

Cayman Islands Polygraph testing malpractice committed by a reputable organisation Julius Baer and administered by well known local law firm Maples & Calder and an American examiner, Lou Crisella, a member of the American Polygraph Society

Zurich, January 7th, 2006

Government of the Cayman Islands

Your Excellency, Dear Prime Minister, Dear Ministers

I would like to draw your attention to a malpractice carried out in the Cayman Islands. This practice could cause and has already caused that people of the Cayman Islands are not treated fairly and equally. The malpractice of polygraph testing was carried out by a so-called highly qualified American Polygrapher and the administration of the test was done by a reputable local law firm. According to international bodies I contacted such practice could spoil the country's law reputation because for instance a USA Member of Congress confirmed that they do have a federal law the "Employee Polygraph Protection Act 1988 (EPPA)" in place for controlling such tests. If such an Act is not in place employees are exposed to great injustice if such test are carried out in a jurisdiction. If that procedure carried out to my friend it would have been highly unlawful if conducted in the USA. The companies involved in the case I know are deliberately not mentioned because it still can become a legal matter and at the moment it is avoided to release the name of the companies and the involved people. On the other hand I cannot accept that that sort of practice happens again in the beautiful Islands of Cayman. Cayman's people are exposed to injustice and certainly unlawful conduct. It is requested that adequate action will be taken

- prohibiting such conduct which happened to my client during a polygraph test in the Cayman Islands (mentioned below) or
- passing an act which might even prohibit polygraph testing at all similar to the state of Michigan, USA or
- Forbidding an examiner to exhibit abusive behaviour (harassment) during testing.

The state of Michigan, USA passed an act which abolished polygraph testing at all. Malpractice also could put the Cayman Islands and the American Polygraph Association into a very poor light and confirms only what the state of Michigan, USA and well known psychological societies (e.g. Canada etc) in the world already concluded that polygraph testing must be abolished. It is of no scientific value.

The following is based on a true case which happened in the name of company in the Cayman Islands in the office of a reputable law firm in November 2002.

The lie detector test was unfair and poorly conducted because the American examiner, a consultant of the Company and administrator the law firm did not follow the best practice model of the guidelines of the American Polygraph Society and the American Employee Polygraph Protection Act 1988 (attachment). They were in breach of several guidelines and laws from an American point of view which would mean in America that Company would have to pay considerable high fines and would be liable for its conduct. The breaches are also confirmed by another American polygraph a member of the American Polygraph Society and the involved examiner admitted retrospectively that the testee was not testable because he was on strong medication and had to undergo a risky spine surgery few days after the test. The matter is at present under investigation as well with the American Polygraph Association because the examiner is accused of not acting ethically and professionally. The verdict of the American Polygraph Association has not been released yet.

The Cayman law firm took the simple position "Cayman does not have an act and therefore companies can require from its employees at test any time" (the health condition is not considered and not the amount of medication someone takes) or in other words the employee does have only very limited rights in that procedure. The same Cayman law firm and the Company accused the testee of making up his pain which is unbelievable accusation. It was known that the testee had health problems and only ten days after the test he was diagnosed with his sickness by highly qualified specialist in Switzerland. "Making up pain" is a simplicity which is hardly to accept from a reputable law firm in the Cayman Islands. It is also not acceptable from an ethical and a professional point of view of a lawyer as well as an examiner to make such accusation because the testee had made both aware in

writing of his bad physical condition he was having before the test. On top of that the test was carried out by "a so-called highly qualified American examiner according to the law firm because he performed over 8'000 tests and had so-called Cayman experiences". Lastly, one would think that with such high profile professionals and supervisory body it should not be possible to malpractice a simple lie detector test indeed.

Certain staff members of the company in the Cayman Islands were requested to take immediately a lie detector test in order to fulfil successfully a "Clearance of Management" and additionally had to sign the forms after the test. This "Clearance of Management" was truly an interrogation as it turned out in the case I am referring to and therefore it was an interrogation with extreme consequences for someone who failed the test because of health reasons.

The person who failed the test I know very well and he gave me some details which I am convinced that they are accurate: He was asked to undergo the test without any notice period; he was not allowed to consult his doctor and was not allowed to consult his lawyer. With a lot of psychological pressure he was forced to undergo the test. Unfortunately, he was on a high dosage of medication, was diagnosed with a serious spine problem ten days after the test and after a conservative treatment of four weeks had to undergo a serious spine surgery. The diagnose was three slip discs and a spine channel which was too narrow, therefore he had not been able to sit quietly during that polygraph examination because of the pain he had and medication he was on. It is not possible to sit quietly with three sleep discs in the area of L4/5 and 6 in your lower back.

After I stop the test the examiner accused him of being a criminal, the company and the law firm accused him of having used countermeasures such as moving his body strategically and changing his briefing pattern. He lost his job because of all that accusations.

My wish is for today that someone can help me either to implement an Act such as the attached EPPA 1988 in the Cayman Islands or prohibit polygraph testing similar to the state of Michigan USA. Please let me know which procedure I have to follow and to whom I have to address my request? Do I have to involve the Police?

The case I am referring to might go to Court and therefore we would like to make the case a public matter only then and not before.

The idea of this email is to ask for regulation of Polygraph testing on Cayman Islands, asking about if above would an issue from an Human Rights point of view and how would you protect employees or even to fight for abundance of polygraph testing in the beautiful Cayman Islands.

I also have to mention that I have received several serious threats and therefore I feel it is important that I release this information as long as I am still alive.

Kind regards,



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- United Nations
Office of the High Commissioner for Human Rights, Mr Jean Ziegler
- Foreign Commonwealth Office United Kingdom
- Declaration of BERN

Proposal Anti-Polygraph Act Cayman Islands 2003

Polygraph tests of employees or prospective employees prohibited.

- 1. Prohibition, penalty. No employer or agent thereof shall directly or indirectly solicit or require a polygraph, voice stress analysis, or any test purporting to test the honesty of any employee or prospective employee. No person shall sell to or interpret for an employer or the employer's agent a test that the person knows has been solicited or required by an employer or agent to test the honesty of an employee or prospective employee. An employer or agent or any person knowingly selling, administering, or interpreting tests in violation of this section is guilty of a misdemeanor. If an employee requests a polygraph test any employer or agent administering the test shall inform the employee that taking the test is voluntary.**

- 2. Investigations. The department of labor and industry shall investigate suspected violations of this section. The department may refer any evidence available concerning violations of this section to the county attorney of the appropriate county, who may with or without such reference, institute the appropriate criminal proceedings under this section.**

- 3. Injunctive relief. In addition to the penalties provided by law for violation of this section, specifically and generally, whether or not injunctive relief is otherwise provided by law, the courts of this state are vested with jurisdiction to prevent and restrain violations of this section and to require the payment of civil penalties. Whenever it shall appear to the satisfaction of the attorney general that this section has been or is being violated, the attorney general shall be entitled, on behalf of the state, to sue for and have injunctive relief in any court of competent jurisdiction against any such violation or threatened violation without abridging other penalties provided by law.**

- 4. Individual remedies. In addition to the remedies otherwise provided by law, any person injured by a violation of this section may bring a civil action to recover any and all damages recoverable at law, together with costs and disbursements, including costs of investigation and reasonable attorney's fees, and receive other equitable relief as determined by the court. The court may, as appropriate, enter a consent judgment or decree without a finding of illegality.**

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Freienbach, July 28th, 2003

Dear Mr. Vaughan,

Thank you very much for your letter of July 7th, 2003.

I highly appreciate all the work you have already done for me particularly to read my complaint, to write above letter and to guide me in respect of formally setting up my complaint in order to facilitate the review for the Grievance Committee.

I do not mind if Mr. Sosnowski will sit on the Committee because the information I provided him with for his review was not complete and he could not review a lot of important facts before making his statement. Therefore, he did not have the full picture at the time when he reviewed my case (his statement attachments 8 and 15). On the other hand I highly appreciate your offer that Mr. Sosnowski is not one of the assigned Ethics Committee Member. I also would like to apologize that I am so late with my complaint, however, I had to recover properly first from my invasive spine surgery in order to deal with this matter.

INTRODUCTION

I am aware of the fact that APA consists of members dedicated to provide a valid and reliable means to verify the truth and establish the highest standards of moral, ethical and professional contact and this is the main reason why I would like to present my case to you first before taking legal actions. I am convinced that the supervising body (APA's Grievance Committee) should investigate the matter first because they are the professionals in the field. The Court, anti.Polygraph society and politicians in the Cayman Islands should only get formally involved when the professional supervising body had the opportunity to draw its conclusions. This is only fair and does not create unnecessary confusion and bad feelings between the parties.

It is clear to me that the American Polygraph Association (APA), as a private organisation cannot have the authority to enforce laws of any political jurisdiction. On the other hand I am convinced if members of APA do not act ethically or professionally in carrying out their work, APA would be highly interested in being informed about their conduct in order not to jeopardize the organization's reputation. It is even more important that all the good work which has been done by examiners and scientists, who have a common interest in the

professional use, scientific study, and development of the polygraph test is not spoiled by the conduct of single examiners. During my research

SUMMARY OF EVENTS

I believe that my behavior and my conduct caused on my medical problems could not be interpreted as a counter-measure and have obviously had a huge impact on the outcome of the test.

a) **Involved Parties**

- a. The Company represented by a legal advisor and a representative of the US Branch
- b. The Company's lawyer, Maples and Calder, Attorneys-at-law, who's offices also served as location for the test
- c. Mr. Lou Criscella, polygraph examiner on behalf of the Company
- d. Mr. Rudolf Elmer, examinee and employee of the Company for 15 years

b) **Medical problems:**

- a. I was diagnosed with hip arthritis in 1998 and went for regular physical therapy treatments. I did take taking medication due to pain when needed (Vioxx or Voltaren).
- b. January 2001 I had a bicycle accident and suffered from a severe head injury. Recovery was slow and still ongoing at the time of the polygraph test. I learned from an American protection organization and doctors in 2001 that it can take up to four years to recover from a head injury. It is known that head injured people appear to be fine even though they suffer for years after the injury. It is also known that most of them loose their jobs within a year or two because people believe they are fine but actually the recovery process goes still on.
- c. A sequence of fainting in summer 2000 was checked out by the doctors and left me with taking medication for my heart (Aethenolol).
- d. Since June 2002 I suffered from intermittent pains/cramps in my right leg and the doctors could not find anything. They increased my pain medication without results. This was diagnosed as two slipped discs in the lower back with a narrow spine channel a week after the test in Switzerland during my vacation. (attachment 1 and 14).

c) **Test events**

- a. Several attempts had to be made to finish the interview due to my pain. I needed to shift positions, was unable to sit for a lengthy period of time and had to get relive by the physical therapist as well as more medication.
- b. Mr. Criscella went along but during the acquaintance test he stopped the test and started to accuse me verbally.
- c. I did not want to go along with his threatening behavior and postponed the session.
- d. The setup of the test procedure was unprofessional and the purpose of the test was misleading.
- e. Attachment 12 provides you with the information about what happened and gives you also an overall picture about the test.

d) **Outcome of test**

- a. Due to Mr. Criscella's report to the Company which must have included the outcome of my interview, acquaintance test and the breakup before the "real" test, they terminated during my sick leave my contract 10 days after the test and this has ongoing consequences until today.

Legal aspects

For your information the Cayman Islands does not have any kind of Employee Polygraph Protection Act (EPPA 1988) in force and also no Protection Act for head injured people. Maples & Calder, the legal advisor of the Company states that an employee can be asked to undergo a polygraph test any time if the employer wants to have the employee tested. Basically, this means if the employee does not undergo the test or does not pass the test it could be used to make an employee redundant. This happened to me ten days after the test being on sick leave. However, I do not accept this simplicity by Maples & Calder, particularly with my health condition.

Maples & Calder on the other hand confirmed that the tests were in line with US best practice (attachment 2). This is highly questionable because

- I believe after having reviewed my case the Grievance Committee of the APA may conclude that what happened to me and other testees was by no means "US best practice" (attachment 2) and not ethically, morally and professionally conducted during the procedure.
- I also hope the Grievance Committee agrees that a person with my health condition and history as well as medication would not be tested in the USA.
- "US best practice" and also EPPA 1998 regulations such as the 48 hours rule for employees who are not working for Government, Police or Military was not considered. For Government and Law Enforcement Agencies as I am informed it is part of their employment contract to undergo such tests at any time. This was not part of my employment contract.
- I do not think that the Grievance Committee agrees that it is US best practice to accuse and verbally harass an examinee when conducting an evidentiary examination.
- I also hope according to US best practice the Grievance Committee agrees that critical sequences (acquaintance test, the accusations and the harassment) needed to be taped and not "deliberately" omitted as it appeared to have happened.

I am about to challenge Maples & Calder's statements in Court. I am going to challenge also the fact that head injured people have to undergo a polygraph test even though I declared it on the consent form before the test. I am still stunned that an employer can force an employee including making psychological pressure to undergo such a test with my health condition and all the declarations on the consent form after having served for the Company for 15 years.

Set-up of test

The test was declared as "Clearance of Management" and therefore not an investigative examination according to the Company's agents Maples & Calder, Mr. Criscella, the examiner, as well as two Directors of the Company. I do not think that it is correct to call my interview and test an "evidentiary examination". I was made to believe that it was only a "Clearance of Management" which was administered by Maples & Calder and carried out by Mr. Lou Criscella. Maples & Calder stated in writing that it was not an investigation (Maples & Calder attachment 21, "when it was nothing of that sort"). However, even Mr. Sosnowski and Mr. W. Kelly (attachment 10) concluded that it appeared to be an investigation.

COMPLAINTS FOR REVIEW BY THE GRIEVANCE COMMITTEE OF THE APA

I am convinced that Mr. Criscella was in violation with several rules of the APA standards. You find below the issues referred to in order of the particular paragraph of the By-Laws of the American Polygraph Association, my explanations including the facts/proof and my conclusions of the allegations.

3.1. Statement of purpose: “... a polygraph examination, properly administered by a well trained and competent polygraph examiner and using a validated testing technique, has a high degree of accuracy in detecting truthfulness or deception. ...”.

I do not think that the test was properly administered because there were several violations (By-Laws: 3.2, 3.3.1, 3.4.1, 3.4.2, 3.4.3, 3.7.1, 3.8.2, 3.8.4, 3.8.5, 3.8.6, 3.9.8, 4.11, 4.2.1, 4.3.1, 4.4.1, 4.5.1, 4.11.1) and therefore a high degree of accuracy was not possible in detecting truthfulness or deception in my case.

Conclusion/Allegation 3.1: The polygraph test never met the “Statement of Purpose” and therefore all the actions following Mr. Criscella’s accusations created confusion for all parties based on questionable test results and his conduct. His conduct and behavior played an important role especially in the break-up phase of the test and his report to the Company was founded on false facts due to a questionable polygraph testing procedures which is explained in the following paragraphs.

3.2. Definition: Management Clearance versus Investigation

A letter as of Nov 27th, 2002 from Maples & Calder (attachment 21) confirms that it was not an investigation (Maples & Calder accused me of mischaracterizing the “Management Clearance Process”) therefore it must have been an evidentiary examination which should have been carried out by Mr. Lou Criscella.

3.2.1 Evidentiary Examination: “... it is not intended to prevent admission as evidence of a confession obtained during the examination”.

Mr. Criscella accused me and verbally harassed me after the acquaintance test in order to make me admit to things I did not commit. I was an easy victim for him on heavy medication due to pain attacks. He intended to obtain evidence and a confession by accusing me and harassing me. He went as far as telling people that “I was admitting things”. He made highly damaging accusations and destroyed my reputation with my Superiors. Mr. Criscella took one statement as an admission, which was totally wrong. He informed Maples & Calder and the Company that I had made “some” admissions because the CEO came back confronting me with one during a later telephone call. I can proof this fact because I do have a witness. Mr. Criscella’s behavior and conduct (accusing and harassing me, asking questions on the accusatory side) clearly indicated that he did not perform an evidentiary examination as I was made believe (“Management Clearance”). Therefore, I have to assume that he deliberately did not tape crucial sequences of the procedure (the explanation of the acquaintance test, the acquaintance test itself, his accusations (attachment 16). The transcript of the tape and the above mentioned incident clearly confirm that it was an investigation. Finally, I was made to believe by him that it was only an evidentiary examination. Mr. Criscella was playing a double game in my view and this behavior suggests unethical intentions.

Conclusion 3.2: It appears that Mr. Criscella, as a highly qualified examiner and Maples & Calder, the administrator, could not differentiate between an evidentiary and an investigative examination. Mr. Criscella intended to extreme pressure so I would admit to things I did not commit. This is not in line with the APA's definition.

3.2.1. Evidentiary Examination versus Investigative Examination

It is obvious that Mr. Criscella was informed that it was an investigation otherwise he would not have started accusing me of incidents/events I was not involved in (attachment 3 lists the accusations he made).

Mr. Kelly's report (attachment 10) suggests that the questions were more on the accusatory side (discrimination) and that someone must have influenced Mr. Criscella's opinion otherwise he would not have accused me after the acquaintance test was nearly completed. Actually the test was stopped at the acquaintance test level after about ten questions.

Maples & Calder's transcript (attachments 17 and 18) proofs that the questions were mainly on the accusatory side.

Maples & Calder's transcript also proofs that crucial sequences were not taped (acquaintance test, Mr. Criscella's accusations and conduct, my detailed information about my health condition and that my doctor advised me not to take the test).

It appears that Mr. Criscella clearly knew what he was doing and that he did not inform me correctly about the type of examination.

The questions had an element of accusations and this suggests an element of strong discrimination. I have to assume that he did not ask all testees the same questions during the interviews as well as during the polygraph tests. I do have some indication from other examinees that they were asked different questions (could the Grievance Committee compare all questions please).

Mr. Criscella also gave me two copies of the same letter at the same time one in the left and the other in the right hand with reasoning that one is the original which is barely readable and the other, a copy, is better to read. The way he gave me the papers was a clear attempt to collect fingerprints because I only needed to hold them for 15 seconds or in other words he was collecting evidence which indicates an investigative examination.

Conclusion/Allegation: 3.2. The Company and Maples & Calder called the test a "Management Clearance" (attachment 9), and therefore Mr. Criscella was supposed to conduct an evidentiary examination which was in fact an investigative examination. This was misleading me and the other testees and is considered unethical.

3.3.1." A polygraph examiner shall meet the training and educational requirements of his category of membership".

I doubt that Mr. Criscella meets above requirements. However, my lawyer as well as I was never provided with an official document of Mr. Criscella's category of membership and professional education. It was only stated by Maples & Calder that he is a member of the "International Academy of Polygraph", he conducted over 8'000 tests and has extensive experience in the Cayman Islands. As a member of an international organization with extensive Cayman experience Mr. Criscella should be well aware of the complexity and danger working in another jurisdiction.

Conclusion/Allegation 3.3.1. I only can assume based on my case that Mr. Criscella's professional education is doubtful. May I kindly ask you to check his professional category of membership, if he is still a member as well as if his conduct is in line with his category of membership?

3.4.1. "The examiner shall make reasonable efforts to determine that the examinee is a fit subject for testing, where allowed by law. Basic inquiries into the medical and psychological condition of the examinee as well as any recent drug use should be made where allowed by law. Mental, physical or medical conditions of the examinee that should be observable to, or that should be reasonably known by the examiner, should also be evaluation prior to testing. No test should be conducted where valid results could not be reasonably foreseen":

Consent form: I wrote my problems down on the consent form and initialed that I was not fit for the test (attachment 4) (crossed out the "no" and the sentence received the meaning "I am not fit for the test").

I told Mr. Criscella about the drugs I was taking and that I recently had to increase the dosage (side effects, attachment 6) based on my Doctor's advice. The drugs were prescribed by Dr. Felix Häfner (attachment 1 and 5). I also told Mr. Criscella that my doctor told me that I was not fit for the test and I should postpone the test.

The prescription of the drugs clearly states (attachment 6) that it is difficult to make sound judgments after taking the drugs. My agreement to the test after having been persuaded by Mr. Criscella might have been influenced by the drugs I was taking. I took two kinds of drugs (VIOXX and Aethenolol) and I found no one who could explain the effects of both drugs together in conjunction with the high dosage I was on.

The surgery report of Prof. Hansjörg Leu (attachment 7) confirms that I was seriously suffering from two large disc hernias and a narrow a spine channel (could not sit still with that pain). It is generally known that the pain comes and goes at any time and I was suffering from intermittent cramp attacks which were uncontrollable by medication (attachment 1). Prof. Hansjörg Leu is a highly qualified surgeon and Board Member of the International Society for Minimal Invasive Spine Surgery. He and Dr. Felix Häfner will testify if needed.

Later Mr. Criscella admitted that I was not fit for the test (email Mr. Sosnoswski attachment 8).

A reasonable effort would have been to consult a doctor and verify the situation and not just persuade me to go on with the test. There was enough evidence that I was not fit for the test I even informed Mr. Criscella about my doctor's opinion. I believe that

Mr. Criscella, as prudent and professional examiner, should have drawn the conclusion that due to my circumstances no test should have been conducted because valid results could not be reasonably foreseen. On the other hand he must have known the Company took my office keys away and did not tell me that my job was at stake from the start of the test. First he created psychological pressure to force me to continue with the test and later he harassed me verbally after breaking up the test.

Conclusion 3.4.1. An examiner who acts ethical and professional would not have started the test at all. Mr. Criscella neglected to consult a doctor and let him decide if I was fit for the test or not. He is not a qualified professional to make a judgment in relation to my health/medication issues which I brought to his attention. Instead Mr. Criscella took the approach to persuade me by saying we should try to find out if I was fit or not for the test. This became obvious during the test. Later he admitted that I was not fit for the test (email Mr. Sosnoswski attachment 8).

3.4.2. “The examiner will inquire whether the examinee is currently receiving or has in the past received medical or psychiatric treatment or consultation”.

Mr. Criscella inquired but went along with the test. Mr. Criscella as a well experienced professional with more than 8’000 tests should have been in a position to draw the right conclusion based on his level of education and his professional experience. It was a wrong judgment he made which he confirmed later to Mr. Sosnoswski (attachment 8).

Conclusion/Allegation 3.4.2. Mr. Criscella’s inquiries were superficial even though I clearly stated on the consent form that I was not fit for the test that I was on medication and that my doctor, Dr. Felix Häfner, had told me to postpone the test (attachment 1). An experienced examiner would have gone into more detail particularly someone with Mr. Criscella’s experience and educational background.

3.4.3. “If the examiner has a reasonable doubt concerning the ability of the examinee to safely undergo an examination a release from the examinee and his/her physician shall be obtained.”

Mr. Criscella must have had a reasonable doubt but never asked for a release from me and my physician which he would have received without any doubt.

Conclusion/Allegation 3.4.3. He neglected to ask for a release form even though I wrote down on the consent form that I was not fit for the test and even provided more information why I was not fit on the consent form at the beginning of the test (attachment 4). This is an unprofessional conduct to handle such delicate matters.

3.7.1 “An examiner shall, prior to the examination, dedicate sufficient time to identify the issues and any potential problems in any area of testing”.

Mr. Criscella did not spend enough time “in any area of testing” because I assume he was not aware of the fact that if the examinee fails he/she lost his/her job. This would clearly not be ethical considering the EPPA 1988 regulations and US best practice but it is also not ethical to perform such a test on an examinee with health problems.

The consent form was completed by Mr. Criscella or a third party because in the "hold harmless statement" the name of "Julius Baer" is not my handwriting. I would have put down the name of Mr. Criscella and not the Company's name. Any changes I made on the consent form were initialed by myself but the sentence "I further understand that I am not taking this test as a condition of employment or continued employment and that I was advised that I could not be forced to take this test by anyone"(attachment 4) was crossed out after I signed the form and therefore it was not initialed.

I only received written information (attachment 9) about the reasons for the test, its procedure and consequences etc. after the second attempt. This was crucial information which I should have received before the series of interviews even started and is required by EPPA 1988 law or "US best practice".

I know for a fact that in the USA a decent examiner would not test a Banking employee under these circumstances because such tests are in general not part of an employment contract (exceptions in the USA: Government and Law Enforcement employees). Therefore, it is not ethical from a professional point of view to use different ethical principles and best practice standards when working in another jurisdiction. If he had spent enough time "in any area of testing" he would have found out what the Bank's real purpose was and that the test was not properly prepared and administered. The fact that a crucial sentence "I further understand that I am not taking this test as a condition of employment or continued employment and that I was advised that I could not be forced to take this test by anyone" (attachment 4) was crossed out on the consent form should have made him suspicious that something terrible was going on.

Conclusion/Allegation 3.7.1. Mr. Criscella did not spend sufficient time to identify potential problems in any area of testing otherwise he would have foreseen that there were problems with the consent form (sentence crossed out, I initialed the change "no", someone put the name of "Julius Baer" in the form and that the forms (attachment 4) were distributed only after the test. This test was clearly not professionally prepared and executed.

3.8.2 "The examiner shall obtain the consent of the examinee prior to testing".

As an examinee you only can provide information to the examiner and then the examiner has to make the decision if consent to the test is even reasonable. For example a mentally or physically sick person or person under medication can consent to the test not knowing that he/she is not fit for the test. In my case I had a feeling with all the issues (medication, head injury, spine problems, doctor's recommendation) that I was not fit for such a test. Mr. Criscella on the other hand must have thought that I was fit for the test. It is difficult to understand which circumstances he based his judgment on that I was fit for the test. On the other hand Mr. Sosnowski confirmed (attachment 8) that Mr. Criscella later thought that I was not fit for the test.

Conclusion/Allegation 3.8.2. I had honestly declared all my health problems before starting the test (consent form crossed out the "no" and the sentence became the meaning of not being fit) "I am not fit" so there was no real consent. However, he persuaded me that I should try and we find out later as "the polygraph will tell if I am

fit or not or if I have pain or not". This "Try and Find out Method" is certainly not the right approach having a lot of information about my health status. I also stopped the test twice because I realized I was in pain, could not focus anymore and that Mr. Criscella became kind of aggressive. Persuading an examinee to try and find out - is from my point of view - not a validated testing technique and therefore unethical.

3.8.4. "Sufficient time shall be spent to discuss the issues to be tested and to allow the examinee to fully explain his or her answers".

Mr. Criscella started accusing me immediately after about 10 questions of the acquaintance test and therefore he did not give me sufficient time to fully explain my answers. Respectively I made him aware that I was definitely not fit for the test under those circumstances.

Conclusion/Allegation 3.8.4. Mr. Criscella did not give me the time to explain the answers to the acquaintance test. He was in breach with the by-laws.

3.8.5. "Sufficient time shall be spent to ensure the examinee recognizes and understand each question. ..."

During the pre-interview Mr. Criscella spoke very fast and had several questions packed in one topic so it was sometimes difficult for me to grasp the content of what he was asking. His strong accent made it even more difficult for me to understand him clearly in a foreign language taking into account the medication and pain I had. English is not my first language and it might even be better to have asked for the assistance of a translator. The tape will clearly confirm that he was speaking very fast, that I was breathing heavily and deeply (please listen to the tape, I did not receive a copy of the tape) and he did not give me enough time to answer his questions. I only continued with the test believing that the polygraph system would show that I was in pain. I really wanted to get the test over with.

Conclusion/Allegation 3.8.5: During the pre-interview he went through the questions so fast that I had difficulties to understand his questions in detail. His philosophical discussion about "what is a lie and what is not" in a foreign language was difficult being under pain. It appears that he wanted to confuse me. He must have noticed that I had difficulties to express myself. After the acquaintance test he did not give me time to explain myself because he physically cornered me by looking deeply into my eyes. He then started to accuse me and shouted at me. This is clearly harassment and I hope Mr. Criscella will confirm his conduct even though it is not on the transcript and the tape. I do not think this is an ethical conduct for a professional polygraph examiner.

3.8.6. "The examiner shall not express bias in any manner regarding the truthfulness of the examinee prior to the completion of testing."

Mr. Criscella was definitely expressing bias prior to the completion of testing.

He did not ask all the testees the same questions which I call an act of discrimination. I cannot prove this but it appears that other testees were asked different questions. Could the Grievance Committee review the questions of the interview and the polygraph test

of the other examinees as well? It certainly will clarify the approach which Mr. Criscella took.

During my interview the questions were more on the accusatory side (report Mr. Kelly attachment 10).

Mr. Criscella was accusing me and harassing me after the acquaintance test which I also call bias.

Conclusion/Allegation 3.8.6. It seems that Mr. Criscella was informed prior to the interview that I might be a suspect. His line of questioning expressed bias and discrimination towards me. He also clearly sought to provoke a reaction on my side with his provocative behavior. This is unprofessional conduct during an evidentiary examination.

3.9.8. "An audio or an audio/video recording of the pre-test and in-test phases shall be made and maintained for evidentiary examinations ..."

An audiotape was made but several crucial sequences were missing (start where I explained I was not fit for the test at the beginning, the explanation of the acquaintance test and the acquaintance test itself, the accusations and harassment was not taped as well). The transcript which I received confirms that only a limited part was taped and crucial sequences of the test are missing.

Conclusion/Allegation 3.9.8. I have to assume that sequences of the pre-test and the accusations were deliberately not completely taped which is not a professional and ethical conduct. According to Maples & Calder it was not an investigation (attachment 21) and therefore at least a complete audiotape should have been made by the examiner. Crucial sequences as already explained were not taped. This is professional neglect in my view.

4.1.1. "A member shall respect the rights and dignity of all persons to whom they administer polygraph examinations"

I believe that I did not have all rights and that I was not treated with dignity.

- a) Denial of legal and medical advice: I was told by the Banks legal advisor and director that I was not supposed to talk to anyone but my wife or my superior about the ongoing test. Therefore my right to seek legal counsel or medical advice was taken away from me even before the beginning of the procedure. This might not have been Mr. Criscella's fault but he as the expert in setting up and administering such tests should make sure that my rights are not violated by anyone involved in the procedure.
- b) Consent form: I should have put the name of "Julius Baer" in my handwriting on the consent form. I have to assume that Mr. Criscella completed the blank spot in the form. I am highly convinced that the sentence "I further understand that I am not taking this test as a condition of employment or continued employment and that I was advised that I could not be forced to take this test by anyone" was crossed out after I signed the form. This is illegal and violates my human rights.

- c) Medical problems: As I mentioned earlier Mr. Criscella neglected to seek the professional advice of a doctor regarding my health issues. He felt competent (I question if he is a trained physician?) enough to decide to follow through with the test. His misjudgment of the situation had a huge impact of the outcome as he did not give me credit for my honesty because he seems to already having judged me as being guilty.
- d) Choice of method: His way of "Let's-try-and-see" is not a validated format of polygraph testing due to the By-laws. The purpose of this method is solely to get the cooperation of the examinee and therefore only served his side. He did not pay me respect as he ridiculed my health problems and never asked for a signed release from me or my doctor at that time.
- e) Line of questioning: As mentioned above his line of questioning was accusatory and he chose to ask me in a different way than the other examinees which is discriminatory. He accused me of being the responsible person for incidents in the bank which I always denied.
- f) Accusations: I know that an examiner should only make a statement in relation to if a person is truthful, deceptive or not testable. He accused me (attachment 3) and verbally harassed me as well. An examiner should never verbally and physically harass (coming very close to my body and looking deeply into my eyes while talking with a raised voice) a testee. Therefore, his possible argument that I did not submit to the test is false because he started accusing and verbally harassing me before the final test was carried out. Would you go along with such an examiner? Were his accusations part of his game plan because he realized from the polygraph readings of the acquaintance test that I was not testable? Mr. Criscella started accusing me during the acquaintance test which is neither ethically nor professionally correct.
- g) Audiotape: He neglected to tape crucial sequences of the interview. I do not know but he might have realized that I was not testable and therefore he deliberately tried to find a way that he could finish the test in order to confirm that I failed so he would not loose his face toward his employer the Bank. However, I do not know what his intention was at that time.
- h) Withheld Report: I never received his report on my readings of the test. I have to assume that he did write a report to the Company as they refer to it in one of their letters. I regard this as disrespect of my persons as he is holding back personal information which might damage my professional reputation in the highest degree.

Conclusion 4.1.1. It is obvious to me that Mr. Criscella did not respect my rights and dignity. I have to assume that he did not realize how seriously ill I was at the time when he tested me because I did not know myself. The consent form, his choice of questioning, the accusations, the missing audiotape and the withheld report are strong examples how Mr. Criscella disrespected my rights and how unethical he carried out his work. He became the extended arm of the Company to do their dirty work which is a disgrace in itself.

4.2.1. "A member shall not render conclusive diagnosis when the physiological records lack sufficient quality and clarity".

My physiological records must have lacked sufficient quality and clarity. I wrote everything down on the consent form what I believed should be taken into account before testing me. I do not think that Mr. Criscella was in a position to draw an honest conclusion that I was fit for the test. However, he made a conclusive diagnosis "I was fit for the test". He told the Company that I was deliberately defeating the test and therefore I had failed the test in his opinion without even going through with it. This had tremendous consequences for my professional career within the Company.

Conclusion/Allegation 4.2.1. Mr. Criscella misjudged the situation gravely in his report to the Management. He also made a conclusive diagnosis that I was fit for the test even though the medical profession did not agree with him. On top of that he did not provide me with the report even though my lawyer had asked for them.

4.3.1. "A member shall afford each examinee a reasonable opportunity to explain physiological reactions to relevant questions in the recordings."

I had no time to explain my physiological reactions. He started accusing and harassing me right away after about 10 questions of the acquaintance test. Today, I know I was not even in a position to explain my physiological reaction because I was not aware what impact my sickness had for example on my breathing. I was breathing heavily during the whole length of the interview due to excitement and pain. It is also difficult to sit still with a serious spine problem because of the pain. I needed physiotherapeutic treatment after one part of the interview and the physiotherapist confirmed (attachment 20) that I was aggravated with pain. Therefore, accusing me that I was moving strategically is a terrible insult. I am certain that I did not move strategically and I hope the polygraph reading will confirm this fact. Finally, Mr. Criscella asked me only about 10 questions during the acquaintance test and I do not think this is good enough in Court to use as evidence to proof that "I was moving my body in strategic ways", and "was taking deep breaths" before answering his questions.

Conclusion/Allegation 4.3.1. Unfortunately, at the time of testing I did not know precisely what caused my physiological reactions but today I know it was the serious back problem and the medication. The short sequence of the polygraph reading should be analyzed and it will confirm that I was not moving strategically and even confirm that there is not enough evidence to draw a conclusion at all. It might also confirm that I had to sit in an odd position having my right leg on a chair (to keep my hip relaxed) and the other leg on the floor. This could have caused the more so-called strategic movements which certainly would explain that Mr. Criscella drew the wrong conclusion.

4.4.1. "A member shall not provide any report or opinion regarding the medical or psychological condition of the examinee for which the member is not professionally qualified to make ..."

Mr. Criscella clearly provided an opinion about my medical and psychological condition in the sense that I was fit for the test. To my knowledge he is neither a qualified doctor nor a psychologist and lacks certainly knowledge of the impact of medication such as the combination of VIOXX and Aethenolol. I know Mr. Criscella even wrote a report to Management accusing and what I should have committed. I

hope he is honest enough and provides you with that report. However, I hope he mentioned in his report my appearance which would clarify that I was in pain and therefore could not sit properly for any length of time.

Conclusion/Allegation 4.4.1. I have to assume he made a statement about my appearance and behavior as Mr. Criscella did never provide me with a copy of his report. He also expressed his opinion that I was fit for the test based on his conduct to follow through with the test. Later he changed his statement to Mr. Sosnowski (attachment 8). Finally, providing a report is supposed to be standard based on EPPA 1998 and I believe if he acted ethically he would not be afraid to provide me with his report.

4.5.1. “A member shall not conduct a polygraph examination when there is reason to believe the examination is intended to circumvent or defy the law”.

I have to assume that Mr. Criscella was pre-informed by the Company and that he was made to believe that the examination was intended to circumvent the law in the way of a private investigation. It appears that he preciously knew that I had to fail the test (the consent form, his choice of method, his line of questioning (see attachments 10 and 18), the accusations and harassment, the missing audiotape and the withheld report are strong examples) in regards of circumventing the Labor Law in the Cayman Islands. This again shows Mr. Criscella's disrespect and unethical work attitude.

Conclusion/Allegation 4.5.1. He must have been aware of the fact that Maples & Calder and the Company were trying to circumvent the law. They did not like to get the Police involved so they used him to carry out police work.

4.11.1. “A member who administers or attempts to administer any polygraph examination in violation of the Code of Ethics or the Standards of Practice may be subject to ...”

Conclusion/Allegation 4.11.1: I am absolutely convinced that Mr. Criscella should be subject to an investigation based on all issues mentioned. The Grievance Committee might find him guilty of violating the Code of Ethics or the Standard of Practice. They will have to decide about his future status and membership in the Association.

FINAL THOUGHTS

Discreditation/Loss of Reputation: It is hard to follow that Mr. Criscella thought that I was a suitable person to be tested (attachment 8) but he agreed to test me and he went so far as to accusing me. He also stated that I made admissions during the interview and that I was deliberately trying to defeat the acquaintance test (attachment 13). This is a terrible assumption. I told him in our first session that I had quickly researched the internet about polygraph testing as I did not know anything about it. I even showed him a printout Mr. Criscella used this to discredit me by telling the Company “someone who looks up the internet about polygraph testing will do other bad things as well”. He damaged my reputation within the Company to an unrepairable degree. This is highly unprofessional conduct and an insult to the APA.

Due Diligence: It is also really confusing that Maples & Calder with its legal professionals, the bank's own legal advisor and Mr. Criscella could possibly not have been aware of the fact

that I was not fit for test from a medical point of view. The medication I took and which I had to increase during those days should have been another sign that I was not in good health. Taking into account that I declared all those issues on the consent form at the beginning of the test and that I was made to continue with test using increasing psychological pressure from the Banks representatives as well as Mr. Criscella, this makes it a terrible act.

48-hour rule: The EPPA 1988 has clear guidelines how a test should be administered and I am convinced that those guidelines will be taken into account in the sense of "US best practice" (according to Maples & Calder) if it comes to a Court case. Therefore, the 48 hour rule should be considered as well. None of the testees had 48 hours to consider if he/she wants to undergo the test. Attached please find my comparison with the EPPA 1988 (attachment 11) and what happened in order to gain the full picture.

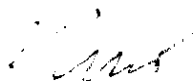
Financial Loss: This test left me with a huge financial loss in many ways because I had to pay my surgery and medical treatments because the Company cancelled my health insurance after I failed the test; I am still unemployed today; my professional career as well as my reputation were destroyed; it is questionable if I can really work properly again like I used to because I have not recovered completely from the surgery (at least another six months); hardship for the family and so on.

Please do not misread me. I am not seeking financial gain with this letter. My purpose is to learn more about polygraph testing in relation to my case as I strongly feel being mistreated by the involved parties. Therefore I kindly ask you to look closely into the matter and give your opinion and verdict. I trust you as the experts in the matter to make sound judgment in setting the records straight.

Again it is going to be a lot of work to go through my report; however, I believe it has to be done in order to draw the right conclusions about an American examiner carrying out work in another jurisdiction. I honestly believe that international working professionals should have particular interest in the Code of Ethics as well as the best practice model of their home country/association and act in line with those standards when working abroad. They represent not only their country but also their association and should set a model example anywhere in the world.

I am looking forward to your response and trust that you treat the matter confidentially and correctly from an ethical, moral and professional point of view.

Best Regards,



Rudolf Elmer



AMERICAN POLYGRAPH ASSOCIATION

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July 8, 2004

Mr. Rudolf Elmer
Rietstrasse 8
8807 Freienbach
Switzerland

RE: Complaint against Mr. Lou Criscella, Complaint No. 58-03

Dear Mr. Elmer:

As Chairman of the Ethics and Grievance Committee for the American Polygraph Association, I have carefully reviewed all of the material provided by both you and Mr. Criscella regarding your Complaint. Due to the fact that the process was stopped before any Specific Issue testing the majority of the By-Laws do not apply. Regardless, no specific violations were identified.

Based on this finding the Case is closed.

Sincerely,

Steven D. Duncan
General Chair
Ethics and Grievance Committee

I highlited the words I believe the examiner was not in line with „Code of Ethics“ according to American Poligraph Association

CODE OF ETHICS

The Members of the AMERICAN POLYGRAPH ASSOCIATION hold themselves bound, individually and collectively, to the following Code of Ethics:

- I. To maintain the highest **standards of moral, ethical and professional conduct**; to be governed by laws of equity and justice in the performance of all functions.
- II. To **respect the inherent dignity of all mankind**; to deal justly, fairly, and impartially with each individual, irrespective of social, political, racial, ethnic or religious considerations, economic status, or **physical characteristics**.
- III. To discharge professional duties and obligations with independence, dignity, and self-respect; to keep all decisions and reports scrupulously free from any personal financial, political, fraternal, social or other extraneous influences.
- IV. To refrain from false or misleading advertising; to accept no remuneration for services rendered unless such be fair and reasonable; to **decline to represent knowingly both sides of an area at issue, except by express permission of those concerned, given after a full disclosure of the facts**; to represent with undivided fidelity.
- V. To refrain from express or implied **public criticism of any Member of AMERICAN POLYGRAPH ASSOCIATION**, except as may be required by due process of law, placing the welfare and advancement of the Association and the polygraph profession above personal desires and ambitions.
- VI. To recommend for membership in the AMERICAN POLYGRAPH ASSOCIATION only those persons who are believed to be fully qualified for the class of membership for which they are applying; who subscribe completely to **the moral and ethical Standards and Principles of Practice of the Association**; and who **will strive in every way to be a credit to the polygraph profession**.
- VII. To support to the best of their ability the professional goals of the AMERICAN POLYGRAPH ASSOCIATION: to support scientific research in the polygraph field; to **contribute to better community relations; through word and deed to elevate the status of the polygraph profession**.

STANDARDS AND PRINCIPLES OF PRACTICE

In order to achieve unity of purpose, to assure a clear concept of obligations to each other and the profession, and to provide for the continuing welfare and protection of the general public, all members of the AMERICAN POLYGRAPH ASSOCIATION have agreed to abide by the following Standards and Principles of Practice.

1. A Member shall recognize the fact that his primary responsibility must be to the person who has volunteered for a polygraph examination, regardless of the circumstances which created the need for the examination.
2. Recognizing that a polygraph examination cannot be conducted on a person against his will, no Member will attempt to conduct an examination when he has reason to believe the examinee has been subjected to coercion or duress. Further, no Member shall conduct any examination on a person without first advising the examinee of the rights enjoyed by every American citizen against self-incrimination and invasion of privacy.
3. No Member shall initiate an examination on any person unless he uses an instrument which makes a permanent simultaneous recording on a moving chart of at least three (3) physiological tracings, the pneumograph, the cardio-sphygmograph and the galvanic skin response. This shall not preclude the recording of additional physiological phenomenon on the same charts. No Member shall conduct an examination on an instrument wherein the manufacturer

has not supplied information for self- calibration and sensitivity standard's for that instrument. Every Member shall calibrate his instrument periodically and keep a record of the dates of calibration. N. Member shall record any psychological or physiological phenomenon with an instrument or any part of an instrument without the subject being aware that their physiological or psychological phenomena are being recorded. The provisions of these paragraphs shall be subject to such additional indices as may be required to comply with any State or Federal licensing regulation.

4. No Member shall conduct an examination on any person whom he believes to be physically or psychologically unfit for testing. In case of doubt as to the propriety of administering a test in any given situation, **the Member shall seek expert guidance from a competent medical or psychological authority** prior to testing.

5. No Member shall render a conclusive verbal or written decision or report based on chart analysis without having administered two or more polygraph charts.

6. No Member shall terminate a polygraph examination without affording the examinee a reasonable opportunity to explain and to eliminate any reactions which are evident on the charts. Further, no Member shall accept the explanation of the examinee for a chart **response without verification.**

7. No Member shall, unless professionally qualified to do so, include in any written report any statement purporting to be a medical, legal or psychiatric opinion or which would infringe upon areas under the cognizance of professional in those fields. This shall not preclude the examiner from describing the appearance or behavior of the examinee, if this is pertinent to the examination, as long as the examiner refrains from offering any diagnosis which he is professionally unqualified to make.

8. A Member shall not conduct an examination where he has reason to believe the examination is intended to circumvent or defy the law.

A Member shall not conduct an examination where he has reason to believe the examination is intended to interfere with or to prevent the lawful organizational activities of a labor union.

10. A Member shall not solicit or accept irregular fees, gratuities, or gifts which may be intended to influence his opinion or decision. Further, no Member shall set a fee for professional polygraph services; contingent upon the findings or results of such services; nor shall he increase any initial fee as a direct result of his findings during any polygraph examination.

11. A Member shall not knowingly issue or permit his employees to issue a polygraph examination report which is misleading, biased, or falsified in any way. Each polygraph report shall be a factual, impartial and objective account of the pertinent information developed during the examination and the examiner's professional conclusion, based on analysis of the polygraph charts.

12. A Member shall be guilty of gross negligence if it be proven that' he did not in fact obtain data reported as factual in any polygraph report. Further, it shall be **deemed highly unethical for any examiner to express verbally or in writing a test conclusion which is based solely upon subjective opinion of personal assumption.** This does not preclude a professional judgment based on analysis of the polygraph charts, in the absence of substantive admissions by the examinee.

13. A Member shall not publish nor cause to be published any false or misleading advertisements relating to the polygraph profession.

14. A Member shall not offer testimony concerning the charts or conclusions presented by another member unless he is thoroughly familiar with the techniques and procedures used by the other Member. This paragraph shall not

prohibit a Member from testifying concerning his independent examination of the same examinee.

15.. **Any person who is convicted of a felony or a crime involving moral turpitude shall be ineligible for any class of membership in the AMERICAN POLYGRAPH ASSOCIATION.**

16. A Member shall abide by decisions and recommendations officially adopted by the AMERICAN POLYGRAPH ASSOCIATION at any regularly scheduled meeting.



TRANSCRIPT OF RUDOLF ELMER'S INTERVIEWS WITH
LOU CRISCELLA

<p>LC Start Time: 00:00:00</p>	<p>What we're going to do is there are some different issues here, let me go ahead and discuss those with you. The first one pertains to X issue back in April or May of 2000. A copy of the share register of X issue was mailed out to the shareholder from the Y Mail Centre in country z. That's going to be one issue that we're going to talk about. If you had anything to do with mailing that out. The other is going to pertain to the F issue. Now, what that is...in approximately July 2000 confidential documents relating to F issue were sent in the mail to the M Company. Okay? So, in other words what we're looking at is those two. A third area we're going to talk about is going to be, between the 3rd of July and 27th of August of this year, two clients' files were moved from the V Department and I guess with each of those, to my understanding, each of those files consist of five inner files themselves, like a hanging file and an additional file within. So we're talking about two different clients. Do you know anything about that? Do you know the client's names?</p>
<p>RE</p>	<p>Um... No. They mentioned it, but.....</p>
<p>LC</p>	<p>Okay. Well, the client's names and I will use them to you during the test is A and B. Okay, those were the names. A and B, those were the files. Of course have not been turned up. No one has found them. We're going to look and see if they have been taken by anyone. The last issue is going to pertain to a blackmail letter that was sent to the company and so let's just go ahead and simply go ahead and start with the X issue. What do you know to the extent of any of these things that I have asked you about them? We'll start with the X issue. What do you know about that? Did you know that something has been mailed out pertaining to the share register?</p>
<p>RE</p>	<p>I don't know I thought that that was a tax issue.</p>
<p>LC</p>	<p>Well what it is, the initial one that there was actually a fax that was sent out and from what I understand that it was a faxed copy of shareholder information that was mailed out from that so obviously you know it was pertaining to a fax.....</p>
<p>RE</p>	<p>Yeah. [Lawyers?] raised an issue there. There was an error [sighs]. [Long pause].</p>
<p>LC</p>	<p>Do you recall anything else about that incident?</p>
<p>RE</p>	<p>That's exactly my..... My accident, it's....</p>
<p>LC</p>	<p>Did you talk to anybody about that, this incident. Has anyone discussed it with you? Have you discussed it with I guess the general manager or with the CEO?</p>
<p>RE</p>	<p>Yeah. I discussed that one.</p>
<p>LC</p>	<p>When do you recall discussing this, how long ago? Anything recent?</p>
<p>RE</p>	<p>[Long pause]. No. I don't [recall that].</p>
<p>LC</p>	<p>Okay. Let's go ahead and then we're going to talk about the X issue. Let's discuss that one being sent to P Funds. What have you heard and when was that last time you heard anything about that? Have you heard what it is in relation to? Things</p>

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	like that.
RE	I think it was a letter of blackmail.
LC	Well, what we have here is about of July 2000 confidential documents in relation to the X issue were sent in the mail to P Funds and an internal investigation revealed that it was not an accident. So we're talking about things that aren't accidents. So the blackmail thing pertains to a letter that was sent to and then some additional information that we will talk about in just a bit. When was the last time, or have you ever talked about, this issue regarding the X issue?
RE	[Long pause]. Not that I can recall.
LC	Nothing recent? Last couple of weeks?
RE	A couple of weeks, no. That I can't say but [about my] accident in January 2001 [sigh].
LC	Let's go on. You know what we're talking about?
RE	Yeah I know, yeah.
LC	You know the issues I'm talking about?
RE	Yeah, yeah.
LC	And you're familiar with them at least?
RE	Yeah, yeah.
LC	Okay, so at least we've cleared that up. I'm not so concerned about what the extent is that you know about it, whether its been discussed, you know exactly what I'm talking about the Y issue and the X issue and what exactly has taken place. You said the Y issue you recall there being a fax?
RE	Yeah.
LC	What I'm stating to you is that the X issue was actually something like that sent to the P Funds. Okay? So, let's go on.
RE	Yeah
LC	Let's talk about the incidents of the two clients, A and B issue being removed from the Trust files and either being hidden or placed somewhere, given to someone or being removed from the offices?
RE	Yeah.
LC	Anything that you recall from that?
RE	Yeah.
LC	Tell me about that.
RE	Yeah. That's the recent that's.....
LC	I know that its something that has happened within the last few months?
RE	Yeah. What I know about it..... is. Alright these files disappeared.....I know about the security system we have which is from my point of view very safe. I didn't know about it. What I learnt later on is that you could use a key to get through our security system.
LC	When did you learn that?
RE	That was after the event. At least three to four weeks after that....
LC	Okay.
RE	When we found out. I also..... What doesn't make sense to me is that the file has moved, disappeared. Because the normal procedure would be that to take all the contents of a file out. Because we went through several scenarios about

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	what could have happened. One was that a cleaner could have followed into the department. But then it would have been somewhere on the desk.
LC	Is there any time that you've ever handled or gone through these files pertaining to these clients?
RE	No.
LC	You've never seen them, ever gone through them, ever had to pull anything from them. Conducted any work pertaining to those files?
RE	I don't even have access to them. But the department there
LC	Have you ever worked in association with anyone who would have worked with those files? Have you ever assisted in anything that would pertain to anything that would be in the files. Is there anytime that anyone has shown you something or asked you a question about something that appeared in the file?
RE	It could only have been on the compliance side.
LC	Okay. Do you recall seeing anything, recalling the name A or B?
RE	No answer.
LC	Alright at least you know what we're talking about and you know what the make up consists of...of every client file in the trust area. Do you know what they consist of inside the file?
RE	No. If you don't know what they consist of? No, I mean, [long pause]... There is correspondence, there is the trust deed but I haven't done any review on the compliance side. Because of I am the compliance officer, technically you should review those files as well on the know-your-client [long pause] policy. But I'm just so overloaded with work and pushed somewhere. But I know on the other hand that internal auditors have to look at it an, uh, that that's much better organised the last two years. From a risk management point of view.
LC	What are your actual responsibilities? What do you do day to day?
RE	[Sighs] I am chief operating officer
LC	Okay. What do your duties consist of as COO?
RE	Its overseeing financial, and finance accounting, accounting generally and compliance side and investment managers side of three hedge funds, uh IT, uh treasury. I do some dealing as well but its [side]. Quite a variety of responsibilities.
LC	How have you been with your workload? Have you been keeping up with your workload?
RE	Honestly speaking?
LC	Hmm hmm, how behind are you with your workload? Something normal?
RE	No, I wouldn't say normal. From a risk point of view, we have to make change. We applied for another employee and we....
LC	To assist you?
RE	Would assist me and other members in the department of basically covering the responsibilities I have.
LC	How behind would you say you are with your work? Jeopardising what goes on? Would you say you're that behind?
RE	Where I would like to be with work [Inaudible]. If I had about 6 to 8 weeks then I could structure the work in the sense where I really can say okay I know what's going on but it's also a special circumstances in there when since in

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	the equity bond front we started investing so we do have money that we have to invest and which I have to ask, it creates a lot of, creates a lot of legal work beyond the contracts, purchase and sales agreements, analysing from lawyers they can do [language intelligible]. Legal language. So there is a kind of peak which once it is invested it might settle down.
LC	Do you feel you're tremendously behind then? Have you discussed it with anyone?
RE	Yeah, no, no CEO knows I mean I'm very open there. He knows what the situation is.
LC	Have you covered any of that up or hidden any of that work?
RE	Its er... I mean one measure was to get another employee. So, and the other one is, work in accordance to the risk management.
LC	So, again have you covered up at any time the amount of work that you're behind on?
RE	What's the meaning of covered up?
LC	Meaning, have you hid it from anyone or have you 100% told CEO about where you're at?
RE	Yeah, yeah.
LC	Told him 100%?
RE	Yeah, yeah. No, I'm very open there, I did it in writing as well so er I know where my staff problems are. He knows that [inaudible] that's my duty to say what the situation is. Otherwise I'm not er put it this way I took it as my job I took it as trying to hide things and er yeah.
LC	Ok, that's fine.
RE	I think its an organisation has to work this way.
LC	The one last area that I would like to talk about is this area here and I'm going to let you go ahead and look at that. That pertains to. You've seen that before? Do you recall seeing that before?
RE	No. [Long pause].
LC	Have you seen that page before?
RE	No.
LC	Alright that pertains to the blackmail letter that was sent out and those are I guess attachments that were received along the same lines. Why don't you just take a second and just read through that, er the second page to, read through that and er.
RE	[Long pause]. Hmm hmm
LC	Alright. Let me go ahead and lets just read what this is. It pertains to again and then to the blackmail letter that was sent and I guess entitled to C pay us x amount it says x amount Christmas bonus to each employee of CO X who had to leave the Bank including D and P and, I can't recall, don't make out what the other is, after CEO had joined the Bank. If you do not make the payments we release the following information. So, now that's the last point that I'm going to ask you about today. Is this the first time that you're seeing this thing?
RE	This was the first time, yes.
LC	This is the first time you've gotten to see this? Has anyone talked to you about this?
RE	Uh, yep

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LC	Who has talked to you about that?
RE	Er Mr M
LC	Okay and Mr M.....
RE	Sorry, sorry someone talked to me about the x amount dollars.
LC	Who talked to you about the x amount dollars?
RE	[Sigh]. [Long pause] MrsE
LC	Okay. Tell me about Mrs ... E?
RE	E yes.
LC	Is she still with the company?
RE	No she left.
LC	Okay. And Mr M is of course still with the company?
RE	No, but I'm not sure about Mr M, sorry. That's wrong.
LC	Okay, what was Mr R's position with the company?
RE	She was senior administrator
LC	Okay and she had authority to go ahead and discuss this issue with you? Or was it just in passing?
RE	No that was somewhere in a supermarket when we had those interviews and then
LC	Interviews by whom?
RE	By the police it was er...
LC	You sat with the police and went through the interviews?
RE	No, I didn't.
LC	Why didn't you sit with them?
RE	I don't know.
LC	Did they call you?
RE	They did.
LC	They called you in to talk to them?
RE	No they didn't, they didn't, no. But that's precisely the period where I had that accident.
LC	Was it right after or during the accident? Before, during it, after?
RE	[Long pause]. Sorry.
LC	When did Mrs R discuss it with you after you, after they were interviewed by the police or she was interviewed I should I say by the police?
RE	Yeah it was after that.
LC	When did she talk to you, at work, at home, over the phone?
RE	It wasn't at work. It wasn't at work.
LC	Was it privately?
RE	It was privately, yeah.
LC	Did she call you at home? Did you call her?
RE	[Long pause]. No I saw her somewhere.
LC	Did she bring it up, did you bring it up?
RE	I think she brought it up.
LC	And no one else discussed this with you? Not Mr CEO? None of the other persons in the corporation that would I guess would be senior?
RE	I think CEO he mentioned something about x amount dollars.
LC	In a meeting with you personally?

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RE	That was a personal meeting.
LC	Was that at work that he mentioned it?
RE	That was at work.
LC	Let me ask you, prior to coming to the Caymans and working in the office here did you know or have a relationship I mean friendship/relationship with anyone that is at the company now or has left the company?
RE	Relationship. Friendship but not relationship. I knew Mr Mt because of somewhere before the 90's because he went to the Caymans around '91/92.
LC	And other than that, no one else that you had a relationship with? Knew, knew of, carrying out an audit other than Mr M?
RE	No.
LC	Once you arrived here anyone that you had a personal relationship with meaning you'd gone out to dinner with other than in a business sense, anyone you socialised with anyone that you talked to on a continuing basis, either at home or from home?
RE	I wasn't either far too busy [overtime?] I wasfriends in that sense, maybe Mr M as a Swiss.
LC	Anybody else?
RE	Oscar [name?] UBS.
LC	Okay. What does he do?
RE	He's Chief Operating Officer. That's UBS is now .
LC	How about this Mrs E?
RE	Yep
LC	With reference to Mrs E what type of relationship did you have with her?
RE	Ahh, its not friendship in that sense.
LC	Its business?
RE	It's, I met her personally. Er personally as well but its not er...
LC	In what manner would you say you met her personally? You've had dinner with her, you've socialised with her, had drinks?
RE	No we had problems in the Bank. Put it this way, I got involved and people came to me and I was the one people talked to and basically I had an opened door and basically I listened to people and shall I say they came with everything to me because we had a sea of problems in those days so they came to me.
LC	How long ago are we talking these days?
RE	That's '97 at the latest.
LC	Was this before CEO?
RE	Yes before because my experience was personal issues and business.
LC	So your relationship.....
RE	Up to a certain extent my function to keep the company running I did have er the responsibility to think about these issues. I mean I couldn't ignore them. I think that would have been wrong. Maybe that was my personal fault. To get involved with that person if they had within the company problems.
LC	When did Mrs E leave the company? This year/last year?
RE	No it was before 2001 I think.
LC	So sometime in 2000?

RE	Yes.
LC	Why did she leave, or what was the reason why she left? She resigned, left under problems, was she terminated?
RE	She was kind of terminated. We made her an offer. She was going to be [seconded.]
LC	Meaning 'we' meaning who?
RE	Just Bank and myself.
LC	CEO and yourself?
RE	Yes. It was a kind of difficult situation from the company trust
LC	We'll come back and talk a little bit about that. Let's go and ask you know how long is er, Mr M is the only one that would be with Cayman's bank longer than you then? Would you say you have been the longest person here other than Mr M
RE	No, no no, that's wrong.
LC	Senior people.
LC	Who else?
RE	You're talking seniors?
LC	Senior, senior individuals.
RE	CG.
LC	How long has she been in the company? 10 years? 15 years?
RE	No, no, she started 1994. she started a year before I started.
LC	And your relationship with her?
RE	At the beginning it was okay then we had problems. Now, it okay again.
LC	What type of problems did you have?
RE	I think its more language problems basically. I'm getting more and more aware that the language is an issue of the cultural problem
LC	What's your relationship with Mr CEO like?
RE	I think we have a good working relationship, professional.
LC	Outside of the office do you socialise?
RE	No, we don't. No...we are both extremely under pressure.
LC	So prior to Mr CEO coming on board with the Bank how did you feel about him coming on board
RE	It's a good question, a very good question. I think it was a good solution for the company.
LC	How did you feel personally?
RE	I personally was a bit surprised that someone local would take on the..... I could have seen that an ex pat would take over.
LC	Who would have been the next person in line for that position?
RE	As far Mrs H or myself but I'm sure that language was not there. Sometimes it's not how things [inaudible] ...
LC	Are you unhappy about the decision that they made when they made it? I'm not talking about now.
RE	Yes somehow yes I was.
LC	Did you feel you were overlooked for any reason?
RE	No that's not the case because my contract is more in sense to stay here for a certain period. So logically it would make sense to...er it wouldn't have been a

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	long term solution so from that point of view I was thinking of going back.
LC	Do you still have any bad feeling, I'll use a real easy word, bad feelings about not being appointed to the position?
RE	No I think the Bank, we had discussed and financially I'm well covered. I think I'm on a fair salary, I think at the moment we're on the right track.
LC	So do you feel that Mr CEO is doing a good job?
RE	Yep. In certain areas. In certain areas I'm not happy.
LC	Like what? What aren't you happy with?
RE	Where I stood up on c fund and b fund. I've just moved from one to the other. He should have just moved from one department to another, it didn't make sense to do it close before year end because it should go through all the processesof because the people involved there have the knowledge we had [inaudible].
LC	Tell me what type of person you feel has done these type of things. What type of person could have done all the things you and I talked about. The blackmail letter, the information being faxed, being mailed, pulling or removing client files from the file rooms. What type of person do you think did this?
RE	That must be a strange coincidence.
LC	What do you think would cause someone to do this? Someone who is unhappy with the company?
RE	That might be the case.
LC	Do you think it is someone who would like to see the bank close down in the Cayman Islands?
RE	I don't think so.
LC	How do you feel about being in the Cayman Islands?
RE	I'm happy.
LC	Are you comfortable here?
RE	Yeah. In the sense that its where I feel closest. As mentioned at the beginning I am feeling much better here than suffering in Switzerland.
LC	Cooler weather you mean?
RE	Yes.
LC	Other than that how do you feel about being with this company?
RE	I'm happy, I think it's a good company. At the moment we're going through difficult times regarding our position.
LC	Where do you see yourself in the next five or ten years? Tough question. Do you see yourself still with the company?
RE	Yes I think so. That's for sure yes.
LC	Do you feel that advancement is in the future?
RE	Not necessarily, but its not needed.
LC	Do you see yourself staying in the Caymans or going to a different location?
RE	Hopefully staying in the Caymans for the next 4 years. I've renewed my contract September 1 st .
LC	September 1 st of this year?
RE	Yes.
LC	Renewed contract of course, like increase, things like that, is that what you mean

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	by renewed contract?
RE	How do you mean "increased" things?
LC	Like salary increase, things like that, benefits, anything of that or is it just time?
RE	I changed from an ex pat contract to an open contract.
LC	Okay.
RE	And certain things are not shown as an expense anymore but as an increase in salary which is not necessarily [inaudible] solution
LC	Now how position wise? Is your position within the company changed title wise, anything like that? How long have you been COO?
RE	About 4 years and I'm comfortable.
LC	What was your position prior to that?
RE	Chief Accountant.
LC	Chief Accountant?
RE	Yes.
LC	Who has that position now or have they just changed your title?
RE	No, no they didn't change the title. I was financial controller and corporate financial controller.
LC	They split up the position?
RE	No response.
LC	Do you suspect anyone then of committing these acts? Don't know of anyone who's ever done anything, anyone ever said anything in passing, anyone ever mentioned anything?
RE	No, no.
LC	Nobody's ever said anything to you, no one's ever discussed anything with you about the subject?
RE	No, no, it was discussed....
LC	How was it discussed with you?
RE	Discussions with M, L and R.
LC	All at the same time?
RE	No, no, no.
LC	Separate times?
RE	Separate times.
LC	Tell me about with Mr M, what was your conversation with Mr M, what was said?
RE	I'm sorry I can't do that.
LC	Was it something like this, doing something like this?
RE	No, no, who could have done it, or what could have happened.
LC	What was discussed in your call, was there anyone in particular that you talked about?
RE	Events with R and events with P.
LC	You suspect any of those persons? Not that you know for sure, I'm asking do you suspect them?
RE	No I'm not going to suspect anyone.
LC	Did Mrs R do anything like this or is involved still in any of this?
RE	I think that's just something [inaudible].
LC	How would you suspect that it is still going on? Do you think there's still

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	somebody inside giving her information or is she involved in it?
RE	No, I'm talking about this labour tribunal issue, there are just some bad feelings around.
LC	So, would you suspect anyone in the office of doing stuff, this stuff?
RE	No.
LC	I'm not saying that you know 100%, I'm just asking you is there anyone capable in your office at this present time that could do this?
RE	No.
LC	Anybody that would do this?
RE	No response.
LC	Would you do something like this?
RE	No.
LC	Any reason that would cause you to do something like this?
RE	No.
LC	What type of person Rudolf do you consider yourself, meaning do you consider yourself an honest person?
RE	Yeah.
LC	Do you know the difference between the truth and telling a lie?
RE	Yeah.
LC	In your own words what does the truth mean to you?
RE	Its important for me because telling the trust brings you [pause] ahead.
LC	Do you think there's different levels of the truth?
RE	That's a personal issue.
LC	I'm asking you personally. What type of different areas do you believe are areas of the truth?
RE	No response.
LC	Do you think there's 99% of the truth or do you think there is 100% of the truth and nothing else?
RE	No it depends how much for instance in the newspapers how much is said.
LC	Nothing in the newspapers is true but I mean pertaining to you the truth is what to you? Are there shades of grey with the truth with you or do you believe that you tell 100% of the truth?
RE	I always tell 100% of the truth.
LC	You do tell 100% of the truth?
RE	No, not always.
LC	What would you say was your definition or meaning of telling a lie is? What does a lie mean to you?
RE	[Long pause]. Not telling the truth.
LC	Okay. Do you think there's different types of lies too then? There's little lies, white lies, however you'd like to call the lies.
RE	No..... white lies?
LC	You've heard the term white lies?
RE	For instance, employees, as an example, I not always can tell the truth for example on salary or bonus, so I will say this is a white lie or not telling the truth 100%.
LC	What would you consider a serious lie then?

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RE	If I killed someone and said I didn't.
LC	Oh, very good, I would say the same thing. If you had to deal with a person, meaning you were in charge to deal with the person who is caught doing these things or anyone of these things how would you deal with them?
RE	No response.
LC	Fire them? Call the police? Have them jailed? What would you do? Prosecute them?
RE	[Long pause]. Prosecution would mean a criminal act.
LC	This type of person is a criminal person, they have committed some malicious acts, wouldn't you agree?
RE	Yeah, well.....
LC	When you were told, or when were you first told that you would be taking a polygraph exam?
RE	This morning.
LC	Okay, has anyone discussed with you before today about the possibilities of taking a polygraph exam?
RE	No.
LC	Has anyone mentioned it to you?
RE	No.
LC	Had you heard anything, did anyone tell you anything especially recently within the last couple of weeks that you might be taking a polygraph exams ?
RE	No.
LC	No one has said anything to you?
RE	No.
LC	No one has mentioned it in passing?
RE	No.
LC	You ever received any information from anyone outside of the Caymans?
RE	No.
LC	What would cause you then to tell a lie? What would cause you tell a lie?
RE	For instance, on the salary side, when my employees ask me, I would have to give you an example. If someone asked me "what kind of bonus did I get? Did I get 40,000 dollars in bonus?" something like that..... might be, might be not, I don't know...., but maybe I know.
LC	Okay something like that. Let's go through and lets ask you some questions. I want to ask you things and these are going to be things while working at the Bank and more or less or before working at the Bank at other companies. I'm going to ask you then, right at this moment, what did you do before working for the Bank. Where were you?
RE	I was at KPMG.
LC	Lets go through and I'm going to ask you to answer these and if there's anything to add we'll discuss it. Has there ever been a time that you have ever done anything to get back or get even with someone?
RE	How do you mean?
LC	Did you ever do anything to get even with someone or get back with them?
RE	Get back?

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LC	Something that someone maybe has done to you or said something to you and you have done something to get even with them or get back at them in some way?
RE	I'm sure I've done that.
LC	Anything you recall?
RE	No response [considering question].
LC	Is there a specific time when this has happened?
RE	Yes I think so.
LC	Give me an example?
RE	I was setting up a security manual for a guy from Zurich and then they asked me is there any legal issue to do that sort of thing or not and a lot of questions doesn't make sense then I go back in the same sense that I give a clear response a lengthy response with the three questions of about a page and a half, maybe that was a kind of "getting back" clearly stating my position. I mean from his point of view he might have looked at it as "getting back".
LC	Any times other than that then?
RE	No.
LC	Have you ever done anything or tried to ruin someone else to better your position?
RE	No.
LC	Ever been a time that you've done that at any place you worked in including the Bank?
RE	Ruin someone?
LC	I mean ruin their reputation.
RE	Ah, no.
LC	Have them fired, have them terminated, have them dismissed from their job to better your position?
RE	No, I'm in a position at the moment with employees where its important where if I'm in discussions with my financial controller and that could have an impact, because the performance is not there so....
LC	Could there be anything maliciously or done anything malicious against someone to ruin them to better your position?
RE	No.
LC	I mean if its their performance or job okay that's fine, I understand that but have you ever said or done anything specifically or deliberately?
RE	No.
LC	Have you ever done anything on a job you could be fired for?
RE	No response.
LC	Ever been a time at the Bank or before the Bank?
RE	There was [inaudible] this year over the limit on the ethics position which I'm allowed to have but would be a risk.
LC	Pardon what was that again? Sorry?
RE	Ethics position and that was kind of aggressive there but it turned out in favour of the company.
LC	Alright, anything else, any true things that you've ever violated more or less break any company rules or regulations. Any time that you have deliberately broken any company rules or regulations?

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RE	Rules and regulations.....[appear to be considering question]
LC	You know what I mean by rules and regulations?
RE	Yeah, yeah.
LC	Anytime you've ever done anything to break any rules and regulations?
RE	Yeah, I think so, I think so.
LC	Where were you working? Here or somewhere else?
RE	Oh, maybe an investment which should have gone back to Zurich and asked permission. Maybe we shouldn't have spent 3,000 dollars an hour but it was more in the grey area where you say okay, shall I go back to Zurich and I said no.
LC	This just pertained to the \$3,000?
RE	Pardon?
LC	\$3,000 dollars you said?
RE	Yeah.
LC	Okay, so meaning did you truly violate a rule and regulation or was there some area to work with that?
RE	Some area to work but in the sense for instance on the year end when you do your accruals you go in for a very conservative position and you also do a crisis position. But it's a volatile area, but one where we would have had huge problems.
LC	So has there ever been a time then that you have ever broken any company rules and regulations other than that?
RE	I am sure that there are more than that.
LC	Anything that you recall that you've done?
RE	No response.
LC	You understand what the word deliberate means?
RE	Leaving the office earlier for instance? I'm not sure what you're talking about.
LC	No, no, calling in sick may be one of them I'm not worried about things like that, I'm talking serious, you ever do anything serious break any rules or regulations seriously?
RE	No, I mean the regulations on the personnel side I mean they have got their rules.
LC	Punching the time clock I'm not worried about that I'm talking about seriously.
RE	Taking money you mean?
LC	Hiding things, taking things, removing things.
RE	No.
LC	Have you ever at any time purposely, do you know what the word purposely means? It means deliberate okay, or maliciously destroyed any company files or records at any place you've worked including the Bank?
RE	Not purposely.
LC	You've been told to do it or instructed to do it?
RE	No.
LC	By someone senior?
RE	[Long pause]. In Zurich yes.
LC	How about here while you've been here? Has there been anyone who has told you to go ahead and destroy something or help them destroy something?

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RE	No.
LC	At any time?
RE	At any time.
LC	Okay. Have you ever at anytime told a lie in order to cover up something again at work. Not talking about to wife or minor things about being sick or leaving early or things like that but I mean did you ever tell a serious lie. Let's use that. Did you ever tell a serious lie in an effort to cover up something?
RE	Not in the Caymans.
LC	Prior to working in the Caymans?
RE	I had an issue that I wanted to report that I can recall.
LC	What type of issue?
RE	That was more standing up for something and then I was forced not to do it, so basically I lied. [Long pause] I told management, I mean I was an auditor, and I thought that's wrong.
LC	So did you, so there's been a time when you've lied to someone in a position of authority then? You've ever lied to your supervisor, boss?
RE	I mean you're talking seriously now? No, no.
LC	Yes. I'm not talking about the white lies again. I mean serious. I mean if they've ever asked you where the information was, or if you had done something. Have you at any time removed confidential information from the company where you worked?
RE	Could have by accident I can't recall I did in Zurich but that was [inaudible]
LC	Have you removed anything since you've been here?
RE	No.
LC	Have you removed any information that is confidential from the offices?
RE	Yes except its been returned and from my point of view its confidential. It was my memos I wrote and I moved which I did not [inaudible] people to look at.
LC	Other than that has there ever been a time?
RE	No response.
LC	Maybe you were aware of giving confidential information to any other outside persons?
RE	Confidential information to unauthorised persons? Yeah could be to Mr M and I mean certain things we talked about in management meetings to let him know what the situation is. Outside persons? To the extent he needed to know.
LC	How about anyone outside of the company? Did you ever send or tell anyone anything outside the company that was unauthorised, or have received anything about what was going on, information or anything like that?
RE	No. Basically client names, no.
LC	Lets go back to discussing Mrs E real quick and then we're going to ahead and wrap this up and get into the polygraph itself. Pertaining to Mr E it was your job and Mr CEO's job to dismiss her?
RE	Yes.
LC	Prior to her being dismissed at any time did you talk to her or tell her that she was going to be dismissed prior to your meeting together with her and Mr CEO?
RE	No.

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LC	Never at any time?
RE	No.
LC	Didn't tell her, didn't discuss with her didn't give her? I call it "heads up" in English.
RE	Yeah, yeah.
LC	But did you give her "heads up", tell her that maybe this was coming down?
RE	No.
LC	Not at any time?
RE	No.
LC	Anything else pertaining to Mrs E that you feel that there is a problem presently other than what you told me about the court case?
RE	No.
LC	Anything else? Do you believe that she is involved in what's going on at this present time with all this other stuff?
RE	Er, sorry I don't understand.
LC	Meaning do you feel that she is involved in any of these things that I have showed you or discussed with you that I'm going to be asking you in the test?
RE	Er, can you rephrase it, I'm sorry I'm not following anything.
LC	That's fine that's why I said we're going to wrap it up here in just a minute. Is that, do you believe that she is working with anyone to do these things against the company?
RE	I don't think so.
LC	Okay.
RE	I don't think so.
LC	Okay. Alright, other than that lets go ahead and tell me what have you seen, what have you heard, what have you read about polygraph exams. I've already asked that to you but I'm going to ask that to you again . What have you read, what have you seen, what have you heard?
RE	I'm not.... I read today on the internet what it is.
LC	You read today? What did you read today? You read it on the internet or in a book? What did you read?
RE	Er, er, it's on one side its okay on one side there is different opinions about it.
LC	What websites did you go to?
RE	I've got it here. I've got the page to show you. It's this one here.
LC	Okay. I've seen this before. Do you have any questions that you have about this?
RE	No.
LC	Did you go on any other websites than this one?
RE	No.
LC	Did you look up any other information?
RE	No.
LC	Okay. Alright. Any questions that you have about polygraph on anything you've read in there. Something that you'd like to ask about?
RE	Yeah, I mean my health status, the medication I take and they're talking about blood pressure, heart beat that sort of things are not there.
LC	We're going to do an initial test together. What we're going to do is called an

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	acquaintance test where I'm going to see if your testable or not meaning your reactions, what your reactions give what happens. We're going to do that first to see if we can even go ahead and proceed doing the questions. We're going to review the questions here right now that I'm going to ask in the test then I'll tell you about how polygraph works okay, then we'll go from there okay?
RE	Yes.
LC	So, lets go ahead and we'll review our questions together then we'll talk about polygraph alright. Then all I'm going to ask you to do for me Rudolf is just answer yes or no to these unless you do not understand them.
RE	Yes.
LC	I'm not going to ask you anything other than the questions for the test but I want you to review all of them. Okay, so let's just go through them then. If you will answer yes or no, is your first name Rudolf?
RE	Yes.
LC	Is today Thursday?
RE	Yep.
LC	Listen to this question very carefully I'm going to read it to you twice. Regarding whether or not you have removed or sent out any client files from the Bank and given or sent them to anyone do you intend to answer each question that I ask you about that truthfully. Now I'm going to read it one more time. Regarding whether or not you have removed or sent out any client files from the Bank and given or sent them to anyone do you intend to answer each question about that I ask you truthfully.
RE	Yes.
LC	Do you understand that?
RE	Yes.
LC	That's why I read twice. Next question is going to be prior, do you know what the word prior means? It means before.
RE	Hmm hmm.
LC	Prior to working for the Bank did you ever tell a lie in an effort to cover up something?
RE	No.
LC	In a place of work?
RE	Yes.
LC	What type of lie? Is that other than what you've already told me?
RE	Yeah, the white lies we talked about.
LC	I'm not talking white lies I'm talking serious, telling serious lies.
RE	No.
LC	You ever tell a serious lie?
RE	No, no.
LC	Do anything malicious against your company and lied about before working for the Bank. Ever tell a serious lie, you can answer that question no?
RE	No.
LC	I'll read it to you again. Prior to working for the Bank did you ever tell a serious lie in an effort to cover up something?

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RE	No.
LC	Okay. Do you know.....
REI can't
LC	Go ahead, do you want to talk about it?
RE	I can't.....
LC	You don't think you want to go on?
RE	No.....
LC	Okay, so do you not want to proceed then?
RE	No,....
LC	What do you want to do? Do you want to leave, go home?
RE	Er..... I'm losing my [inaudible]
LC	Okay. Alright I'm going to have ask you to sit back for just a second okay.
RE	Yes, I need a break.
LC	Okay, well just sit back, lets get you a glass of water.
Duration 01:10:51	
	BREAK
LC Start Time 00:00:00	It is 22 November 2002 we're again here with Rudolf Elmer and lets just go back through some of the things that you and I talked about yesterday meaning the issues that we're looking at. Now I just want to reiterate some of those and then pretty much what we'll do is talk about polygraph and how it works and I'd like to show you those letters again that we talked about yesterday because maybe your head wasn't clear when we looked at them so you know exactly what we're talking about.
RE	That was the case. I thought about it and I still have the issue with this accident in January 2001 what happened there and trying to remember things and now I'm not really trying to remember, I'm trying to forget, because I cant remember.
LC	Alright well lets go through what we're talking about. We're talking about items either fax or mail pertaining to the X issue and the second would be the y issue information was sent to the P Fund and to your knowledge sending someone, anyone sending the y issue information to the P Fund would be an unauthorised person is that correct?
RE	Yes.
LC	It would be unauthorised for anyone to send that information to the P Fund?
RE	Yes.
LC	Okay. And then we also have missing files pertaining to two clients one is A and the other is B and that has just happened this year between July and August?
RE	Yes.
LC	Okay and then the last bit of information is this letter, blackmail letter as we're referencing it here, again why don't you go ahead and look at that. You said that yesterday was the first time that you had actually seen this letter since you were not present when the Cayman authorities interviewed everyone?
RE	Yes.
LC	You said that you were not present during that time so yesterday was the first time that you saw that is that correct?

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RE	I'm not really entirely sure.
LC	Okay.
RE	I mean at least from I think I can recall. I don't think the contents are familiar.
LC	Okay because I know yesterday you said that was the first time you had saw this.
RE	Yeah, yeah. I'm not sure. I'm sorry.....
LC	Okay, that's fine. Just take a look through it again. Why don't you just go through it and take a look at it and see what it consists of.
RE	No response.
LC	Some of it is not comprehensible. Its either written by someone or someone had someone write that, obviously. Either someone used their left hand to write it or the opposite hand that they usually write with or they had gotten someone to write it for them in some manner. The other is to give youa retyped copy of this letter that was sent to the French tax authority or the Ministry of Justice in Paris and the original and the copiesI'm going to give those to you.
RE	Sighs heavily.
LC	Why don't you go ahead and take a look at those.
RE	Yep.
LC	Would it be better if you had some type of cushion maybe to sit on?
RE	It wouldn't help.
LC	Okay. Take a look at those though and then what we're going to go ahead and do is talk about polygraph and we're going to review the questions and then we'll go from there.
RE	Yes. What about this one?
LC	That was shown to you?
RE	Yes.
LC	What was that?
RE	That's head legal.
LC	Okay that's legal in Zurich? That's when you were in Zurich?
RE	Yep when I was in Zurich.
LC	Okay. Do you remember when that was?
RE	[Long pause] At least a year ago.
LC	Okay, that's alright, now you know, I'm going....
RE	I'm going... I'm not up to much.
LC	Okay, so you just want to discontinue?
RE	Yes.
LC	You don't want to try to sit through and try to go through the test?
RE	No, not under these circumstances..... my leg hurts.
LC	Okay. You want to discontinue talking?
RE	Can I stand up please?
LC	Sure go ahead.
RE	You don't mind?
LC	That's fine. Okay. Would it be easier if you lean against the wall there?
RE	Yes.....
LC	Would you go ahead and do that a second, just take your time there.
Duration	

Transcript's poor quality

Conclusion

This transcript is not accurate and we need to fight this if they will provide the Executive Committee with that sort of information. It looks like I am stupid on the other hand I can proof what I achieved in 2002. I am convinced my performance in 2002 shows a different picture of my capabilities. It is another attempt to attack my credibility.

If you want me to do more work on this transcript I could but I do not want to waste my time with something which is not accurate. It is poor quality.

This transcript is not accurate because

- It does not take the **non verbal communication** into account. Supervising law firm Maples “ Calder wrote “no response” which looks bad for me but I shook the head or nodded with the head.
- It is **poorly writing down**
 - it implies for instance that I was talking about an “ethic position” this is clearly not the case it was the “currency position” I said (that’s the field where I made the money for the Bank). Did person who typed must have lack of knowledge of Banking technical terms. Either it is the tape or the person who wrote it down.
 - Another example of an Error in transcript; “I changed from an expat contract to an open contract”. (should be a local contract). I could provide you with more example if needed.
 - Another example is; “Some area to work but in the sense for instance on the year end when you do your accruals you go in for a very conservative position and you also do a **crisis position (currency position I believe I said)** . But it’s a volatile area, but one where we would have had huge problems
- transcript does not show **how fast he spoke to**, me being in the condition I was, it was not polite and fair to talk that fast. To be fair in such a serious matter **a translator** should have been consulted to translate the questions precisely and accurately
- I did have problems with the **examiner’s accent**. He had a very strong accent which was hard for me to grasp. I am sorry to say but it was American southern English I believe he spoke. English is a foreign language for me and I am not language prone. I have notice in any other foreign language I know once I am not in a good shape (tired, sick, pain) my language skills deteriorate enormously. To be precise the skills get worse even during the day. Certainly, this would be agreed by every language expert
- On the other hand it really shows that my **medication or condition** had an effect on my thinking.
- The examiner did not allow to finish my sentences several times. He interrupted me as you see with “Okay”, “alright” several times and then he went on. This interruption is not shown in the tape.

8th December 2002

Checklist “Employee Polygraph Protection Act 1988” and procedure taken by Julius Bär Bank and Trust Co. Ltd, Cayman

Weakness in the Julius Bär Bank and Trust Co. Ltd. (JBBT-GCM) procedure based on the Employee Polygraph Protection Act 1988 (EPPA), which represents best practice particular for Mr. Criscella who is an American polygraph examiner. On December 27, 1988 the Employee Polygraph Protection Act (EPPA) became law in the USA. This federal law established guidelines for polygraph testing and imposed restrictions on most private employers. The following shows the employee’s and employer’s checklist and the JBBT-GCM’s approach and shows some violations (*are printed in bold*) to the EPPA.

Checklist for the Employer

Nr	Statement according to EPPA	Best Practice according to EPPA	JBBT-GCM
1	The incident must be an ongoing, specific investigation	Yes	Yes
2	It must be an identifiable economic loss to the employer	Yes	Yes
3	Obtain a copy of the Employer Polygraph Protection Act of 1988	Yes	N/A for Cayman however examiner was an american expert.
4	Provide the employee with a written statement that includes (prior to test)		
	a) Identification of the company and location of employee	Yes	Yes
	b) Description of the loss or activity under investigation	Yes	<i>Yes, only after my 2nd attempt on Friday Nov 22nd</i>
	c) Location of the loss	Yes	<i>do.</i>
	d) Specific amount of the loss	Yes	<i>do.</i>
	e) type of economic loss	Yes	<i>do.</i>
	f) how the employee had access to the loss note	Yes	No
	g) more a management clearance check of key employees	Yes	<i>Yes, only after my 2nd attempt on Friday Nov 22nd</i>
	h) what kind of reasonable suspicion there is to suspect the employee of being involved in the loss	Yes	No, was a clearance of management and key personnel
	i) the statement provided to employee MUST be signed by someone other than the polygraph examiner, who is authorized to legally bind the employee and MUST be retained by the employer for at least 3 years	Yes	Yes, CF signed, it was given to me by CF after second attempt
6	Read the Notice to Examinee to the employee, which should be signed, timed, dated and witnessed.	Yes	<i>Not read, not timed and not witnessed</i>
7	Provide the employee with 48 hours advanced notice (not counting weekends or holidays) to the date and time of the scheduled polygraph test.	Yes	<i>No notice, however option to think about for 4 hours or to decline</i>

Employee Polygraph Protection Act 1988 and best practice

Nr	Statement according to EPPA	Best Practice according to EPPA	JBBT-GCM
8	Provide employee with written notice of the date, time and location of the polygraph test, including written directions if the test is to be conducted at a location other than at the place of employment.	Yes	No
9	Maintain a statement of adverse actions taken against the employee following a polygraph test.	Yes	Yes, cannot go back to work, statement was communicated only verbally after the not completed test
10	Conduct an additional interview of employee prior to any adverse action following a polygraph test.	Yes	No
11	Maintain records of ALL of the above for a minimum of 3 years	Yes	Yes, questionable as communicated by M&C not everything was audio or video taped
12	Employees may not waive their rights.	Yes	<i>I do not know at this stage, I need to see the form I signed</i>
14	There is a USD 10'000 penalty for EACH violation of the law	Yes	<i>Obviously some violations occurred</i>
15	Check out the credentials of the polygraph examiner that you use and verify that the examiner meets EPPA requirements. Never hesitate to ask for written proof of licensing, liability insurance etc.	Yes	<i>M & C response not received yet</i>
16	Use your company letterhead on all forms you provide to the employee. Have your corporate attorney review your actions to assure your compliance of EPPA.	Yes	I do not know but I assume FB did the review

Checklist for the Polygrapher Examiner

Nr	Statement according to EPPA	Best Practice according to EPPA	JBBT-GCM
1	Provide the employer with a copy of EPPA guidelines. Do not just try to explain what has to be done during a phone conversation with the employer.	Yes	<i>No, however not adequate in Cayman but at least something in writing should have been given prior to the test. I had only the option to question CF</i>
2	The examiner should not get involved in assisting the employer to determine who should or should not be tested, or who does or does not have access or reasonable suspicion / clearance. It was a clearance test in order to find out if the person is truthful or not.	Yes	<i>Yes, he must have because he gave me the information why I should have done it (career, closing the Cayman office)</i>

Employee Polygraph Protection Act 1988 and best practice

Nr	Statement according to EPPA	Best Practice according to EPPA	JBBT-GCM
3	Obtain a copy of the signed statement of advanced notice provided to the employee, along with a copy of the explanation of their rights and written directions/appointment PRIOR to the interview. Obtain a photo ID of the employee. RULE OF THUMB: No form, no test! No identification, no test!	Yes	<i>No, my form was not completed correctly because I did not write down the name of "Julius Baer" as far as I can recall. I also was open what I have disclosed in relation to medication and head injury from the start of the interview.</i>
4	Provide the employee with a written explanation of the polygraph test and procedures. Have it signed by the employee and be sure to include the date and test and procedures.	Yes	<i>Not before the test, only after 2nd attempt</i>
5	Read and explain the rights to the employee. Have it signed, dated and timed.	Yes	<i>No rights explained. Except only allowed to talk to my wife and CF, no legal and medical advice according to FB and PN</i>
6	Advise the employee of a taping and/or one-way mirrors.	Yes	Was not advised of TV (it is an assumption I make because I saw CF and M&C lawyer constantly looking at something in a room close to examine room), I was advised of audio-tape and video-tape
7	Carry a minimum of USD 50'000 or equivalent professional liability coverage	Yes	?
8	Conduct no more than 5 polygraph tests during one calendar day, even if only 1 test is under EPPA. This includes all tests for all employers and/or lawyers you conduct during the day!	Yes	Yes
9	Administer no test that is less than 90 Minutes duration.	Yes	Yes
10	Provide the employee with the polygraph test questions in writing.	Yes	No, only oral test
11	Have an appropriate license, if so required, in the state where the test is to be conducted.	Yes	<i>Not seen yet.</i>
12	Keep a log of company name, employee name, date and times for all polygraph tests during the course of a day when 1 test is given under EPPA's	Yes	Yes
13	Inform the employee of the results of the test and allow him/her an opportunity to explain any reaction.	Yes	<i>I had no opportunity after the test run to explain what happened he started accusing me immediately.</i>

Employee Polygraph Protection Act 1988 and best practice

Nr	Statement according to EPPA	Best Practice according to EPPA	JBBT-GCM
14	Provide any opinion of deception or non-deception in writing.	Yes	<i>Not received yet, we asked for it</i>
15	Result must only be based on the polygraph test results, and should NOT be based on behavior.	Yes	<i>My result might have been on behavior "not cooperative" rather than polygraph test results.</i>
16	Do not include any information not relevant to the original purpose of the test to the employer.	Yes	Questionable
17	Keep a copy of ALL reports, notes and records for a minimum of 3years.	Yes	Yes
18	Provide a copy of charts, questions and reports to the employee upon request.	Yes	<i>Not received yet from M&C</i>
19	Provide a copy of charts, questions and reports to the employer when results are deceptive.	Yes	I do not know if that happened
20	Provide the Department of Labor with copies of the same, within 72 hours, upon request of the Secretary of DOL, or other authorized person of DOL.	Yes	N/A but poor practice in a foreign country

Further issues to be considered:

- Under the title of "Clearance of the Management" and implementing of the security program and particular its execution created extreme irritation , particular in my case, taking into account my hip and discs problems and medication leaded to unjustified accusations
- Charles Farrington, Paul Nathan and Franchoise Birmholz "do not talk to anybody than your wife about the test", Thursday, Nov 21st, 2002, 0815am. In my perception, this meant, that I could not go for any legal or medical advice, or could not talk about it to headquarters.
- I mentioned at the beginning and confirmed in writing that I am taking medication. I was asked what but not how much. The dosage is as important as the product especially for the pre-interview where the baseline is established.
- My dosage was increased by the doctor from Thursday to Friday by 25 mg Viiiox or 100 % more. My doctor recommend not to take the test under the present condition
- I also mentioned my head injury. It is general knowledge that recovery takes at least three years and there might remain deficiencies. I was in my 20th month. I still have some weeknesses, which need to be verified by the Psychologist. On the bottom line I feel OK at least my performance up to now will prove that (not going into details) as I have had a successful professional year.
- CF and M&C lawyer might have watched every employee on TV and listened to the tape. CF gained enormous personal information about each employee (Private Protection Act) which is not fair praxis
- CF mentioned that he did the test as well. He explained to me that he could watch the indicators on TV which was not the case with me. This made me suspicious of the procedures encountered. Did CF really take the test?
- My Test date was set for Thursday, Nov 21st, 2002. I only received the Bank's Statement on Friday, Nov 22nd morning after 2nd attempt which I could not complete because of pain.
- That Friday I was put under pressure by CF even though I had serious pain in my body. "If I do not pass the test I will not be allowed to go back to work." Pressure was continuously increased. I do not think that this is correct or fair if someone is under pain.
- I went to see my psychologist in order to find out what I could do to clear my mind and to talk to someone in German, even though I risked the threat put on "my family".

Employee Polygraph Protection Act 1988 and best practice

Summary

Taking all this into account (breaches of EPPA standard and the chosen protocol), it is highly questionable that this interview which obviously turned out into an interrogation (later part because there were all elements of shouting at someone and trying to make me admitting to things I did not do and finally trying to get confession). Mr. Criscella used all these techniques in my case. I do not think that this does hold up with the professional standards requested by "The Employee Polygraph Protection Act of 1988" when you only carry out an interview.

Even though EPPA is an American Act it could be looked at as a guideline for a professional and ethical execution when implementing a security program. Knowing that for example the Canadian Society of Psychologist does not accept the polygraph method as a reliable method to proof the truth and there are more jurisdictions which look at it as a questionable method. Therefore, I think such a tool needs to be used carefully and one must follow strictly the protocol proposed by adequate standards.

CONSENT TO POLYGRAPH

I, the undersigned, do hereby voluntarily consent to submit to a polygraph interview and test, and hereby release Deception Control and the examiner administering this test from any and all claims resulting from or arising out of this examination. I also hold harmless Julius B. [unclear], from any and all claims resulting or arising out of this interview and test, to whom I agree that the test results and information should be given. ~~I further understand that I am not taking this test as a condition of employment or continued employment and that I was advised that I could not be forced to take this test by anyone.~~ To the best of my knowledge, I have ~~no~~ no physical or mental conditions which would prevent me from taking this examination. After having the interview and test explained to me in detail, I do hereby consent that the necessary attachments be placed on my person where necessary. I also agree that these procedures may be recorded or videotaped.

Signature R. E. [unclear] Date 21st Nov 2002

Print your complete name: RUDOLF ELMER
accident head injury

accident [unclear]

medications and health

**William E. Kelly, C.P.P.
284 Colony Street
West Hempstead, NY 11552
U.S.A
(516) 481 1222**

26th February 2003

My professional experience is set out in my resume, a copy of which is enclosed.

I have been asked to review a number of documents relating to interviews with Mr Rudolf Elmer, conducted by Mr Criscella. I have been provided with extracts from a report by Julius Baer Bank & Trust Company (the "Bank") to its head office (the "Report"), a copy of a transcript of some interviews and some correspondence.

I have over 40 years experience conducting polygraph interviews. I have been conducting polygraph tests for 28 years.

PART I TRANSCRIPT OF RUDOLPH ELMER'S INTERVIEW WITH LOU CRISCELLA

I was not present during the interview with Mr Elmer and a lot of information may be missing from the transcript. My overall impression of the interview, after having interviewed people for close to 40 years, is that I find the questioning on the accusatory side. If this line of questioning was consistent with the other individuals tested then it would be acceptable. If this type of questioning was only utilized with Mr. Elmer than I would have the impression that prior to the interview, Mr Criscella had been led to believe or told that Mr. Elmer was the prime suspect. Only by listening to the other interviews could this be determined for certain.

For example, on page 10 there are general questions like:

Do you suspect anyone? Would you do this? Do you know the difference between the truth and telling a lie?

PART II **Comments on the Report**

I have commented below on various paragraphs of the Report.

Page 4

Introduction 1.2.1.

“It was a pre-condition of Mr. Elmer’s ongoing employment...” In the USA we have pre-employment polygraphs that are given prior to a person being offered a job. These tests, aside from Government agencies are unlawful other than in exceptional cases; i.e.- armoured car companies and pharmaceutical companies under certain conditions. On-going employment in USA means polygraphing a current employee and these are governed by the Employee Polygraph Protection Act of 1988 (“EPPA”).

2.1.5.

“The termination has been dealt with entirely lawfully and fairly”. Not under USA polygraph laws (see below).

4.2.

An investigation should have been conducted in order to ascertain who, in the Company, had “access and opportunity” to have stolen the files. All of these people should have been requested to be polygraphed. Anything short of this is discriminatory.

4.6.

“... International Academy of Polygraph”.

I’ve never heard of this organisation, not that I doubt it’s existence. I’ve heard of the America Polygraph Association and I’m a member of the National Polygraph Association and attend its annual seminar.

5.7.

“It was decided..... they would not be permitted to return to work”. This would have been a breach of the EPPA and would result in a civil fine of not more than \$10,000 against employer.

6.2.

“Mr. Elmer replied that he did not know the purpose of their visit”. – EPPA requires 48 hours notice before taken polygraph. This time is given so employee can consult with an attorney, a doctor, etc, prior to consenting to take the polygraph.

6.18

“Mr. Elmer admitted that he had gone on to the Internet” Page 15. Unless there is additional interviewing I don’t see Mr. Elmer “admitting that he had deliberately tried to beat the acquaintance test”.

In summing up, I would have followed the EPPA rules. I would not have ended the polygraph at such an early stage. I would have given Mr. Elmer all the leeway he requested, whether it be separate interviews, allowing him to sit, stand, walk around etc. The only time he would need to sit still would be for about 10 minutes – the time required to attach him to the instrument and administer the tests. If he said that he could not sit still for more than 10 minutes then, in my opinion, he would be untestable - and would have to get a doctor’s note stating that.

I am attaching the guidelines in relation to the EPPA as outlined by the Americana Polygraph Association mentioned on page 4, 4.8 of report on termination. It is clear that the test was not conducted in accordance with the EPPA and those guidelines. In particular:

1. an employee cannot be disciplined or dismissed for failing to take a polygraph test;
2. a written statement should have been given to the employee setting out a variety of matters in relation to the reason for the test being conducted;
3. 48 hours notice of the test should have been given;
4. inform the employee of the results of the test and allow them a chance to explain any reactions; and,
5. provide any opinion of deception or non-deception in writing.

I am also attaching the forms I utilize when testing an employee – they conform to the Employer Polygraph Protection Act of 1988.

William E. Kelly
Member
National Polygraph Association

Your Ref: MWI\JEF\600299\1006051
Our Ref: AJW/lh/10400
Direct E-mail: awalters@campbells.com.ky
Direct Line: (345) 914 5861

27th February, 2003

BY HAND

Maples & Calder,
P.O. Box 309 GT
Ugland House,
South Church Street,
George Town,
Grand Cayman

Strictly Private and Confidential

Dear Sirs,

RE: RUDOLF ELMER – COMPANY BANK AND TRUST COMPANY (the “Bank”)

We refer to the document headed “Report on Termination of Employment of Rudolf Elmer” (the “Report”). This letter is intended to respond to that Report for the purposes of Mr. Elmer’s appeal against the decision to terminate his employment.

We assume that you will arrange for it to be forwarded to the Executive Committee of the Bank. The contents of this letter are based on instructions from Mr. Elmer.

Accompanying this letter are the following:

- 1) Report of Mr. William Kelly, polygraph expert
- 2) Medical reports and letters from:
 - i) Dr. Häfner 25th November 2002
 - ii) Lisa Cummins 28th November 2002 (therapist confirming I had pain)
 - iii) Professor Leu 13th January 2003
 - iv) Professor Leu 22nd January 2003 (invasive spine surgery, surgeon’s report)
 - v) Dr. Häfner 18th February 2003
- 3) Notes of Mr. Elmer telephone conversation with Mr. CEO on November 24th, 2002
- 4) Letter from to Bank dated 25th November 2002
- 5) Letter from to Maples & Calder dated 6th December 2002

Summary of position of Mr. Elmer

A summary of the circumstances leading up to this current appeal of the dismissal of Mr. Elmer from the employment of the Bank is set out in our letter to the Bank of 25th November 2002 (tab 4).

Mr. Elmer's position is as follows:

1. He was one of a limited number of employees of the Bank who at short notice were required by the Bank to undergo a polygraph test as a condition of their continued employment with the Bank.
2. The Bank could not vary the terms of his contract to impose such a condition without his consent (see below).
3. At the time, Mr. Elmer was suffering from medical conditions that impaired his ability to sit for lengthy periods of time. Mr. Elmer had been diagnosed with early arthritis in his hips and in December 2002 was diagnosed with two herniated discs in his spine. Mr. Elmer underwent surgery in January 2003 and is expected to make a full recovery. We understand that the surgery report indicates that Mr. Elmer's condition was more serious than diagnosed.
4. Mr. Elmer agreed to undergo the polygraph test and underwent a pre-test interview with the Bank's polygraph examiner, Mr. Criscella. Those interviews were interrupted by the discomfort that Mr. Elmer was in due to his back and hip conditions. Only parts of the interviews were recorded on audio tape.
5. Mr. Elmer was subjected to significant pressure in relation to the polygraph test. He had been told that he should only discuss it with his wife and after the second pretest interview he was informed that he could not return to work unless he successfully passed the test. He was asked to return his office keys until that had happened. For someone with such a long established career with the Bank, this was a dramatic step for the Bank to take and was a great shock to Mr. Elmer.
6. Mr. Elmer answered the pre-test questions from Mr. Criscella as helpfully as he could, bearing in mind the language difficulties, the medication he was on, the discomfort he had and the importance of giving careful thought to his answers. Some of the questions were particularly challenging, such as those relating to Mr. Elmer's relationship with Mr. CEO and the relatively philosophical distinction between telling the truth and lying and the degrees of seriousness of lies. Mr. Elmer answered these questions openly and frankly.
7. It is alleged that Mr. Elmer tried to disrupt the initial part of the polygraph test described as an "acquaintance test" by controlling his breathing and moving his body and that he did so to "sabotage" the test. This is emphatically denied by Mr. Elmer. Mr. Elmer's position is that during the acquaintance test, he was asked to deliberately lie. In doing so, he believes that he

may have taken involuntary breaths which are now being treated as a ground for his dismissal. At the time of the acquaintance test, Mr. Elmer was seated with his right leg positioned on another chair to relieve his discomfort. If he moved, it was because of that discomfort, not a deliberate attempt to defeat or sabotage the test. Mr. Criscella apparently is an expert in such tests but became overtly hostile towards Mr. Elmer after no more than the brief acquaintance test. Mr. Criscella whose behaviour which appeared to Mr. Elmer as very emotional, accusing and aggressive, concluded the test at that point and Mr. Elmer did not have the opportunity of completing the polygraph test which would have demonstrated whether he would have answered Mr. Criscella's subsequent questions honestly or not.

8. It is alleged that correspondence between this firm and the Bank and its lawyers contained or repeated false statements made by Mr. Elmer about Mr. CEO and the Bank following a telephone call he had with Mr. CEO. When the respective accounts of Mr. Elmer and Mr. CEO are compared, they are similar and the account of the conversation that is complained of is consistent with that joint recollection. Mr. Elmer may have drawn certain conclusions from what was said to him, just as the Bank has, itself seeks to draw many conclusions from a variety of factors.
9. The Bank has mischaracterised and distorted its lawyers' transcript of the incomplete tape recording of the pre-test interview between Mr. Criscella and Mr. Elmer.
10. Without any corroborating evidence or evidence from Mr. Criscella, the Bank has sought to rely on statements that Mr. Criscella has claimed Mr. Elmer made after the acquaintance test was concluded. Mr. Elmer denies that he made any admissions for example that he deliberately disrupted the acquaintance test or warned Ms Roxane Ebanks that she might be dismissed by the Bank shortly before she was actually dismissed.
11. The Bank's own Employee Guidelines state on page 3 that it is "committed to the fair and equitable treatment of all Employees". It is Mr. Elmer's contention that the Bank has not acted fairly in relation to him or his dismissal and the other staff members who had to undergo the polygraph test. The Executive Committee now has the difficult task of effectively choosing the word of one party over another with no reliable or objective evidence to support the position of the Bank.
12. It is suggested that when approaching that task, the Executive Committee should apply no lesser standard of proof than would be required in civil court proceedings; namely, that the Bank must prove on the balance of probabilities that Mr. Elmer's dismissal was reasonable. It is submitted that with directly conflicting positions and no clear evidence, it would not be reasonable for the Executive Committee to uphold Mr. Elmer's dismissal.
13. On behalf of Mr. Elmer, it is suggested that a reasonable resolution of this process is for him to be reinstated and, when medically fit, to undergo a polygraph test as a condition of his employment as the Bank has required.

The Polygraph Test

Based on the report of Mr. Kelly (tab 1) the following observations can be made:

- i) There is a question over the credentials of Mr. Criscella.
- ii) Mr. Elmer should either have been required to complete the test or provided medical evidence that he was unfit to do so.
- iii) The test was not conducted in accordance within US law and in particular the US Employee Polygraph Protection Act 1988. From the guidelines attached of the American Polygraph Association to Mr. Kelly's report it is clear that Mr. Elmer should have been given 48 hours notice of the test so that he could consult an attorney or a doctor. It does not appear that sufficient information was provided to Mr. Elmer prior to the test. Amongst other things, Mr. Criscella should only have sought to draw conclusions from the test results following an examination and not from any behavior demonstrated by Mr. Elmer. Mr. Criscella should have prepared a written report setting out his findings.
- iv) Not all employees who could have been involved in the alleged wrongdoings were tested.
- v) Mr. Criscella was accusing during the pre-test questioning and even at the early stage appeared to be exhibiting a belief that Mr. Elmer was the guilty employee.

For a polygraph test to have been arranged by US based executives of Bank Ltd, New York and conducted by a purported US polygraph expert that contravened US law does not demonstrate on the part of the Bank a desire to the fair and equitable treatment of all employees.

Set out below is Mr. Elmer's response to the details of the Report submitted by the Bank to the Executive Committee. The Report submitted by the Bank is voluminous and, at times, misleading and unfair. In summary, it appears that the position of the Bank is as follows:

- i) Mr. Elmer was required to undergo the polygraph test but sought to defeat that test, or deceive the polygraph examiner; and
- ii) That Mr. Elmer's subsequent contact with the Bank has misrepresented various facts, made allegations against Mr. CEO and has generally resulted in a breakdown of the trust and confidence of employer and employee.

It is not intended to comment on every paragraph of the Report, to do so would produce an even longer response that would simply make matters more complicated and confusing than the Report itself. The fact that every paragraph has not been responded to or commented on does not necessarily mean that its contents are agreed or remain undisputed.

Legal matters

A number of legal matters have been raised by the Bank. Although not of major significance, they should be noted.

The Bank has suggested that it was a precondition of Mr. Elmer's ongoing employment that he successfully completed a security clearance programme which included a polygraph test (paragraph 1.2.1 of the Report). The Bank further asserts that under Cayman Islands law the Bank is entitled to require its employees to undergo a polygraph examination at any time (paragraph 4.8 of the Report). Mr. Elmer's contract of employment is at appendix 1 to the Report. On 22nd November 2002, Mr. Elmer received a letter from the Bank dated 21st November 2002, a copy of which is at appendix 4 to the Report. The letter was given to Mr. Elmer in Mr. CEO's car and purports to impose preconditions on Mr. Elmer's continued employment although this appears to contradict paragraphs 12 and 13 of Mr. Elmer's contract of employment, a copy of which is at appendix 1 to the Report. The contract of employment indicates the contract, the Employee Guidelines Memorandum dated 16th September 2002 comprised the complete agreement between the Bank and Mr. Elmer in relation to his employment. We do not accept, therefore, that it is correct to assert that the Bank could unilaterally impose the conditions set out in the letter of 21st November 2002 without Mr. Elmer's written consent.

Furthermore, there is nothing that we are aware of under Cayman Islands law which makes any reference to the ability of an employer to require an employee to submit themselves to such an examination. That is entirely a private matter between those parties.

The Employee Guidelines (appendix 1 to the Report) set out in detail the approach of the Bank to disciplinary actions and make it clear on page 4 that "... in any event the Employee has the right to appeal a decision to the Managing Director or the Executive Committee of the Board of Directors, in circumstance where it is a decision of the Managing Director that is being appealed". Again, therefore, it is not accepted that Mr. Elmer does not have a right to an appeal, as appears to be intimated by the Bank.

Mr. Elmer's medical condition

Attached is a report from Mr. Elmer's family doctor, Dr. Felix Häfner, in Zurich. The report confirms that, for some time, Mr. Elmer has suffered from problems with his hips. In 1998 Mr. Elmer was diagnosed with arthritis of both hips. This condition was treated and continued to be treated with a combination of drugs and physiotherapy. Subsequently, Mr. Elmer started to complain about pain and cramps in his right leg. An MRI taken on 13th December 2002 confirmed that Mr. Elmer had two slipped discs in his lumbar spine. Those have now been treated by way of surgery, which took place on 22nd January 2003. A copy of the report from the surgeon is also attached.

Throughout the Report the Bank appears to imply that either Mr. Elmer was falsifying his medical condition or that his condition was somehow concocted. The enclosed reports make it clear that this is not the case and confirm the symptoms that Mr. Elmer would have been experiencing during the material period.

1. Sunday's Tf call, November 24th, 2002 about 4.30 PM

Situation: I was on sick leave and strong medication based on the doctor's certificate of Dr. Felix Häfner and on the treatment received from the physiotherapist Nov 22nd and 23rd, 2002.

- **Accusations and threats by Mr. Farrington's according to his report to the Executive Committee 6.24**
 - "nobody at Julius Bär wished Mr Elmer any harm but that, as a result of what had happened on Friday night it would have been obvious to Mr Elmer that he was, potentially, in a bad position.
 - Mr Elmer would want to do what was best for him and his family in the circumstances. **(implying again that I am the guilty person and my family has nothing to do with Mr. Farrington and the office)**
 - If there was any way in which he could he the bank, the bank would be helpful to him **(implying again that I am the guilty person)**
 - If the Bank was able to locate the missing files, the that would be of great assistance to the Bank **(implying again that I am the guilty person)**
 - The Bank is likely to move quickly ahead and that if Mr Elmer was prepared to assist the Bank, or explain his position, he needed to do so very soon. **(threat and that on a Sunday afternoon)**
 - It was Mr Farrington's understanding that Mr Elmer made some admissions on Friday evening. **(this is an assumption which confirms that Mr. Farrington was accusing Mr. Elmer)**
 - **Indirect speech which does not give the true conversation. If that were direct speech then the threats, accusations and assumptions made would be more obvious.**
- **Accusations and threats from Mr. Elmer's point of view (based on his notes)**

He (CF) said: If I want to talk with him I can call him anytime?
I said: I would but I do not have a reason.
CF: If I can bring back the two files (disappeared in the timeframe June -Sept 2002 from the Trust & Co Dept). He/The Bank would help me. **(implying that I am the guilty person, making an accusation)**

My response: I did not answer.
CF: I admitted (he meant during Friday's interview when the examiner started accusing me) to have done bad things. **(assumption he made and was accusing me)**

I asked: What did I admit?
CF: No answer received.
I asked: Do I have to come to the office tomorrow?
CF: No. He mentioned that people do not want that I do something in the sense of hurting myself. **(insulting and thinking bad things about me)**. He continued: "I do not know what is happening tomorrow. Then he said on a personal note: it would be better for the family if I talked. **(threat to the family, I am certain he did not mean something good)**

I stopped my conversation because I was shocked.
He lastly said: "It will happen now very quickly!" **(threat on a Sunday afternoon)**

Accusations made by the Polygrapher who consulted the Company x, Cayman Islands after halting the test Friday, November 22nd, 2002, about 07.00 pm

First of all I noticed that there was no TV to monitor (puls, bloodpressure etc) which on the other hand was there when Mr F, CEO, took the test and told me on Thursday, Morning, November 21st, 2002 about 08.30 AM. This made me suspicious. There was something going on which I do not know.

After the sequence of the pre-run test of the polygraph the examiner started with accusing me as follows:

- He went through the pre-run test with the figures 2 to 6, I had to lie on the figures 4 and 6 (see separate explanation about the pre-run test)
- Then he went in front of me and started immediately with accusing, he did not make any explanations at all. He just showed me a piece of paper did not explain it which might be the proof that I did not cooperate with the procedure. However, no explanation was given at all and the sequence was not tapped as well (highly professional or was it done deliberately? Did he have a game plan?):
 - “I am not cooperative” no explanation why I was not cooperative. He put a piece of paper in front of me which obviously was a product of the lie detector, hopefully working correctly. I did not receive any explanation why I was qualified “not cooperative”.
 - My explanation is that I was breathing in when I had to lie about the figures 4 and 6 because I am not used to lie being connected to a lie detector system. My thought process was now he wants me to lie “yes” would be right but I have to say “no”. Therefore, I breathed in thinking “yes is right but he wants me to say no” and I breathed out and said “no”. I also breath heavily when I am in pain which was the case in that strange sitting position. I have never tried that before.
 - He did not say anything about strategically move of my body. That is a fabrication on his part. How could I, the right leg I had to put on another chair and the left leg was in the 60 degree on the floor. Anyhow that position caused pain in my lower back which should be on the polygraph machine (the machine should pick up pain it says in Mr. F’s report). He must have thought that I wanted to deceive him but that was not the case. It was only the acquaintance test, not the real one anyway. We never got to the real test.
 - The next accusation was when someone looks something up on a polygraph at the internet then he must be willing/able to do other bad things (this is ridiculous, I am just not the person who accepts everything for granted especially if it is from America, I am critical thinking person and I want to know what my rights are etc.)

Test run problem

Test run = “deliberately attempted to defeat the new security programme which he was asked by the company to undergo. This has nothing to do with ill health”.

I did not say at that moment when he accused me that it has to do with ill health. In that particular sequence I could not even attempt to explain, all the explanation was given by the examiner shouting at me. He assumed that a person who reads in the Internet about lie detector tests before taking a test is already a criminal. At least that is the way it came across taking all his accusations and explanations into account.

Here the way I can recall that situation:

I was asked to choose a figure. I gave Nr 4. He put down Nr 2 and 3 and Nr 5 and 6. He asked me to lie on figure 4 and 6.

The question was: Did you choose this figure? I had to answer with yes or no.

First figure	2	yes
	3	yes
	4	no => lie
	5	yes
	6	no => lie

As far as I can recall I believe that I was breathing in at the figure 4 and 6 before I lied because I had to lie according to the examiner's instruction. I also know that I felt kind of dizziness/confusion coming up in my mind. I wanted to keep control of the situation. Initially I did not have pain in my leg at that time because I was only 30 minutes in the room!.

Immediately after the second time we went through the above program he started to accuse me of not being cooperative without explaining why and went on with accusations and theories. I did not have any chance to respond

I assume that the above explanations and also the pre-test run can be reviewed on the audiotape or there are witnesses who watched the sequence

As I understand from the supervising lawyer that particular sequence was not recorded.