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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**

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 III 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