UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF MISSISSIPPI

UNITED STATES OF AMERICA

v. CRIMINAL NO. 3:08CR014-M-A

ROBERT L. MOULTRIE,
NIXON E. CAWOOD,
CHARLES K. MOREHEAD,
FACILITY HOLDING CORP., d/b/a
THE FACILITY GROUP,
FACILITY MANAGEMENT GROUP, INC.,
FACILITY CONSTRUCTION MANAGEMENT INC. and
FACILITY DESIGN GROUP INC.

GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDANT MOULTRIE'S MOTION FOR DAUBERT HEARING AND ADMISSION OF PRIVATELY-ADMINISTERED POLYGRAPH RESULTS

Comes now the United States of America, by and through the United States Attorney and responds in opposition to defendant's Motion for *Daubert* Hearing and Admission of Privately-Administered Polygraph Results as follows:

The results of polygraph examinations are rarely admissible in criminal jury trials for any purpose. Great care is usually taken by all parties to ensure that matters concerning the results of polygraph examinations of witnesses or defendants are not disclosed until the issues concerning their admissibility can submitted to the Court, usually in camera, so as not to unduly prejudice any party.

Defendant ROBERT L. MOULTRIE has moved for a *Daubert* hearing and to introduce the results of two privately-administered polygraph examinations that Moultrie participated in without the prior knowledge or involvement of investigative agencies of the United States or the State of Mississippi. Moultrie also claims that the government refused to offer an FBI polygraph to his

client. This is simply incorrect as will be discussed below.

Based on the tone and content of Moultrie's motion, the manner in which it was filed, the attached exhibits and current Fifth Circuit precedent, the United States is skeptical of the true purpose of Moultrie's motion. In addition, the United States disagrees in several respects with the disingenuous and incomplete recitation of events contained in the Motion. Therefore, to accurately develop the record and to provide the Court with relevant precedent concerning the admissibility of Moultrie's polygraph results, the United States responds as follows and submits that Moultrie's motion is contrary to Fifth Circuit precedent, without merit and should be denied.

STATEMENT OF FACTS

Approximately two years ago, the government notified defendant Robert L. Moultrie's attorney that Moultrie was the subject of a criminal investigation relating to illegal activity stemming from The Facility Group's involvement in the economic development project known as Mississippi Beef Processors, LLC. In December, 2006, during a meeting with Moultrie's counsel, the government offered Moultrie a polygraph examination to be administered by a current FBI examiner. Moultrie rejected this opportunity.

Thereafter, and without notice to the government, Moultrie's counsel informed the government that he had participated in a privately administered polygraph. The government was given no advance notice of the private polygraph examination and was not invited to attend or participate. Similarly, the government was not asked to provide input about potential questions or stipulations concerning the results of the exam.

By letters dated December 28, 2006, and January 29, 2007, Moultrie's attorney provided the

results of the examination to the government. The polygraph results, however, were submitted in a sealed envelope, and Moultrie provided numerous restrictions on the United States before it could view the results.

The United States, by letter dated February 12, 2007, declined to view Moultrie's polygraph due to the restrictions Moultrie's attorney placed on the United States. The government did, however, again offer to examine Moultrie by a current FBI polygrapher and, if he agreed to undergo such an examination, offered to consider the results of both examinations. (Exhibit 1).

Thereafter, on February 23, 2007, the United States received a letter from defense counsel acknowledging receipt of the goverment's offer. However, Moultrie's counsel declined the government's offer to conduct a standard FBI polygraph examination. By letter dated February 28, 2007, the United States again offered Moultrie the opportunity to participate in an FBI polygraph examination. (Exhibit 2). Again, neither Moultrie nor his counsel accepted this offer.

Several months later, by letter dated May 23, 2007, the United States again offered Moultrie the opportunity to participate in an FBI polygraph. (Exhibit 3). This offer was also declined. During one of the government's many conversations with Moultrie's attorney, he decided to allow the government to view Moultrie's private polygraph. The questions, responses and results were considered by the government. However, in consultation with the FBI, the United States was informed that the FBI could not scientifically examine results of polygraphs in which they were not involved because they could not ensure the reliability of the pre and post test interviews or the environment of the testing. In addition, the United States and the FBI both had grave concerns with the relevancy of the questions Moultrie was asked. Counsel for defendant was so notified.

By letter dated December 10, 2007, the government was provided with a copy of yet another

privately-administered polygraph examination of defendant, this time on the issue of Moultrie's knowledge of "fraudulent" billing on behalf of his company. Similarly, the government was neither notified of this examination in advance nor was it asked to participate in any manner. Again, in consultation with the FBI, the government considered the results of the polygraph, but again concluded that the results were unreliable. Moultrie's attorney was again offered the opportunity for his client to take a standard FBI polygraph examination. Again he declined.

Knowing that the grand jury had been scheduled for early February, 2008, on or about January 31, 2008, Moultrie's attorney claimed that his client was finally willing to take an FBI administered polygraph examination without restrictions. The United States faxed to Moultrie's attorney a standard FBI Advice of Rights form and a standard FBI Consent to Interview With Polygraph form on February 1, 2008. (Exhibit 4).

An examination was scheduled for February 5, 2008. However, the examination was canceled by Moultrie due to a tragic accident involving several of his friends. In trying to reschedule the examination, Moultrie's attorney rejected the standard FBI forms and placed restrictions on the manner in which the polygraph was to be administered. The FBI examiner advised that he could not administer an examination under such restrictions. On February 7, 2008, Moultrie was again notified that the FBI would agree to examine his client under standard conditions. (Exhibit 5). Moultrie again declined to be examined by the FBI.

Finally, in March, 2008, counsel for defendant contacted the United States about examining his client. Contrary to Moultrie's March 8, 2008, letter, the United States did not refuse to administer an FBI examination. Rather, when Moultrie's attorney was informed that the original FBI polygrapher was on duty in the Middle East, Moultrie's attorney informed the government that

his client would not take a polygraph from any other FBI examiner.

Since 2006, although the government had no duty to do so, it has offered many accommodations to Moultrie, has agreed to meet and did meet with his attorneys to discuss his case on many different occasions and has extended numerous invitations to Moultrie to take FBI polygraph examinations. To put it bluntly, Moultrie has always found a reason to decline the opportunity.

Counsel for the government has never refused to consider defendant's polygraph examinations. The government is well aware of the results, having reviewed the reports. However, in consultation with the FBI, the government considers the examination results unreliable.

STANDARD OF REVIEW

A district court's decision concerning the admission of polygraph evidence is reviewed for abuse of discretion, *United States v. Pettigrew*, 77 F.3d 1500, 1514 (5th Cir. 1996), and the exclusion of such evidence will not be disturbed unless "manifestly erroneous." *Pettigrew* at 1514 (citations omitted).

DISCUSSION OF POLYGRAPH LAW

1. Moultrie fails to cite a single Fifth Circuit case that supports admitting his privately-administered polygraph results in a criminal jury trial.

Moultrie's twenty-seven page motion fails to cite a single Fifth Circuit case that supports his request to offer into evidence in a criminal jury trial the results of his privately-administered polygraph examination.[1] The government is also unable to locate any Fifth Circuit support for what

[1] Moultrie cited *Posado* and *Pettigrew*. Both cases when closely examined by the Court provide strong authority opposing Moultrie's request. Moultrie also mentions this Court's decision in *Parks v. Mississippi Department of Transportation*, 2006 WL 2483484 (N.D. Miss 2006), but did not point out that *Parks* was a civil case in which polygraph results were not

Moultrie is trying to do. There is, however, strong authority opposing it.

a. <u>The *Pasado* case removed the bar to polygraph evidence, but didn't open the floodgates</u>.

Before *Daubert*, the Fifth Circuit employed a bar excluding the admission of polygraph evidence. After *Daubert*, the Fifth Circuit in *United States v. Pasado,* did not open the floodgates to polygraph evidence, but instead merely removed the absolute per se bar prohibiting the admission of the results of these examinations. *United States v. Posado*, 57 F.3d 428 (5th Cir. 1995). In the *Pasado* opinion, the applicable *Daubert* analysis was discussed as well as the enhanced role that Rule 403 plays in considering whether to admit polygraph results.

In removing the per se exclusion, the *Posado* Court was careful to point out that "we do not now hold that polygraph examinations are scientifically valid or that they will always assist the trier of fact, in this or any individual case." *Posado* at 434. Instead, the Court maintained that before polygraph evidence may be admitted, it must meet the relevancy requirements of Rule 702.

<u>Fed. R. Evid. 702</u>

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

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offered to prove the truthfulness of the examinee, but were merely offered to show the reason why the plaintiff was terminated from her job. Moultrie also refers to *Ulmer v. State Farm Fire and Casualty Company*, 897 F.Supp. 299 (W.D. La. 1995), another district court decision concerning polygraph evidence in a civil trial, not a criminal trial. In addition, Moultrie cites *Gibbs v. Gibbs*, 210 F.3d 491 (5th Cir. 2000), which like *Parks* and *Ulmer* also concerns a civil trial, this time a bench trial.

Under 702, the Court initially determines whether the results are reliable, and then decides whether they are relevant. However, the inquiry does not end there because "[o]ther evidentiary rules, such as 403, may still operate to exclude the evidence." *Posado* at 435 citing *Daubert* at 2797-98.

The *Pasado* Court was also clear to explain that "... the presumption in favor of admissibility established by Rules 401 and 402, together with *Daubert's* 'flexible' approach, may well mandate an enhanced role for Rule 403, in the context of the *Daubert* analysis, particularly when the scientific or technical knowledge is novel or controversial." *Posado* at 435 (citations omitted).

Finally, in discussing the enhanced role of Rule 403 as it relates to polygraph evidence, the Fifth Circuit addressed safeguards that if present may operate to counterbalance the potential prejudicial effect relating to polygraph evidence.

SAFEGUARD 1: The Prosecution Is Invited to Participate in the Polygraph Examination.

In *Pasado*, the prosecution was contacted before the defense conducted their polygraph examinations, and the prosecution was offered the opportunity to participate in the examinations. *Posado* at 435. The prosecution was further offered the opportunity to stipulate to the use of the results of the polygraph examination. The *Posado* Court recognized that in cases where both the prosecution and defense have the opportunity to participate in the polygraph examination, both parties have a risk in the outcome of the examination, which simultaneously reduces the possibility for unfair prejudice and increases reliability. *Posado* at 435. This principal is repeated in more recent cases following *Pasado*, as discussed below.

In Moultrie's case, the first safeguard and counterbalance mentioned in *Posado* is not present. The government had no opportunity to participate in Moultrie's privately-funded examinations, and was in fact unaware that Moultrie had undergone the privately-administered

polygraph examinations until after they had already taken place. There was no input from the government concerning the questions to be asked, and the government was not invited to enter into pre-polygraph stipulations concerning the use of the results of Moultrie's privately funded polygraph examinations.

Because there was no joint participation, both parties did not have a risk in the outcome of the polygraph examination. Therefore, the possibility of reduction of unfair prejudice and increased reliability contemplated in *Posado* simply does not exist in Moultrie's case.

As to this safeguard, it should also be noted that since 2006, Moultrie has been repeatedly invited to participate in polygraph examinations conducted by a current Federal Bureau of Investigation polygrapher, in accordance with standard FBI policy, conditions and control features. However, Moultrie has declined these invitations.

Although the government had no duty to do so, over the past two years it has offered many accommodations to Moultrie, extending numerous invitations to take FBI polygraph examinations and has agreed to meet with and did meet with his attorneys to discuss the case on many occasions. In his motion, Moultrie attempts to create the perception that he was actually eager to be examined by the Bureau. This itself is disingenuous.

Absent the safeguard of investigative and prosecutorial participation in Moultrie's polygraphs, this first "counterbalance" factor described in *Pasado* and more recent Fifth Circuit decisions is glaringly absent.

SAFEGUARD 2: **Preliminary Hearing v. Jury Trial**

Another counterbalancing factor discussed in *Posado* turns on the forum in which the evidence would be offered. In *Posado*, the polygraph results were not offered at a trial before a jury

as Moultrie requests, but were instead offered in the more relaxed setting of a pretrial suppression hearing before a district judge. *Posado* at 435. As to the difference in audience, the Fifth Circuit in *Pasado* made clear that "[a] district court judge is much less likely than a lay jury to be intimidated by claims of scientific validity into assigning an inappropriate evidentiary value to polygraph evidence." *Posado* at 435. The *Pasado* Court also recognized that the Fifth Circuit has consistently held that the rules of evidence are relaxed in pretrial suppression hearings, unlike a jury trial, which Moultrie now faces.

Finally, in fully discerning *Pasado's* impact on the admission of Moultrie's polygraph evidence, it is of great importance that this Court note that even after the per se exclusion of polygraph evidence was removed and even though many safeguard and counter balance measures were present in the *Pasado* case, which are not present here, upon remand to the district court the polygraph results discussed in *Pasado* were still ruled to be inadmissible and were still excluded by the district court. *See United States v. Ramirez,*195 WL 918083 (S.D. Tex 1998) (unreported).

Without the safeguards, the results of the examination are unreliable, inadmissible and no hearing is necessary. Though Moultrie places great emphasis on *Posado,* the case weighs heavily against the admission of his privately-administered polygraph examination.

b. Under *Pettigrew*, Moultrie's privately funded polygraph examination is inadmissible.

While *Pasado* is instructive on safeguards, the case most analogous to the facts at hand is the Fifth Circuit's more recent decision in *United States v. Pettigrew,* 77 F.3d 1500 (5th Cir.1996). In *Pettigrew,* the defendant, after being convicted by a jury of several federal offenses including bank fraud, making false entries and money laundering, argued that the district court erred in excluding the results of a polygraph examination that Pettigrew maintained supported his defense

that he lacked intent to deceive. *Pettigrew*, 77 F.3d at 1514. In rejecting Pettigrew's argument, the Fifth Circuit again addressed the "enhanced role" of Rule 403 when considering polygraph evidence. The Court noted that even if *Daubert's* Rule 702 inquiry was met, the potential for prejudice in admitting polygraph results was high, especially absent the safeguards and counterbalances mentioned in *Pasado.* The *Pettigrew* court discussed in detail the safeguards present in *Posado*, such as participation by the government and the ultimate audience being a judge rather than a jury. These safeguards, which were not present in *Pettigrew*, are also absent here.

Like Moultrie's, the polygraph examinations in *Pettigrew* were also administered by a polygrapher selected by the defense without the participation of the government. Also like Moultrie, Pettigrew hoped to offer the evidence directly to a criminal jury, not to a district judge under the relaxed rules of a pre-trial suppression hearing. As to this different audience, the Court in *Pettigrew* placed emphasis on the fact that the evidence in *Pasado* was not offered at a jury trial, but was merely offered in a pre-trial suppression hearing, before a district judge who would be less likely to be "intimidated by claims of scientific validity." *Pettigrew*, at 515 (citing *Pasado*, 57 F.3d at 435). Thus, neither safeguard discussed in *Pasado* existed in *Pettigrew*. Because of the lack of these safeguards, the results of the Pettigrew's private polygraph were excluded just as Moultrie's should be.

As the *Pettigrew* Court strongly put it, "[w]hile these factors may not always be conclusive, the absence of these or other similar safeguards certainly weigh most heavily against the admission of polygraph evidence." In fact, the district court denied Pettigrew's motion requesting admission of polygraph results without a hearing. Although the Fifth Circuit generally does not sanction efforts to "short circuit" the *Daubert* analysis, when the offer fails the second prong of the Rule 702

inquiry, it "sees little reason to force a district court to expend precious judicial resources in painstakingly evaluating the scientific evidence under *Daubert*." *Pettigrew* at 1515. Thus, no hearing is required in the instant case.

2. Moultrie's privately administered polygraph examination

In addressing the admission of polygraph results, the district court first decides if the evidence is reliable and then determines if it is relevant. After that, under the enhanced version of Fed. R. Evid. 403 discussed in *Posado* and *Pettigrew*, the Court assumes the role of gatekeeper to ultimately determine whether the "probative value of the evidence is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury..." *Pettigrew* at 1515

a. Reliability

In seeking to establish the reliability of the polygraph examinations at hand, Moultrie merely discusses the qualifications and experience of his polygraphers. This alone does not establish the reliability of the subject examinations. Because the government was not invited to participate or attend either of Moultrie's privately-administered polygraphs, it was not involved in providing input into proposed questions or in providing necessary information to the polygrapher to be used in the critical pre and post polygraph interviews. Additionally, because the government did not participate in either test, it has no way of knowing whether reliable information about the particular facts of the case was submitted to the polygraphers. In short, the government simply cannot agree to the reliability of examinations in which it was not consulted, invited or in any way involved. In fact, we contend that the defense could not have a sufficient understanding of the facts and legal theories at that time to have properly formed relevant questions.

b. Relevance

The government has reviewed, in consultation with the FBI, the questions offered to Moultrie, and does not believe they are relevant to the specific criminal charges, that is violations of Title 18 United States Code, Sections 371, 666 and 1341. The first private polygraph examination consisted of two questions, with the following answers:

1. Did you ever have an agreement with anyone that your company would get work on the Mississippi Beef Project in return for making contributions to [the public official's] campaign?
   No.

2. Did anyone ever communicate to you that your company would be provided work on the Mississippi Beef Project in return for contributions to [the public official's] campaign?
   No.

It is important to note that in his brief in support of the admission of these questions and results, Moultrie cites *United States v. Sun-Diamond Growers of California*, 526 U.S. 398, 404-405 (1999), which does not concern Section 666(a)(2). Rather *Sun-Diamond* concerns Section 201(b)(1)(A). There is an important difference in the statutes as to intent.

Under the charged offense, Section 666(a)(2), no agreement or return promise is required by a public official to trigger criminal liability. In the questions crafted by Moultrie's private examiner, the critical element of "quid pro quo" is prominently displayed in both questions, that is, both questions deal with getting something in return.

Section 666(a)(2) imposes criminal liability on those who **corruptly give, offer, or agrees to give anything of value to any person, with intent to influence or reward**. The statute does not require and the government need not prove a quid pro quo. *See United States v. Agostino,* 132 F.3d 1183, 1190 (7th Cir. 1997)(declining to add an additional, specific quid pro quo requirement into the elements of Section 666(a)(2). Section 666(a)(2), "by its statutory language requires that the

defendant act 'corruptly... with intent to influence or reward..' This intent, and not any specific quid pro quo" is what is required under the statute.) *See also United States v. Gee*, 432, F.3d 713, 714-15 (7th Cir. 2005) (666 does not require quid pro quo) *United States v. Castro*, 89 F.3d 1443 (11th Cir. 1996) *cert. denied* 117 S.Ct. 965 (1997) (declined to require quid pro quo under 666(a)(2)).

Moultrie's polygrapher asked the wrong questions by adding a quid pro quo element that is not required under the statute Moultrie is charged with violating. Moultrie could thus pass or "beat" the examination on these two erroneous questions which relate to a different offense, and still be quite guilty of intending to corruptly influence the public official under Section 666(a)(2). Accordingly, any relevance whatsoever evaporates when these two questions are compared to the offense charged. Understandably, then, *Pasado*, *Pettigrew* and other similar Fifth Circuit cases insist on government participation as a safeguard when seeking to introduce polygraph results.

The relevance of the other polygraph questions is similarly lacking.

1. Did you have any type of agreement with anyone that your company could submit fraudulent bills on the Mississippi Beef contract?
No.

18 U.S.C.§ 1341, the mail fraud statute, criminalizes the acts of individuals who use the mail in furtherance of schemes to defraud, or for obtaining money by false or fraudulent pretenses, representations or promises. Moultrie is charged under this statute. The manner in which question 1 is phrased lends itself to confusion and creates the impression that the examiner is asking Moultrie if he had an arrangement with entities and individuals such as Community Bank, Mississippi Development Authority and Richard Hall that would allow Moultrie to defraud them. There is no allegation that the victims of Moultrie's frauds were complicit in the offenses charged. He is certainly not charged with obtaining permission from others to defraud them. Thus, this question

is confusing, immaterial and its relevancy is highly questionable.

2. Did you obtain the Mississippi Beef contract knowing your company would submit fraudulent bills?
No.

This question is equally irrelevant, and of no import under the mail fraud statute. Under Section 1341, there is no element requiring that Moultrie contemplate or know that his company would submit "fraudulent bills" in advance or at the time of receiving the contract to perform work on Mississippi Beef Processors, LLC. Admission of this question would tend to confuse and mislead a jury.

3. Do you have any knowledge of fraudulent billing on the Mississippi Beef contract?
No.

While this question is arguably the most relevant of the five, it is still overly general, and since the United States was not invited to participate in this examination, it has no assurance that reliable information about the particular facts of the case were provided to the polygrapher for the purposes of conducting the examination.

Thus, four of the five questions are totally irrelevant to this case under Rule 702, and without being involved with the examination and being unfamiliar with the information presented to the examiner, the United States cannot vouch for even the final question. These issues would have been fleshed out in advance had the government been invited to attend and participate in Moultrie's examinations or had Moultrie participated in a FBI examination. These very issues about the relevancy of Moultrie's questions make it easy to understand why the Fifth Circuit insists on

safeguards such as government participation in privately administered polygraph examinations before their results can be admitted into evidence at any stage of criminal proceedings.

c. Enhanced Role of 403 and the absence of any Safeguards

The third and perhaps most important function this Court undertakes when polygraph evidence is sought to be admitted is its enhanced role under Fed. R. Evid. 403, as discussed in *Posado* and *Pettigrew*.

Even if Moultrie's evidence survived *Daubert's* 702 inquiry, it should then be excluded under Rule 403. In *Pettigrew*, the Fifth Circuit determined that the potential for prejudice created by polygraph evidence is high in absence of appropriate safeguards. *Pettigrew* at 1515. As discussed in great detail earlier, the opinions in both *Posado* and *Pettigrew* addressed safeguards and counterbalances that should be in place before polygraph evidence is admitted.

Again, the first safeguard mentioned in both *Posado* and *Pettigrew* is the participation by the prosecution in the private examination. No government official was ever extended an invitation to participate in either of Moultrie's private examinations. There was no consultation with the government about proposed questions, manner of examination or controlled measures. Joint participation is absent. Here, the situation did not exist where both parties had a risk in the outcome, thus, as noted in *Posado*, the risk of unfair prejudice is not reduced. *Posado* at 435. See also *United States v. Styles*, 75 Appx. 934 (5th Cir. 2003) (unpublished) (upholding district court's exclusion of polygraph results and finding important fact that government was not invited to participate in examination), *United States v. Dominguez*, 92 F.Supp. 737 (S.D. Tx 1995) (exclusion of polygraph results when defendant did not invite government to be present at examination or have its own experts present during pretest interview and testing process).

The other safeguard prominently mentioned by the Fifth Circuit in *Pasado* and *Pettigrew* is the audience. Like Moultrie, *Pettigrew* hoped to offer polygraph evidence directly to a jury, not to

a district judge under the relaxed rules of a pre-trial suppression hearing. As to the different audience, the Court in *Pettigrew* placed emphasis on the fact that the evidence in *Pasado* was not offered at a jury trial, but was merely offered in a pre-trial suppression hearing, before a district judge who would be less likely to be "intimidated by claims of scientific validity." *Pettigrew*, at 515 (citing *Pasado*, 57 F.3d at 435).

In discussing these two safeguard factors, the Fifth Circuit was clear that "[w]hile these factors may not always be conclusive, the absence of these or other similar safeguards certainly weigh most heavily against the admission of polygraph evidence." *Pettigrew* at 1515.

In the absence of safeguards and relevancy, the results are inadmissible and no hearing is required. Even if the Court permits a *Daubert* hearing, Moultrie's offer of his privately administered polygraph should be excluded by the Court under Rule 403.

3. The government does not intend to bolster its witnesses' credibility by questioning them about results of polygraph examinations.

Finally, Moultrie forecasts and predicts that the United States will attempt to offer as substantive evidence the results of government witness polygraph examinations or that the government will bolster its witnesses with polygraph results. Moultrie can rest assured that the United States does not intend to offer the results of polygraph examinations as substantive evidence in its case-in-chief. To do so would violate Fifth Circuit precedent. To the extent that defendant complains of the standard polygraph provisions in our plea agreements, that language can be easily redacted for presentation to the jury by either party.

Accordingly, for the reasons cited herein, the United States submits that no hearing is required and that defendants' motion for admission of his privately-administered polygraph examination be denied.

Respectfully submitted this the 2nd day of April, 2008.

JIM M. GREENLEE
United States Attorney

By: /s/ James D. Maxwell, II
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CERTIFICATE OF SERVICE

I, James D. Maxwell, II, and William C. Lamar, Assistant United States Attorneys for the Northern District of Mississippi, hereby certify that on April 1, 2008, I electronically filed the foregoing Government's Response in Opposition to Defendant Moultrie's Motion for Daubert Hearing and Admission of Privately-administered Polygraph Results with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

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and I hereby certify that I have mailed by the United States Postal Service the document to the following non-ECF participants:

None.

This the 2nd day of April, 2008.

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