

1           actually have a study that have been published, and  
2           these studies that have been published in the AFTE  
3           journals in '98, winter 2009, spring 2009, they had to  
4           be subject of peer review before they even got  
5           published, again giving validity to the reliability of  
6           the science and the reliability of an examiner to say,  
7           yes, I've examined this, in my opinion the source of  
8           these fired bullets or spent casings came from a  
9           single source weapon. Thank you, your Honor.

10                   COURT BERRY: You're welcome. We're going to  
11           go ahead and take a ten minute recess on this matter  
12           and then we'll give the parties -- oh, I'm sorry,  
13           Judge Kenny --

14                   COURT KENNY: I want to review -- I've seen  
15           the other documents. I got Mr. Zubel's Exhibit this  
16           morning. I want to review them. I'm going to need  
17           about 30, is that all right?

18                   COURT BERRY: Oh, that's fine. Whatever  
19           time -- that's all right. Actually if you need  
20           additional time we can go ahead and do other matters.

21                   (At about 10:39 a.m. off record).

22                   (At about 11:28 p.m. back on record).

23                   THE CLERK: File No. 08-12323, People versus  
24           Doyle Palmer and File No. 09-6967, People versus  
25           Christopher Stanfield.

1 MS. KOWAL: Good morning, your Honor,  
2 Christine Kowal for the People.

3 MR. AWAD: Mahommad Awad appearing on behalf  
4 of the People, your Honor.

5 MR. ZUBEL: Brian Zubel for the Defendants.

6 MS. MANNARINO: And good morning. Maria  
7 Mannarino on behalf of Mr. Doyle Palmer.

8 COURT BERRY: Good morning to all of you.  
9 Judge Kenny and I have had an opportunity to not only  
10 listen to the testimony of the witnesses that were  
11 proffered but also review extensively the issues that  
12 were briefed by counsel's motion, within counsel's  
13 motion and also the documents that were furnished and  
14 entered into evidence by way of the People and the  
15 defense, and at this point I'm going to turn it over  
16 to Judge Kenny because Judge Kenny and I  
17 philosophically share the same analysis in pertinent  
18 part. So rather than reiterate it or restate it I'm  
19 going to turn it over to Judge Kenny. Judge Kenny.

20 COURT KENNY: All right. Just for the record  
21 I'm going to go forward with my ruling in People  
22 versus Stanfield and then I will leave it to Judge  
23 Berry if there are any, you know, in terms of her, in  
24 her ruling whether she elects to adopt portions of it  
25 that's fine, any, you know, deletions or additions

1 I'll certainly leave to her. But, certainly, for the  
2 record, these are rulings and judgments that stand  
3 alone.

4 I have reached my conclusion and I'm basing  
5 my ruling on my review of the testimony, the exhibits  
6 and the arguments presented in this case.

7 The appropriate test for the admissibility  
8 of expert scientific testimony in Michigan is the  
9 reliability standard that has been set forth in  
10 Daubert versus Dow Pharmaceuticals, 509, U.S. 579, a  
11 1993 U.S. Supreme Court decision in Gilbert versus  
12 Daimler Chrysler Corporation, 470 Michigan, 479.

13 In Daubert the United States Supreme Court  
14 did, in fact, clarify the admissibility requirement  
15 for expert scientific testimony that held that the  
16 Federal Rule of Evidence 702 superseded Fre versus  
17 United States, 54 App DC 46, 1923 decision, which  
18 merely required that expert testimony be generally  
19 accepted in order to be admissible.

20 Now, under Daubert the court has set forth  
21 what has been set forth as a non-exhaustive list of  
22 factors that a trial court could consider when  
23 determining whether or not to admit scientific expert  
24 testimony which includes whether the theory or  
25 technique that forms the basis for the expert's

1 opinion, number one, has been or can be tested?

2 Two, has it been subjected to peer review  
3 and publication? Does it have a high known or  
4 potential rate of error? And four, has there been a  
5 general acceptance within the scientific community?  
6 And are there standards and controls regarding the  
7 techniques of operation?

8 Now, Michigan Rule of Evidence 703 governs  
9 the underlying facts and data for the expert's opinion  
10 testimony, and the Michigan rule is different from the  
11 federal rule. And the record should reflect too that  
12 I recognize that pursuant to Gilbert that the Supreme  
13 Court has held that under Michigan Rule of Evidence  
14 702, that the trial court serves in the gatekeeper  
15 role to make certain that any expert testimony that is  
16 admitted at trial is reliable. And that the trial  
17 court must insure that any and all scientific  
18 testimony or evidence admitted is not only relevant  
19 and reliable.

20 Just so that the record is clear, the Court  
21 is mindful of the fact that the proponent of the  
22 evidence, in this case the prosecution bears the  
23 burden, bears the burden of establishing not only the  
24 relevance of the evidence but its admissibility.

25 In the Stanfield case the relevance I don't

1 think has been in dispute. The question is whether or  
2 not expert testimony can be offered to determine how  
3 many different guns were being fired from the area of  
4 this car wash. So certainly the number of weapons  
5 that were being used to fire bears relevance on the  
6 charge of murder. The question here for this Daubert  
7 hearing has to deal with admissibility.

8 The Court may admit evidence only once it  
9 insures that the expert testimony has met the  
10 standards of reliability that have been set forth in  
11 702.

12 And as stated in Gilbert 702 mandates a  
13 searching inquiry, not just of the data underlying the  
14 expert testimony but also the manner in which the  
15 expert interprets it and extrapolates that data.

16 And in this particular case the defense  
17 challenges the claim that firearms identification  
18 testimony from any expert from the crime lab, or  
19 anyone for that matter, rises to the level of quote  
20 science unquote, as required under Michigan Rule of  
21 Evidence 702 and 703.

22 The defense analogizes the subjective  
23 conclusions drawn by the firearms examiners as being  
24 analogous to eyewitness identification testimony. That  
25 is it is subjective not subject to the type of

1 scientific measurement that for example DNA evidence  
2 is subjected to.

3 The defense in its subjection to the  
4 introduction of the type of testimony offered by the  
5 crime lab, and I'm focusing on the expert's ability to  
6 testify that a particular spent casing came from a  
7 particular gun or that spent casings were fired from  
8 the same weapon as opposed to a possibility of dozens  
9 of weapons. But that the expert can, in fact, zero in  
10 and testify that shell casings or spent bullets came  
11 from a particular firearm or came from the same  
12 firearm.

13 Now, the defense in this matter cites a 2008  
14 and 2009 report from the National Science Foundation,  
15 as well as the National Research Council and raise  
16 questions about the science of firearms  
17 identification.

18 I found it noteworthy in looking at what had  
19 been marked as People's Exhibit five, the testimony of  
20 Judge Harry T. Edwards, a Senior Circuit Judge and  
21 Chief Judge Emeritus United States Court of Appeals  
22 for the D.C. Circuit in his testimony before the U.S.  
23 Senate Judiciary Committee.

24 Judge Edwards certainly is someone who does  
25 not have any direct ties to any lab or any law

1 enforcement agency. It would certainly seem difficult  
2 to attach any bias to Judge Edwards' testimony.

3 And on page seven of his testimony he says  
4 at the bottom of page seven: Obviously, NSF has good  
5 ties to the academic community and it understands the  
6 demands of rigorous scientific research; but the  
7 agency has very thin ties to the forensic science  
8 community and very little expertise in building and  
9 reinforcing the foundations of areas of applied  
10 Science and practices such as our found in the  
11 forensic science disciplines.

12 In addition, there is nothing to indicate  
13 that NFS has the relevant expertise needed to  
14 strengthen the practices of forensic science.

15 I do think that that is noteworthy in terms  
16 of to what degree the Court is going to give weight to  
17 the NFS conclusions when Judge Edwards makes the  
18 observation that they, that the NFS has very little  
19 relevant expertise as to how forensic sciences and  
20 forensic labs work.

21 Now, the defense raises the claim that in  
22 this particular type of expert testimony that is being  
23 proffered there is not the type of measurements that  
24 is traditionally found in other types of scientific  
25 lab research and procedures. And I would submit that

1 not all science requires micrometer, yardsticks or  
2 other measuring devices.

3 For example, if I were to walk out of the  
4 building today and slip and fall and think that I  
5 broke my leg and would be taken to the hospital I  
6 would have an x-ray and that x-ray would be read by a  
7 radiologist. It is unlikely that the radiologist  
8 would be measuring the bones in my leg, perhaps there  
9 may be a need to do that, but for the most part the  
10 radiologist who's an expert in that field of medicine  
11 reads the x-rays. Is that subjective? Yes. And it  
12 is some degree of examination but it's based on  
13 training and education and it is by observation that a  
14 radiologist, that type of expert looks to see if  
15 someone's leg is broken.

16 So I say that just as an illustration of the  
17 fact that I don't think that the absence of the type  
18 of micrometer measurement throughout the firearms  
19 examination is fatal to its claim of being a valid  
20 science.

21 The prosecution called Dr. James Hamby.  
22 Who's currently the director of Indiana Laboratory  
23 specializing in firearms identification. Dr. Hamby has  
24 with regards to the Stanfield case has no direct  
25 connection to the work that was done in this



1 particular case. He was here to address the science of  
2 the firearms examination.

3 Dr. Hamby is and has been actively involved  
4 in the field for almost four decades which renders him  
5 in this Court's opinion at least someone who's able to  
6 share an educated opinion about the field. Dr. Hamby  
7 has worn many hats in that particular field. He's  
8 currently a business owner owning a laboratory that  
9 specializes in firearm identification. He's also  
10 served as a firearm examination trainer. He's also  
11 been a researcher and he has been a former peer  
12 publication editor. And lastly, has also been a  
13 firearm's examiner working in the crime lab itself.  
14 He has performed many different roles and I think  
15 is eminently qualified to comment here in the field.

16 Looking at Dr. Hamby's testimony on both  
17 direct and cross-examination, we look to the Daubert  
18 test and the issues to be considered as set forth in  
19 that opinion. First question is can the work --  
20 firearms examination work be tested? And certainly  
21 there has been testimony from Dr. Hamby that  
22 validation studies were done in 1998, 2008 and 2009,  
23 studies of consecutively rifled gun barrels.

24 These studies were done in response to an  
25 article that was brought up by Mr. Zubel on

1 cross-examination. That being the 1955 Biasotti  
2 research paper and its inquiries and questions that  
3 were raised. Those questions I believe were answered  
4 with the test studies that were done in '98, 2008 and  
5 2009. These were studies that involved over 20  
6 countries. So this is not just a test that was done in  
7 one lab to be validated by the person who is the  
8 proponent of a particular technique or procedure, but  
9 done with over 500 participants in 20 different  
10 countries.

11 The result of the testing that was done over  
12 20 different countries validated the procedure and  
13 training technique that has been adopted for decades  
14 by AFTE.

15 Second, the question is whether or not the  
16 technique or science is subject to peer review and  
17 publication.

18 AFTE journals according to Dr. Hamby, in  
19 fact, publishes articles that deal with research. It  
20 is subject to peer review as well as peer comments.  
21 After the publication Dr. Hamby himself indicates that  
22 he has been the author of some 20 to 30 articles  
23 himself.

24 So this is not a field that shies away from  
25 peer review or analysis of the work and research that

1 is being done in the field.

2 The third category is whether or not there  
3 is a high known or potential error rate. Once again I  
4 think the validation studies of 1998, 2008 and 2009,  
5 particularly in contrasting against the Biasotti study  
6 I think shows that there is not a high error rate that  
7 is known, nor is there any potential error rate that  
8 has been persuasively brought to this Court's  
9 attention.

10 The fourth category is whether there is  
11 general acceptance of the firearms examination  
12 procedure and technique that has been used. And I  
13 think that it is noteworthy that in Daubert they use  
14 the term as their general acceptance. In general  
15 acceptance does not necessarily mean that there is  
16 universal acceptance. I think it's -- I'm sure there's  
17 some people out there who may still be proposing that  
18 the earth is flat. But the fact of the matter is this  
19 is a scientific technique and procedure that started  
20 in 1907 has been adopted and continuously used by the  
21 United States Military, federal law enforcement  
22 agencies like the Bureau of Alcohol Tobacco and  
23 Firearms, the Federal Bureau of Investigation,  
24 numerous, virtually all state law enforcement agencies  
25 and crime labs, foreign countries and universities.

1 That certainly stand for the issue of scientific,  
2 general scientific acceptance in the community.

3 And are there standards and controls  
4 regarding the techniques and operations? Dr. Hamby  
5 testified that there were, in fact, training manuals  
6 and procedures that have been in effect for decades  
7 and that those techniques have been adopted throughout  
8 this country as well as in foreign countries and  
9 applied for decades.

10 The defense also attacks the testimony not  
11 only of Dr. Hamby but also more broadly the AFTE  
12 organizations, claiming that they are engaged in what  
13 I think can probably be accurately -- Strike that.

14 Maybe described as advocacy on behalf of the  
15 science. The defense I believe is characterizing this  
16 in the form of a degree of self-serving advocacy to  
17 preserve their own work, their on scientific  
18 procedures and their own techniques that have been in  
19 effect for decades.

20 I don't want to quibble over the use of  
21 words, but in terms of advocacy I think that the more  
22 appropriate assessment of this is that the  
23 organization as well as Dr. Hamby are here defending a  
24 process that has been accepted and used for over a  
25 century and they are defending the validity and

1 reliability of their scientific work and technique  
2 when it has been attacked in a National Science  
3 Foundation Publication.

4 Finally with regard to the defense claim  
5 that the firearm examination evidence is really akin  
6 to the identification of a face, like an  
7 identification of a face of a witness. Dr. Hamby  
8 interestingly enough indicated that if you are going  
9 to use that analogy it's sort of like identifying the  
10 face of your mother in a crowded room which I think  
11 you know all relate to --

12 I think that AFTE's terminology or metaphor  
13 of using looking at the face of the object is perhaps  
14 not the best metaphor to have been used, but I do not  
15 find this to be a subjective analysis or subjective  
16 process in its entirety.

17 I do find that the -- that there is a degree  
18 of subjectivity, if you will, in that as in many  
19 sciences someone has to look and say, yes, these  
20 things are identical, just as I'm sure in DNA analysis  
21 someone is going to have to say looking at charts,  
22 someone will say well these criteria all match up as  
23 well.

24 But I do find that after an examination of  
25 the exhibits, testimony offered by Dr. Hamby, and a

1 review of the applicable case law and rules of  
2 evidence, that the People have met their burden.

3 And with regard to People versus Stanfield,  
4 the firearms examination identification testimony will  
5 be permitted with regards to the individual officer  
6 and witness, but whether he meets the requirement to  
7 testify is left for a later time

8 MR. ZUBEL: Thank you, your Honor.

9 MS. KOWAL: Thank you.

10 MR. ZUBEL: Your Honor, if I might address  
11 one issue. And this is in going back to about a third  
12 of the way into the Court findings. I just want to  
13 make this one point of clarification.

14 In quoting from the People's Exhibit Number  
15 Five which was the statement of Harry T. Edwards,  
16 Judge Edwards, at the bottom of page seven. The Court  
17 read a passage talking about the National Science  
18 Foundation as being an inappropriate agency to be the  
19 leader in the forensic science community.  
20 Specifically I would quote, "NFS is an independent  
21 federal agency created to promote the progress of  
22 science. It's the funding source for approximately 20  
23 percent of all federally supported basic research  
24 conducted by American colleges and universities."

25 That was not, and perhaps it's sort of

1 alphabet soup in dealing with all these different  
2 agencies and all these different organizations. But  
3 the NFS is nothing to do with the National Academy of  
4 Science or the National Research Council which issued  
5 the 2008 and 2009 reports. And I just wanted that to  
6 be clear on the record.

7 COURT KENNY: No, I appreciate that. And  
8 that's fine. I pointed that out for the illustrative  
9 point of the fact that the academicians have in the  
10 eyes of Judge Edwards little experiences and expertise  
11 in the field of forensic science.

12 MR. ZUBEL: Thank you, your Honor.

13 COURT KENNY: But I certainly -- I  
14 understand your point. But that's fine. I was aware  
15 of that. I was not attributing the 2009 report to the  
16 NFS. Okay.

17 MR. ZUBEL: Thank you, your Honor.

18 COURT BERRY: With respect to to People of  
19 the State of Michigan versus Palmer, the Court in  
20 pertinent part will adopt the factual basis that was  
21 outlined in Judge Kenny's opinion. Will also -- the  
22 Court will also adopt the legal analysis that was  
23 outlined in Judge Kenny's opinion as the issues in the  
24 Stanfield case are the same issues being argued in  
25 this case.

1                   Is that a fair statement, Mr. Zobel.

2                   MR. ZUBEL: I think they're certainly  
3 analogous to one another, yes.

4                   COURT BERRY: Thank you very much. I just  
5 want to make certain I'm not -- the only thing I would  
6 point out just so the record is clear. There was much  
7 to be made of the report that actually was identified  
8 and introduced into evidence as People's Exhibit  
9 Seven. Obviously we also had the second report by the  
10 NSA.

11                   But the NSA report number one on page nine,  
12 something that I think is pretty consistent to the  
13 testimony of Dr. Hamby is that firearm and toolmark  
14 identification involves some degree of subjectivity  
15 during the final phase of the examination protocol  
16 when the examiner evaluates the degree of  
17 correspondence in the patterns between toolmark with  
18 similar class characteristics. This is neither fatal  
19 to the identification process nor unique to the  
20 firearms and toolmark identification.

21                   Dr. Hamby actually spent a fair amount of  
22 time on this. And it was I think argued by the defense  
23 that the subjectivity is what is really at issue here.

24                   And if you go on further in this report it  
25 states the response is that almost all -- at almost



1           fundamental levels it is somewhat analogous to the  
2           manner in which we recognize friends and relatives in  
3           our everyday life.  When we see a friend or relative  
4           in a large crowd we are able to make the  
5           identification based on pattern of features that match  
6           our memory.  While none of us will ever view the face  
7           of every living individual in the world, we can easily  
8           agree that we would be confident that we have  
9           specifically identified our friend or relative.

10                         In pertinent part the firearms examiner  
11           learns to recognize the face.  That's really what we  
12           spent a lot of time listening to is the face of the  
13           submitted firearm through the careful study of the  
14           test fired bullet or cartridge cases from that  
15           firearm.  This face takes on the form of  
16           reproducibility patterns or arrays of -- and what is  
17           that?  What's that called?

18                         MS. KOWAL:  Striae.

19                         COURT BERRY:  Straie.  Thank you.  On fired  
20           bullets and any number of strae or impressed marks on  
21           the fired cartridge cases.

22                         And why the Court points this -- makes a  
23           point to really reiterate this is because I think this  
24           was pretty much the gist in most -- in large measure  
25           of what the defense has argued to this Court.  I'm not

1 going to go through the whole thing. But what I  
2 thought was interesting is that the defense argued and  
3 relied on in its brief, written pleadings that most  
4 recent Supreme Court case have elaborated even further  
5 the Court's gatekeeping function. When an expert  
6 opinion is not supported by sufficient facts to  
7 validate in the eyes of the law or when indisputable  
8 record facts contradict or otherwise render the  
9 opinion unreasonable it must be excluded from the jury  
10 consideration. And then they go onto cite the case  
11 under the ident -- Strike that.

12 Then they go onto talk about the  
13 identification under MRE 702. And they again cite the  
14 sections, Section 2 of the NSA Committee Report of  
15 2009 in term of empirical -- that report findings  
16 empirical testing of firearm identification to be  
17 inadequate. Sufficient studies have not been done to  
18 understand the reliability or repeatability of the  
19 method.

20 Now, I'm not going to go through and  
21 reiterate what Judge Kenny has stated. He's addressed  
22 that, and that, you know, the Court incorporated that.  
23 But I think that what's important to note is what was  
24 also identified and admitted into evidence as People's  
25 Exhibit Number Six. It is an affidavit of

1 John E. Rolph who is a professor of statistics at the  
2 Marshall School of Business at the University of  
3 Southern California. He also holds a number of  
4 appointments in mathematics department and law school.  
5 And apparently he was also on this task force, this  
6 committee. But what I found interesting is on page  
7 three the Court reviewed paragraph ten -- reviewed the  
8 entire document but specifically paragraph ten is  
9 illustrative of the point: "That the committee's  
10 cautionary statement above is not the commentary --  
11 "is not a commentary on admissibility of firearms  
12 related-toolmark evidence." In the committee's views  
13 "statements on toolmark matches including legal  
14 testimony should be supported by the work that was  
15 done in the laboratory, by the notes and documentation  
16 made by the examiners and by proficiency testing or  
17 established error rates for individual examiners in  
18 the field and in that particular laboratory."

19 So what it said to the Court -- what this  
20 says to the Court is that while this report does raise  
21 some potential for concerns, as highlighted by the  
22 defense, I don't think it negates or otherwise throws  
23 out some 102 years of what is otherwise been reliable  
24 and verifiable scientific measures for firearms  
25 analysis and identification of toolmark

1 identification. And again, this is incorporating my  
2 remarks with that of Judge Kenny's.

3 One thing the Court would like to also point  
4 out is that in its conclusion the defense state or --  
5 Strike that.

6 Before the Court gets to that, the Court  
7 also -- Strike that.

8 The defense also relies on the case of  
9 People v Coy wherein in that case the Michigan Court  
10 of Appeals held that a forensic match is not unique  
11 match to the exclusion of other possible sources. That  
12 case applied to DNA analysis as stated in the brief  
13 submitted by the defense on behalf of  
14 Mr. Palmer.

15 In Coy the evidence revealed that a DNA  
16 mixture where where the analyst could only conclude  
17 that the suspect was a possible contributor of the  
18 types observed, cognizance in the gravity of a jury  
19 might mistakenly attach to evidence of matching DNA  
20 without further explanation. The Court was  
21 circumspect in requiring that the prosecution present  
22 an accurate estimate of just how rare or how common  
23 the inclusion was.

24 And then it goes onto state, in light of the  
25 decision of Coy the inability of the forensic firearm

1 examination to statistically estimate the significance  
2 of its results precludes its admission -- or  
3 admissibility as a question of law of evidence in  
4 Michigan.

5 I believe Dr. Hamby's testimony was quite  
6 clear on the number of test that he had utilized. I  
7 believe it was ten firearms, ten barrel firearms. In  
8 fact, that was introduced into, and that report was  
9 introduced into evidence as People's Exhibit --

10 MS. KOWAL: Three, your Honor.

11 COURT BERRY: I can't read that. I've got it  
12 but I can't read it. Might have to do a little better  
13 job there next time. So that's number three, People's  
14 Exhibit Three. Thank you. Which for the record is  
15 identification of consecutively rifled gun barrels.

16 I'm not going to go through the whole litany  
17 of what he testified to, but it was clear in this  
18 Court's mind that he is eminently qualified.

19 And he is, you know, he does show, Mr.  
20 Zubel, a degree of passion in this area that you  
21 typically don't see. And I agree with Judge Kenny that  
22 sometimes that may be construed as a way of advocating  
23 for a particular purpose or position. But I agree with  
24 Judge Kenny that this area of law -- I should say area  
25 of scientific measurement is -- can only be

1 characterized as being under attack. And -- or under  
2 scrutiny, if you will. And this Court found not that  
3 he, that is, Dr. Hamby was defensive but rather that  
4 he was passionate about what he has been -- the type  
5 of test that he's been conducting for several decades.  
6 I believe it was four decades to be exact and quite  
7 confident in his ability to render a full and complete  
8 expert opinion on firearm mark -- on firearms and  
9 toolmarking identification.

10 The other thing the Court wanted to point  
11 out too is that the conclusion cited in the brief  
12 submitted by the defense for Mr. Palmer was that the  
13 Michigan Supreme Court is cautioned against  
14 overlooking yawning, quote yawning analytical gaps  
15 between data and opinions expressed by experts. As  
16 the Court stated ostensibly legitimate data may serve  
17 as a Chogen horse that facilitates fortuitous advance  
18 of junk science and unreliable opinion citing the  
19 Gilbert case. Which for the record actually the cite  
20 should be Gilbert versus Daimler Chrysler Corporation,  
21 470 Michigan, actually 749, I believe Judge Kenny  
22 stated it was 479. Just so the record is clear.

23 It says in the instant case disputable  
24 record facts contradict and otherwise rendered the  
25 opinion testimony unreasonable.

1                   There is no question, I got to tell you, we  
2                   see a lot of experts come through these doors. This  
3                   man is eminently qualified and he can back it up on so  
4                   many different levels. We don't typically have that  
5                   kind of thorough review analysis data testing,  
6                   publications, you know, dictated to the teaching of it  
7                   in the universities and 21 countries. I mean this man  
8                   in my, in this Court's view, is eminently qualified,  
9                   has satisfied the Daubert standard and then some.

10                   And the Court's going to find, Mr. Palmer,  
11                   that this gentleman is going to be able to testify if  
12                   called as a witness in this case finding that his  
13                   testimony is not only reliable but it's relevant to  
14                   the case at hand.

15                   MR. ZUBEL: Thank you, your Honor.

16                   COURT BERRY: Thank you very much.

17                   MS. KOWAL: Thank you, your Honor. Your  
18                   Honor, then Defendant's Motion in Limine is denied?

19                   THE COURT: That's correct, it's denied.

20                   MS. KOWAL: Thank you, your Honor.

21                   THE COURT: Great job though. Now, you've  
22                   educated us.

23                   (At about 12:06 p.m. off the record)

24                   (At about 12:08 p.m. back on record)

25                   THE COURT: Just so the record is clear, it's

1 actually the Court considered not only People's  
2 Exhibit Three but also People's Exhibit One which is  
3 Identification of Consecutively Rifled Gun Barrel.  
4 It's difficult to see these because I got the Xerox  
5 copies not the original People's Exhibit Three  
6 identification of the Bullets Fired from ten  
7 Consecutively Rifled Nine Millimeter Ruger Pistol  
8 Barrels Research Project Involving 507 Participants  
9 from 20 countries. And this is dated AFTE Journal  
10 which was volume 41, number two, Spring 2009. Okay.  
11 Thank you.

12 All right. We've sent the jury to lunch.  
13 Deputy, I'm going to allow that lady over there to  
14 take notes. She has permission.

15 And I don't mean refer to you as lady but I  
16 don't know your name.

17 MR. ZUBEL: I apologize, your Honor, her  
18 name is Lenora Tiggard.

19 COURT BERRY: Ms. Tiggard, you've been  
20 granted permission to take notes.

21 COURT BERRY: We did send the jury to lunch  
22 at this point, or the prospective members of the jury.  
23 But there are a couple other matters the Court has to  
24 go over I think that are still outstanding.

25 The first one I believe, and I don't have