SUPREME COURT OF THE UNITED STATES

No. 96–1133

UNITED STATES, PETITIONER *v.*
EDWARD G. SCHEFFER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES

[March 31, 1998]

JUSTICE THOMAS announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II-A, and II-D, and an opinion with respect to Parts II-B and II-C, in which THE CHIEF JUSTICE, JUSTICE SCALIA, and JUSTICE SOUTER joined.

This case presents the question whether Military Rule of Evidence 707, which makes polygraph evidence inadmissible in court-martial proceedings, unconstitutionally abridges the right of accused members of the military to present a defense. We hold that it does not.

I

In March 1992, respondent Edward Scheffer, an airman stationed at March Air Force Base in California, volunteered to work as an informant on drug investigations for the Air Force Office of Special Investigations (OSI). His OSI supervisors advised him that, from time to time during the course of his undercover work, they would ask him to submit to drug testing and polygraph examinations. In early April, one of the OSI agents supervising respondent requested that he submit to a urine test. Shortly after providing the urine sample, but before the results of the test were known, respondent agreed to take a polygraph test administered by an OSI examiner. In the opinion of the examiner, the test "indicated no deception" when re-

spondent denied using drugs since joining the Air Force.[1]

On April 30, respondent unaccountably failed to appear for work and could not be found on the base. He was absent without leave until May 13, when an Iowa state patrolman arrested him following a routine traffic stop and held him for return to the base. OSI agents later learned that respondent's urinalysis revealed the presence of methamphetamine.

Respondent was tried by general court-martial on charges of using methamphetamine, failing to go to his appointed place of duty, wrongfully absenting himself from the base for 13 days, and, with respect to an unrelated matter, uttering 17 insufficient funds checks. He testified at trial on his own behalf, relying upon an "innocent ingestion" theory and denying that he had knowingly used drugs while working for OSI. On cross-examination, the prosecution attempted to impeach respondent with inconsistencies between his trial testimony and earlier statements he had made to OSI.

Respondent sought to introduce the polygraph evidence in support of his testimony that he did not knowingly use drugs. The military judge denied the motion, relying on Military Rule of Evidence 707, which provides, in relevant part:

> "(a) Notwithstanding any other provision of law, the results of a polygraph examination, the opinion of a polygraph examiner, or any reference to an offer to take, failure to take, or taking of a polygraph examination, shall not be admitted into evidence."

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[1] The OSI examiner asked three relevant questions: (1) "Since you've been in the [Air Force], have you used any illegal drugs?"; (2) "Have you lied about any of the drug information you've given OSI?"; and (3) "Besides your parents, have you told anyone you're assisting OSI?" Respondent answered "no" to each question. App. 12.

The military judge determined that Rule 707 was constitutional because "the President may, through the Rules of Evidence, determine that credibility is not an area in which a fact finder needs help, and the polygraph is not a process that has sufficient scientific acceptability to be relevant."[2] App. 28. He further reasoned that the fact-finder might give undue weight to the polygraph examiner's testimony, and that collateral arguments about such evidence could consume "an inordinate amount of time and expense." *Ibid.*

Respondent was convicted on all counts and was sentenced to a bad-conduct discharge, confinement for 30 months, total forfeiture of all pay and allowances, and reduction to the lowest enlisted grade. The Air Force Court of Criminal Appeals affirmed in all material respects, explaining that Rule 707 "does not arbitrarily limit the accused's ability to present reliable evidence." 41 M. J. 683, 691 (1995) (en banc).

By a 3-to-2 vote, the United States Court of Appeals for the Armed Forces reversed. 44 M. J. 442 (1996). Without pointing to any particular language in the Sixth Amendment, the Court of Appeals held that "[a] *per se* exclusion of polygraph evidence offered by an accused to rebut an attack on his credibility, . . . violates his Sixth Amendment right to present a defense." *Id.*, at 445.[3] Judge Crawford,

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[2] Article 36 of the Uniform Code of Military Justice authorizes the President, as Commander in Chief of the Armed Forces, see U. S. Const., Art. II, §2, to promulgate rules of evidence for military courts: "Pretrial, trial, and post-trial procedures, including modes of proof, . . . may be prescribed by the President by regulations which shall, so far as he considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the United States district courts." 10 U. S. C. §836(a).

[3] In this Court, respondent cites the Sixth Amendment's Compulsory Process Clause as the specific constitutional provision supporting his claim. He also briefly contends that the "combined effect" of the

dissenting, stressed that a defendant's right to present relevant evidence is not absolute, that relevant evidence can be excluded for valid reasons, and that Rule 707 was supported by a number of valid justifications. *Id.*, at 449–451. We granted certiorari, 520 U. S. ___ (1997), and we now reverse.

II

A defendant's right to present relevant evidence is not unlimited, but rather is subject to reasonable restrictions.[4] See *Taylor* v. *Illinois*, 484 U. S. 400, 410 (1988); *Rock* v. *Arkansas*, 483 U. S. 44, 55 (1987); *Chambers* v. *Mississippi*, 410 U. S. 284, 295 (1973). A defendant's interest in presenting such evidence may thus "'bow to accommodate other legitimate interests in the criminal trial process.'" *Rock*, *supra*, at 55 (quoting *Chambers*, *supra*, at 295); accord *Michigan* v. *Lucas*, 500 U. S. 145, 149 (1991). As a result, state and federal rulemakers have broad latitude under the Constitution to establish rules excluding evidence from criminal trials. Such rules do not abridge an accused's right to present a defense so long as they are not "arbitrary" or "disproportionate to the purposes they are designed to serve." *Rock*, *supra*, at 56; accord *Lucas*, *supra*, at 151. Moreover, we have found the exclusion of evidence to be unconstitutionally arbitrary or disproportionate only where it has infringed upon a weighty inter-

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Fifth and Sixth Amendments confers upon him the right to a "meaningful opportunity to present a complete defense," *Crane* v. *Kentucky*, 476 U. S. 683, 690 (1986) (citations omitted), and that this right in turn encompasses a constitutional right to present polygraph evidence to bolster his credibility.

[4] The words "defendant" and "jury" are used throughout in reference to general principles of law and in discussing nonmilitary precedents. In reference to this case or to the military specifically, the terms "court," "court members," or "court–martial" are used throughout, as is the military term, "accused," rather than the civilian term, "defendant."

est of the accused. See *Rock*, *supra*, at 58; *Chambers*, *supra*, at 302; *Washington* v. *Texas*, 388 U. S. 14, 22–23 (1967).

Rule 707 serves several legitimate interests in the criminal trial process. These interests include ensuring that only reliable evidence is introduced at trial, preserving the jury's role in determining credibility, and avoiding litigation that is collateral to the primary purpose of the trial.[5] The rule is neither arbitrary nor disproportionate in promoting these ends. Nor does it implicate a sufficiently weighty interest of the defendant to raise a constitutional concern under our precedents.

A

State and federal governments unquestionably have a legitimate interest in ensuring that reliable evidence is presented to the trier of fact in a criminal trial. Indeed, the exclusion of unreliable evidence is a principal objective of many evidentiary rules. See, *e.g.*, Fed. Rule Evid. 702; Fed. Rule Evid. 802; Fed. Rule Evid. 901; see also *Daubert* v. *Merrell Dow Pharmaceuticals, Inc.*, 509 U. S. 579, 589 (1993).

The contentions of respondent and the dissent notwithstanding, there is simply no consensus that polygraph evidence is reliable. To this day, the scientific community remains extremely polarized about the reliability of poly-

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[5] These interests, among others, were recognized by the drafters of Rule 707, who justified the Rule on the following grounds: the risk that court members would be misled by polygraph evidence; the risk that the traditional responsibility of court members to ascertain the facts and adjudge guilt or innocence would be usurped; the danger that confusion of the issues "could result in the court-martial degenerating into a trial of the polygraph machine;'" the likely waste of time on collateral issues; and the fact that the "'reliability of polygraph evidence has not been sufficiently established.'" See 41 M. J. 683, 686 (USAF Ct. Crim. App. 1995) (citing Manual for Courts-Martial, the United States, App., pp. A22–A46 (1994 ed.)).

graph techniques. 1 D. Faigman, D. Kaye, M. Saks, & J. Sanders, Modern Scientific Evidence 565, n. †14–2.0, and §14–3.0 (1997); see also 1 P. Giannelli & E. Imwinkelried, Scientific Evidence §8–2(C), pp. 225–227 (2d ed. 1993) (hereinafter Giannelli & Imwinkelried); 1 J. Strong, McCormick on Evidence §206, p. 909 (4th ed. 1992) (hereinafter McCormick). Some studies have concluded that polygraph tests overall are accurate and reliable. See, *e.g.*, S. Abrams, The Complete Polygraph Handbook 190–191 (1968) (reporting the overall accuracy rate from laboratory studies involving the common "control question technique" polygraph to be "in the range of 87 percent"). Others have found that polygraph tests assess truthfulness significantly less accurately– that scientific field studies suggest the accuracy rate of the "control question technique" polygraph is "little better than could be obtained by the toss of a coin," that is, 50 percent. See Iacono & Lykken, The Scientific Status of Research on Polygraph Techniques: The Case Against Polygraph Tests, in 1 Modern Scientific Evidence, *supra*, §14–5.3, p. 629 (hereinafter Iacono & Lykken).[6]

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[6] The United States notes that in 1983 Congress' Office of Technology Assessment evaluated all available studies on the reliability of polygraphs and concluded that "'[o]verall, the cumulative research evidence suggests that when used in criminal investigations, the polygraph test detects deception better than chance, but with error rates that could be considered significant.'" Brief for United States 21 (quoting U. S. Congress, Office of Technology Assessment, Scientific Validity of Polygraph Testing: A Research Review and Evaluation–A Technical Memorandum 5 (OTA–TM–H–15, Nov. 1983)). Respondent, however, contends current research shows polygraph testing is reliable more than 90 percent of the time. Brief for Respondent 22 (citing J. Matte, Forensic Psychophysiology Using the Polygraph, 121–129 (1996)). Even if the basic debate about the reliability of polygraph technology itself were resolved, however, there would still be controversy over the efficacy of countermeasures, or deliberately adopted strategies that a polygraph examinee can employ to provoke physiologi-

This lack of scientific consensus is reflected in the disagreement among state and federal courts concerning both the admissibility and the reliability of polygraph evidence.[7] Although some Federal Courts of Appeal have abandoned the *per se* rule excluding polygraph evidence, leaving its admission or exclusion to the discretion of district courts under *Daubert*, see, *e.g., United States* v. *Posado*, 57 F. 3d 428, 434 (CA5 1995); *United States* v. *Cordoba*, 104 F. 3d 225, 228 (CA9 1997), at least one Federal Circuit has recently reaffirmed its *per se* ban, see *United States* v. *Sanchez*, 118 F. 3d 192, 197 (CA4 1997), and another recently noted that it has "not decided whether polygraphy has reached a sufficient state of reliability to be admissible." *United States* v. *Messina*, 131 F. 3d 36, 42 (CA2 1997). Most States maintain *per se* rules excluding polygraph evidence. See, *e.g.*, *State* v. *Porter*, 241 Conn. 57, 92–95, 698 A. 2d 739, 758–759 (1995); *People* v. *Gard*, 158 Ill. 2d 191, 202–204, 632 N. E. 2d 1026, 1032 (1994);

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cal responses that will obscure accurate readings and thus "fool" the polygraph machine and the examiner. See, *e.g.*, Iacono & Lykken §14–3.0.

[7] Until quite recently, federal and state courts were uniform in categorically ruling polygraph evidence inadmissible under the test set forth in *Frye* v. *United States*, 293 F. 1013 (CADC 1923), which held that scientific evidence must gain the general acceptance of the relevant expert community to be admissible. In *Daubert* v. *Merrell Dow Pharmaceuticals, Inc.*, 509 U. S. 579 (1993), we held that *Frye* had been superseded by the Federal Rules of Evidence and that expert testimony could be admitted if the district court deemed it both relevant and reliable.

Prior to *Daubert*, neither federal nor state courts found any Sixth Amendment obstacle to the categorical rule. See, *e.g.*, *Bashor* v. *Risley*, 730 F. 2d 1228, 1238 (CA9), cert. denied, 469 U. S. 838 (1984); *People* v. *Price*, 1 Cal. 4th 324, 419–420, 821 P. 2d 610, 663 (1991), cert. denied, 506 U. S. 851 (1992). Nothing in *Daubert* foreclosed, as a constitutional matter, *per se* exclusionary rules for certain types of expert or scientific evidence. It would be an odd inversion of our hierarchy of laws if altering or interpreting a rule of evidence worked a corresponding change in the meaning of the Constitution.

In re Odell, 672 A. 2d 457, 459 (RI 1996) *(per curiam)*; *Perkins* v. *State*, 902 S. W. 2d 88, 94–95 (Ct. App. Tex. 1995). New Mexico is unique in making polygraph evidence generally admissible without the prior stipulation of the parties and without significant restriction. See N. M. Rule Evid. §11–707.[8] Whatever their approach, state and federal courts continue to express doubt about whether such evidence is reliable. See, *e.g.*, *United States* v. *Messina*, *supra*, at 42; *United States* v. *Posado*, *supra*, at 434; *State* v. *Porter*, *supra*, at 126–127, 698 A. 2d, at 774; *Perkins* v. *State*, *supra*, at 94; *People* v. *Gard*, *supra*, at 202–204, 632 N. E. 2d, at 1032; *In re Odell*, *supra*, at 459.

The approach taken by the President in adopting Rule 707––excluding polygraph evidence in all military trials––is a rational and proportional means of advancing the legitimate interest in barring unreliable evidence. Although the degree of reliability of polygraph evidence may depend upon a variety of identifiable factors, there is simply no way to know in a particular case whether a polygraph examiner's conclusion is accurate, because certain doubts and uncertainties plague even the best polygraph exams. Individual jurisdictions therefore may reasonably reach differing conclusions as to whether polygraph evidence should be admitted. We cannot say, then, that pre-

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[8] Respondent argues that because the Government––and in particular the Department of Defense––routinely uses polygraph testing, the Government must consider polygraphs reliable. Governmental use of polygraph tests, however, is primarily in the field of personnel screening, and to a lesser extent as a tool in criminal and intelligence investigations, but not as evidence at trials. See Brief for United States 34, n. 17; Barland, The Polygraph Test in the USA and Elsewhere, in The Polygraph Test 76 (A. Gale ed. 1988). Such limited, out of court uses of polygraph techniques obviously differ in character from, and carry less severe consequences than, the use of polygraphs as evidence in a criminal trial. They do not establish the reliability of polygraphs as trial evidence, and they do not invalidate reliability as a valid concern supporting Rule 707's categorical ban.

sented with such widespread uncertainty, the President acted arbitrarily or disproportionately in promulgating a *per se* rule excluding all polygraph evidence.

B

It is equally clear that Rule 707 serves a second legitimate governmental interest: Preserving the jury's core function of making credibility determinations in criminal trials. A fundamental premise of our criminal trial system is that "the *jury* is the lie detector." *United States* v. *Barnard*, 490 F. 2d 907, 912 (CA9 1973) (emphasis added), cert. denied, 416 U. S. 959 (1974). Determining the weight and credibility of witness testimony, therefore, has long been held to be the "part of every case [that] belongs to the jury, who are presumed to be fitted for it by their natural intelligence and their practical knowledge of men and the ways of men." *Aetna Life Ins. Co.* v. *Ward*, 140 U. S. 76, 88 (1891).

By its very nature, polygraph evidence may diminish the jury's role in making credibility determinations. The common form of polygraph test measures a variety of physiological responses to a set of questions asked by the examiner, who then interprets these physiological correlates of anxiety and offers an opinion to the jury about whether the witness––often, as in this case, the accused––was deceptive in answering questions about the very matters at issue in the trial. See 1 McCormick §206.[9] Unlike

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[9] The examiner interprets various physiological responses of the examinee, including blood pressure, perspiration, and respiration, while asking a series of questions, commonly in three categories: direct accusatory questions concerning the matter under investigation, irrelevant or neutral questions, and more general "control" questions concerning wrongdoing by the subject in general. The examiner forms an opinion of the subject's truthfulness by comparing the physiological

other expert witnesses who testify about factual matters outside the jurors' knowledge, such as the analysis of fingerprints, ballistics, or DNA found at a crime scene, a polygraph expert can supply the jury only with another opinion, in addition to its own, about whether the witness was telling the truth. Jurisdictions, in promulgating rules of evidence, may legitimately be concerned about the risk that juries will give excessive weight to the opinions of a polygrapher, clothed as they are in scientific expertise and at times offering, as in respondent's case, a conclusion about the ultimate issue in the trial. Such jurisdictions may legitimately determine that the aura of infallibility attending polygraph evidence can lead jurors to abandon their duty to assess credibility and guilt. Those jurisdictions may also take into account the fact that a judge cannot determine, when ruling on a motion to admit polygraph evidence, whether a particular polygraph expert is likely to influence the jury unduly. For these reasons, the President is within his constitutional prerogative to promulgate a *per se* rule that simply excludes all such evidence.

C

A third legitimate interest served by Rule 707 is avoiding litigation over issues other than the guilt or innocence of the accused. Such collateral litigation prolongs criminal trials and threatens to distract the jury from its central function of determining guilt or innocence. Allowing proffers of polygraph evidence would inevitably entail assessments of such issues as whether the test and control questions were appropriate, whether a particular polygraph

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reactions to each set of questions. See generally Giannelli & Imwinkelried 219–222; Honts & Quick, The Polygraph in 1995: Progress in Science and the Law, 71 N. D. L. Rev. 987, 990–992 (1995).

examiner was qualified and had properly interpreted the physiological responses, and whether other factors such as countermeasures employed by the examinee had distorted the exam results. Such assessments would be required in each and every case.[10] It thus offends no constitutional principle for the President to conclude that a *per se* rule excluding all polygraph evidence is appropriate. Because litigation over the admissibility of polygraph evidence is by its very nature collateral, a *per se* rule prohibiting its admission is not an arbitrary or disproportionate means of avoiding it.[11]

D

The three of our precedents upon which the Court of Appeals principally relied, *Rock* v. *Arkansas*, *Washington* v. *Texas*, and *Chambers* v. *Mississippi*, do not support a right to introduce polygraph evidence, even in very narrow circumstances. The exclusions of evidence that we declared unconstitutional in those cases significantly undermined fundamental elements of the accused's defense. Such is not the case here.

In *Rock*, the defendant, accused of a killing to which she was the only eyewitness, was allegedly able to remember the facts of the killing only after having her memory hyp-

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[10] Although some of this litigation could take place outside the presence of the jury, at the very least a foundation must be laid for the jury to assess the qualifications and skill of the polygrapher and the validity of the exam, and significant cross-examination could occur on these issues.

[11] Although the Court of Appeals stated that it had "merely remove[d] the obstacle of the *per se* rule against admissibility" of polygraph evidence in cases where the accused wishes to proffer an exculpatory polygraph to rebut an attack on his credibility, 44 M. J. 442, 446 (1996), and respondent thus implicitly argues that the Constitution would require collateral litigation only in such cases, we cannot see a principled justification whereby a right derived from the Constitution could be so narrowly contained.

notically refreshed. See *Rock* v. *Arkansas,* 483 U. S., at 46. Because Arkansas excluded all hypnotically refreshed testimony, the defendant was unable to testify about certain relevant facts, including whether the killing had been accidental. See *id.*, at 47–49. In holding that the exclusion of this evidence violated the defendant's "right to present a defense," we noted that the rule deprived the jury of the testimony of the only witness who was at the scene and had firsthand knowledge of the facts. See *id.*, at 57. Moreover, the rule infringed upon the accused's interest in testifying in her own defense––an interest that we deemed particularly significant, as it is the defendant who is the target of any criminal prosecution. See *id.*, at 52. For this reason, we stated that an accused ought to be allowed "to present his own version of events in his own words." *Ibid.*

In *Washington,* the statutes involved prevented co-defendants or co-participants in a crime from testifying for one another and thus precluded the accused from introducing his accomplice's testimony that the accomplice had in fact committed the crime. See *Washington* v. *Texas,* 388 U. S., at 16–17. In reversing Washington's conviction, we held that the Sixth Amendment was violated because "the State arbitrarily denied [the accused] the right to put on the stand a witness who was physically and mentally capable of testifying to events that he had personally observed." *Id.,* at 23.[12]

In *Chambers*, we found a due process violation in the combined application of Mississippi's common law "voucher rule," which prevented a party from impeaching his own witness, and its hearsay rule that excluded the

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[12] In addition, we noted that the State of Texas could advance no legitimate interests in support of the evidentiary rules at issue, and those rules burdened only the defense and not the prosecution. See 388 U. S., at 22–23. Rule 707 suffers from neither of these defects.

testimony of three persons to whom that witness had confessed. See *Chambers* v. *Mississippi*, 410 U. S., at 302. *Chambers* specifically confined its holding to the "facts and circumstances" presented in that case; we thus stressed that the ruling did not "signal any diminution in the respect traditionally accorded to the States in the establishment and implementation of their own criminal trial rules and procedures." *Id.*, at 302–303. *Chambers* therefore does not stand for the proposition that the accused is denied a fair opportunity to defend himself whenever a state or federal rule excludes favorable evidence.

Rock, *Washington*, and *Chambers* do not require that Rule 707 be invalidated, because, unlike the evidentiary rules at issue in those cases, Rule 707 does not implicate any significant interest of the accused. Here, the court members heard all the relevant details of the charged offense from the perspective of the accused, and the Rule did not preclude him from introducing any factual evidence.[13] Rather, respondent was barred merely from in-

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[13] The dissent suggests, *post*, at 13, that polygraph results constitute "factual evidence." The raw results of a polygraph exam–the subject's pulse, respiration, and perspiration rates–may be factual data, but these are not introduced at trial, and even if they were, they would not be "facts" about the alleged crime at hand. Rather, the evidence introduced is the expert opinion testimony of the polygrapher about whether the subject was truthful or deceptive in answering questions about the alleged crime. A *per se* rule excluding polygraph results therefore does not prevent an accused–just as it did not prevent respondent here–from introducing factual evidence or testimony about the crime itself, such as alibi witness testimony, see *post*, at 12. For the same reasons, an expert polygrapher's interpretation of polygraph results is not evidence of "'the accused's whole conduct,'" see post, at 18, to which Dean Wigmore referred. It is not evidence of the "accused's . . . conduct" at all, much less "conduct" concerning the actual crime at issue. It is merely the opinion of a witness with no knowledge about any of the facts surrounding the alleged crime, concerning whether the defendant spoke truthfully or deceptively on another occasion.

troducing expert opinion testimony to bolster his own credibility. Moreover, in contrast to the rule at issue in *Rock*, Rule 707 did not prohibit respondent from testifying on his own behalf; he freely exercised his choice to convey his version of the facts to the court-martial members. We therefore cannot conclude that respondent's defense was significantly impaired by the exclusion of polygraph evidence. Rule 707 is thus constitutional under our precedents.

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For the foregoing reasons, Military Rule of Evidence 707 does not unconstitutionally abridge the right to present a defense. The judgment of the Court of Appeals is reversed.

It is so ordered.