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[PP. 4001-4500]

STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
(Capital PCR: 2005-CP-18-1368)
The Honorable Doyet A. Early, III, Circuit Court Judge
Appellate Case No. 2014-000387

Kenneth Simmons, #5066, Respondent/Petitioner,

v.

State of South Carolina, Petitioner/Respondent.

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Q OKAY. WHEN HE WAS LIVING AT HOME, CARING FOR A MOTHER, PROVIDING HER MEDICATION, THERE WAS A SISTER IN THE HOUSE ALSO. IS THAT CORRECT?

A THERE WAS A YOUNGER SISTER.

Q A YOUNGER SISTER. DO YOU KNOW WHICH SISTER WAS THE ONE THAT WAS IDENTIFIED BY MS. HAMMOCK, I BELIEVE, AS HAVING VERY LOW INTELLECTUAL FUNCTIONING? WAS IT THAT SAME SISTER OR A DIFFERENT SISTER?

A I BELIEVE IT WAS THAT SISTER.

Q AND THAT FUNCTIONING WAS FUNCTIONING THAT HAD BEEN IDENTIFIED BY THE SCHOOLS. CORRECT?

A SHE HAD BEEN TESTED AND, I THINK, IDENTIFIED AS HAVING MILD MENTAL RETARDATION.

Q AND HER BROTHER WAS NOT, AT THAT TIME. CORRECT?

A AT THAT TIME HE HAD NOT BEEN IDENTIFIED BY THE SCHOOL.

Q SO, WHO WAS CARING FOR HER?

A I DON'T KNOW. I HEARD MS. HAMMOCK'S TESTIMONY, BUT I DON'T KNOW WHO WAS CARING FOR THE MOTHER.

Q MAINTAINING A SAFE ENVIRONMENT. WAS THERE ANYTHING ABOUT THE ENVIRONMENT THAT HE WAS LIVING IN BEFORE THE AGE OF EIGHTEEN THAT BY ANY INDICATION WAS NOT A SAFE ENVIRONMENT?

A I'M NOT SURE I LOOKED AT THAT SPECIFICALLY. I MEAN, I LOOKED AT THE OVERALL EVALUATION.

Q OKAY. FOLLOWS DIRECTIONS. EVERYBODY HAS SAID HE FOLLOWED DIRECTIONS FAIRLY CLOSELY. ISN'T THAT CORRECT?

A THAT'S WHAT I HEARD IN THIS TESTIMONY. YES.
Q NAIVETE? IS THERE ANY INDICATION THAT HE WAS OVERLY NAIVE?
A AGAIN, I REVIEWED THE WHOLE DOMAINS. I MEAN, WE COULD GO POINT BY POINT. CERTAINLY THERE WAS SOME INFORMATION FROM TEACHERS, AFFIDAVITS AND MS. HAMMOCK'S REPORT. HER TESTIMONY TODAY WAS THAT MISTER SIMMONS WAS SOMEWHAT GULLIBLE AND NAIVE AND TAKEN ADVANTAGE OF, PERHAPS.
Q GULLIBILITY? DID YOU ASSESS THAT?
A THERE IS SOME -- I DON'T KNOW IF THERE WAS ANY EVALUATION OF THAT SPECIFICALLY.
Q WELL, THAT'S WHAT AAIDD IS SAYING THAT YOU LOOK AT. ISN'T THAT CORRECT?
A ABSOLUTELY. YES. YOU SHOULD. THOSE ARE PARTS OF DIFFERENT INSTRUMENTS IN THE VINELAND.
Q IS THERE ANY INFORMATION THAT YOU HAVE SPECIFICALLY THAT TALKS ABOUT THE GULLIBILITY OF THE DEFENDANT?
A I WOULD HAVE TO LOOK AT POINT BY POINT, THE ONE DOMAIN OF GULLIBILITY. I THINK THERE IS TESTIMONY OR SOME INFORMATION IN THE FILE THAT SEEMS TO INDICATE THAT HE WAS PERHAPS GULLIBLE AND TAKEN ADVANTAGE OF.
Q WELL, WHAT IS THAT?
A I WOULD HAVE TO LOOK BACK IN MY FILE. I DON'T KNOW OFF THE TOP OF MY HEAD WHAT IT IS.
Q DID YOU SEE ANY FAILINGS WITHIN THE DEFENDANT'S DEVELOPMENT, PHYSICAL DEVELOPMENTAL AREAS AS A CHILD? DID HE HIT THE

NORMAL STANDARDS?

A I DIDN'T SEE ANY INFORMATION ABOUT THAT SPECIFICALLY.

Q OKAY. AND YOU DID SEE THE REPORT BY DOCTORS SANDLER AND MCABEE THAT SAID THEY DIDN'T SEE ANY OF THAT IN THEIR INFORMATION EITHER. CORRECT?

A I DON'T RECALL THAT. NO.

Q OKAY. INFORMATION THAT THEY HAD, THAT YOU'VE REVIEWED, WAS THAT SIMMONS TOOK CARE OF HIS PERSONAL HYGIENE AND GROOMING INDEPENDENTLY, NOT NEEDING ASSISTANCE OR REMINDERS FROM OTHERS. CORRECT?

A I WOULDN'T EXPECT OTHERWISE.

Q DISCUSSED THE CONTENT OF NEWSPAPER STORIES AFTER READING THEM. ABLE TO HAVE INTERPERSONAL SKILLS WITH CORRECTIONAL OFFICERS AT THAT TIME. CORRECT?

A THAT'S WHAT THEY MAY HAVE SAID AND TO ME THAT'S NOT INCONSISTENT WITH MILD MENTAL RETARDATION.

Q INVOLVED IN A BIBLE DISCUSSION GROUP.

A I UNDERSTAND HE PARTICIPATED IN BIBLE STUDY.

Q THERE WAS NO EVIDENCE OF DEVELOPMENTAL DELAYS, AS FAR AS YOU COULD TELL, WITHIN HIS RECORD. CORRECT?

A I DIDN'T READ ANY REPORT -- BOTH PARENTS HAD PASSED AWAY, AND SO I DIDN'T SEE ANY SPECIFIC INTERVIEW ABOUT THAT.

Q OKAY. HE WAS ABLE TO PLAY VARSITY FOOTBALL AT SCHOOL. CORRECT?

A I UNDERSTAND THAT HE PLAYED FOOTBALL IN HIGH SCHOOL. YES.

Q PLAYED FOR A FEW YEARS. CORRECT?
A TWO OR THREE YEARS.
Q HAD SELF ESTEEM FROM THOSE TWO FOOTBALL SEASONS. CORRECT?
A I DON'T KNOW ABOUT THAT.
Q YOU DIDN'T DISCUSS WITH HIM HIS PRIDE IN THE FACT THAT THEY WERE 13 AND 1 AND 14 AND 0?
A I HEARD THE RECORD. I SAW THE RECORD OF THAT 14 AND 0 VICTORY. I DON'T KNOW IF HE FELT SELF ESTEEM FROM THAT.
Q HOW WOULD YOU SHOW SELF ESTEEM OTHER THAN PRIDE IN AN ACCOMPLISHMENT THAT YOU WERE INVOLVED IN?
A I'M SURE HE WAS HAPPY WITH THAT RECORD, BUT THAT LASTS A CERTAIN AMOUNT OF TIME. IT DOESN'T LAST FOREVER TO THE SELF ESTEEM.
Q OKAY. WITH RESPECT TO THE DRIVER'S LICENSE, DID YOU ASSESS HOW HE UTILIZED A CAR, HOW HE DROVE, IN MAKING YOUR ASSESSMENT?
A I DID NOT EVALUATE HIS DRIVING SKILLS. NO.
Q YOU SAID YOU REVIEWED HIS MOTOR VEHICLE RECORDS, HOWEVER.
A YES.
Q AND DID THOSE RECORDS REVEAL THAT -- WHAT ABOUT HIS DRIVING RECORD?
A WELL, WHAT I SAW IS HE GOT HIS DRIVER'S LICENSE AND THAT HE BROKE THE LAW AND LOST HIS DRIVER'S LICENSE.
Q DID IT SAY HOW HE BROKE THE LAW?
A I HAVE THE SAME RECOLLECTION MS. HAMMOCK DID, THAT HE WAS

DRIVING UNINSURED AND HIS LICENSE WAS SUSPENDED AND THEN I THOUGHT HE GOT CAUGHT WITHOUT A DRIVER'S LICENSE OR WITH A SUSPENDED DRIVER'S LICENSE AND THAT WAS WHEN HE WAS REVOKED.

THE COURT: MISTER ZELENKA, HOW ARE WE LOOKING?

MR. ZELENKA: WE'RE ABOUT TO WRAP IT UP, JUDGE.

THE COURT: WELL I'M NOT SUGGESTING THAT YOU DO, I JUST NEED TO MAKE A DECISION WITH COURT PERSONNEL AND DECIDE WHETHER TO BRING HIM BACK TOMORROW OR WHAT.

MR. ZELENKA: I UNDERSTAND THAT. I THINK I'LL BE THROUGH HOPEFULLY, WITHIN FIFTEEN MINUTES.

THE COURT: ALL RIGHT. EVERYBODY OKAY? GO AHEAD MISTER ZELENKA.

Q DOCTOR TASSE, YOU BRIEFLY MENTIONED THE FLYNN EFFECT. YOU DIDN'T APPLY IT WITH RESPECT TO ANY OF YOUR SCORES TO GET YOUR ASSESSMENT, BUT THE FLYNN EFFECT ITSELF IS SOMEWHAT CONTROVERSIAL IN THE FORENSIC COMMUNITY. ISN'T THAT CORRECT?

A IT'S PROBABLY THE ONLY PLACE THAT IT'S CONTROVERSIAL. IN THE FIELD OF INTELLIGENCE, IT'S A WELL ESTABLISHED FACT THAT I.Q. SCORES ARE RISING AND, IN FACT, THAT'S WHY TESTS GET REVISED MORE QUICKLY AND THAT'S WHY WE – IT'S A WELL ESTABLISHED FACT. IT SEEMS TO BE CONTROVERSIAL IN A FORENSIC SETTING IN ATKINS' CLAIMS.

Q IN ATKINS' CLAIMS BECAUSE IT WASN'T GENERALLY TAUGHT IN THE SCHOOLS ACCORDING TO REPORTS THAT HAVE BEEN DONE. ISN'T

THAT CORRECT?

A I'M NOT SURE I UNDERSTAND YOUR QUESTION.

Q WELL, PRACTITIONERS LIKE YOU OR IN OTHER SCHOOLS HAVE NOT TAUGHT THE FLYNN EFFECT TO GENERAL EXAMINERS WHEN MAKING ASSESSMENTS FOR MENTAL RETARDATION. ISN'T THAT CORRECT?

A WELL, NO. WE DO TEACH THE PHENOMENA OF THE FLYNN EFFECT AND THAT I.Q. SCORES SEEM TO BE, ARE RISING. WE DON'T UNDERSTAND WHY THEY ARE RISING, BUT THEY ARE RISING AND THAT AS TESTS GET OLDER, THE RESULTS OVERESTIMATE AND THOSE NORMS BECOME MORE OBSOLETE WITH TIME.

Q SO, YOU ADOPT THE NUMBERS OF THE FLYNN EFFECT AS CORRECT NUMBERS?

A I'M NOT SURE I UNDERSTAND YOUR QUESTION.

Q THE NUMBERS THAT DOCTOR FLYNN HAS UTILIZED, POLITICAL SCIENTISTS ARE MAKING A DETERMINATION THAT EVALUATION SCORES AS THEY GET CLOSER TO THE TIME FOR A NEW TEST TO BE GIVEN THAT THEY SHOULD BE ROUNDED DOWN IN A DIFFERENT MANNER, THE FLYNN EFFECT.

A WHAT THE RESEARCH THAT FLYNN HAS DONE AND OTHERS HAVE SHOWN IS TRUE AND APPLIES TO PEOPLE WITH MENTAL RETARDATION IS THAT AS TESTS GET OLDER THE NUMBERS ARE, ON AVERAGE, IT'S ABOUT A THREE POINT INCREASE PER DECADE WHERE PEOPLE SEEM TO BE IMPROVING AND SO THESE TESTS SEEM TO OVERESTIMATE ON AVERAGE, POPULATION-WISE, APPROXIMATELY THREE POINTS FOR EVERY DECADE THAT THE TEST HAS BEEN NORM.

Q BUT THERE'S A LOT OF LITERATURE THAT DISPUTES THE FLYNN EFFECT AND RELIES UPON OTHER FACTORS. ISN'T THAT CORRECT?

A NOT THAT I KNOW OF. NO. I MEAN, THE FLYNN EFFECT IS WELL ESTABLISHED ---

Q ARE YOU SAYING THAT THERE IS NO LITERATURE THAT DISPUTES THE FLYNN EFFECT?

A THERE'S NO LITERATURE -- THERE'S LITERATURE THAT SHOWS THAT THE FLYNN EFFECT EXISTS, THERE HAVE BEEN A COUPLE OF STUDIES IN THE PAST YEARS THAT HAVE SHOWN THAT PERHAPS THE FLYNN EFFECT TODAY IN 2000-2010, THAT THIS RISE MAY BE SLOWING DOWN AND MAY BE STOPPING IN SOME SCANDINAVIAN COUNTRIES. BUT HISTORICALLY, THAT'S IRREFUTABLE.

Q SO, AN INDIVIDUAL'S I.Q. LEVEL SHOULD ALWAYS RISE ON THE TESTING?

A NO. NO. BUT WE SEEM TO BE GETTING BETTER. I MEAN, I, PERSONALLY MAY NOT BE GETTING BETTER FROM THIS DATE TO THIS DATE, BUT IF YOU GIVE ME AN OLD TEST THAT'S TWENTY YEARS OLD, I WILL SCORE HIGHER ON THAT TEST THAT I WOULD ON A TEST THAT WAS DEVELOPED AND NORMED TODAY. THAT'S WHAT FLYNN ---

Q EVEN WHEN YOU TOOK THAT TEST TWENTY YEARS AGO?

A WHAT I SCORED TWENTY YEARS AGO, I WOULD HAVE GOTTEN THAT SCORE. TODAY I WOULD GET A DIFFERENT, A HIGHER SCORE.

Q BUT YOU TOOK THE TEST TWENTY YEARS AGO, SO WHY WOULD YOU BE NORMING THAT TEST DIFFERENT NOW THAN IT WOULD HAVE BEEN NORMED THEN?

A BECAUSE NOW IT'S TWENTY YEARS LATER AND NOW I'M TWENTY YEARS OLDER.

Q AAIDD, IN DOING THEIR CONCEPTUAL ASSESSMENTS, THEY LOOK AT EXAMPLES OF AREAS IN SUPPORT ACTIVITIES. CORRECT?

A I'M NOT SURE I UNDERSTAND YOUR QUESTION.

Q WELL, THEIR WEBSITE SETS OUT CERTAIN FACTORS TO LOOK AT IN DOING AN EVALUATION FOR ADAPTIVE FUNCTIONING AND ONE OF THOSE AREAS SUPPORTS AN INTELLECTUAL DISABILITY. CORRECT?

A AGAIN, I'M NOT UNDERSTANDING ---

Q I'M PULLING THIS OFF OF THEIR WEBSITE, "FREQUENTLY ASKED QUESTIONS." THEY ARE SETTING OUT WHAT THEIR EVALUATOR SHOULD LOOK AT.

A IF YOU WANT, I'D BE HAPPY TO READ IT AND MAYBE I'LL UNDERSTAND BETTER.

Q LET ME ASK THIS QUESTION. EXAMPLES OF SUPPORT AREAS AND SUPPORT ACTIVITIES, HOW DO YOU DETERMINE WHAT SUPPORTS ARE NEEDED? AAIDD RECOMMENDS THAT THE INDIVIDUAL'S NEEDS FOR SUPPORT BE ANALYZED IN AT LEAST NINE KEY AREAS SUCH AS HUMAN DEVELOPMENT, TEACHING AND EDUCATION AND HOME LIVING, COMMUNITY LIVING, EMPLOYMENT, HEALTH AND SAFETY, BEHAVIOR, SOCIAL AND PROTECTION AND ADVOCACY. SO, YOU'D BE LOOKING AT THAT AND DOING YOUR EVALUATION?

A NOT FOR DOING A DIAGNOSIS. NO. THAT'S FOR FINDING SUPPORTS. THAT'S FOR INTERVENTION. THAT'S AFTER WE'VE DIAGNOSED MENTAL RETARDATION. THE CONCEPT OF SUPPORTS IS DIFFERENT, VERY

DIFFERENT THAN THE CONCEPT OF DIAGNOSES AND THAT'S, AFTER WE'VE DIAGNOSED WE WANT TO DETERMINE WHAT SUPPORTS A PERSON NEEDS AT WORK, AT SCHOOL, AT HOME. IT'S AN ENTIRELY DIFFERENT ISSUE.

Q IT'S AN ENTIRELY DIFFERENT ISSUE, BUT IT ALSO DEALS WITH THE NEEDS OF AN INDIVIDUAL WITH MENTAL RETARDATION. CORRECT?

A IT CERTAINLY IS RELATED. ABSOLUTELY.

Q AND IN YOUR POWERPOINT, YOU SPOKE ABOUT A NUMBER OF FACTORS THAT PEOPLE WITH MENTAL RETARDATION MANDATE SOME MISCONCEPTIONS OF INDIVIDUALS. CORRECT?

A YES.

Q AND ONE OF THOSE MISCONCEPTIONS WAS "USE ONLY SIMPLE WORDS".

A THE MISCONCEPTION IS THAT PEOPLE WITH MILD MENTAL RETARDATION ONLY USE SIMPLE WORDS.

Q OKAY. AND THIS DEFENDANT DIDN'T ONLY USE SIMPLE WORDS. DID HE?

A I IMAGINE HE USES MULTI-SYLLABLE WORDS.

Q THIS INDIVIDUAL WAS TOILET TRAINED. CORRECT?

A HE DEFINITELY IS TOILET TRAINED. YES.

Q DIDN'T SHOW POOR HYGIENE. CORRECT?

A FROM ALL ACCOUNTS, HE'S GOT GOOD HYGIENE. YES.

Q SOME MISCONCEPTIONS REGARDING PERSONS WITH MENTAL RETARDATION, "DON'T KNOW RIGHT FROM WRONG." BUT HE DID KNOW RIGHT FROM WRONG. DIDN'T HE?

A I'M ASSUMING HE UNDERSTANDS RIGHT FROM WRONG. YES.
Q "CANNOT LEARN". BUT HE DID LEARN. DIDN'T HE?
A YES. THOSE ARE MISCONCEPTIONS THAT PEOPLE WITH MENTAL RETARDATION CANNOT DO.
Q "CANNOT READ." BUT HE CAN READ.
A THAT'S CORRECT. BUT AGAIN, IT'S A MISCONCEPTION THAT PEOPLE WITH MENTAL RETARDATION CANNOT READ.
Q "CAN'T OPEN OR USE A BANK ACCOUNT". BUT THE INFORMATION WAS HE DID OPEN A BANK ACCOUNT WITH HIS WIFE.
A THAT'S NOT WHAT I HEARD. NO.
Q SHE WASN'T SURE.
A SHE WAS SURE THAT SHE OPENED A BANK ACCOUNT BUT SHE WASN'T SURE IF IT WAS ONLY IN HER NAME OR BOTH NAMES. THAT'S WHAT I HEARD IN MS. HAMMOCK'S TESTIMONY TODAY.
Q SO, HE COULD HAVE OPENED A BANK ACCOUNT EVEN BY HER TESTIMONY. SHE WASN'T SURE.
A I DIDN'T KNOW -- I THINK WHAT SHE WASN'T SURE ABOUT WAS WHETHER THE BANK ACCOUNT THAT SHE OPENED -- WHAT I HEARD TODAY WAS THAT SHE WAS SURE SHE OPENED IT. SHE WASN'T SURE IF SHE OPENED IT ONLY IN HER NAME OR BOTH NAMES OR LEAST THAT'S THE TESTIMONY I HEARD TODAY.
Q OKAY. "CAN'T LEARN TO DRIVE OR ACQUIRE A DRIVER'S LICENSE." BUT HE GOT AN "A" IN DRIVER'S ED AND DID GET A DRIVER'S LICENSE.
A AGAIN, IT'S A MISCONCEPTION THAT PEOPLE HAVE, THAT PEOPLE WITH MENTAL RETARDATION CAN'T DRIVE OR CAN'T ACQUIRE A DRIVER'S

LICENSE. WE KNOW IT'S FALSE.

Q BUT THERE ARE SOME PEOPLE WHO ARE MENTALLY RETARDED WHO CAN'T MEET ANY OF THESE CRITERIA. CORRECT?

A ABSOLUTELY.

Q AND THIS INDIVIDUAL, THE CRITERIA THAT'S FREQUENTLY LOOKED AT FOR MENTAL RETARDATION, HE DOESN'T HIT ANY OF THOSE. DOES HE?

A WELL, THOSE ARE MY CRITERIA THAT I PUT THERE FOR ILLUSTRATIVE PURPOSES TO POINT OUT THE MISCONCEPTIONS. THAT'S A SLIDE I USE ALL THE TIME. IT'S A SLIDE THAT'S APPLICABLE TO THE MAJORITY OF PEOPLE WITH MILD MENTAL RETARDATION. MANY OF THEM CAN DO ALL THOSE THINGS.

Q "A NON-RETARDED MAN OR WOMAN WOULD NEVER BE ATTRACTED TO A RETARDED PERSON." BUT HE WAS ABLE TO ATTRACT AT LEAST TWO WOMEN THAT WE KNOW OF. ISN'T THAT CORRECT?

A I UNDERSTAND HE HAD GIRLFRIENDS.

Q WHICH ALSO IS REFLECTED TO THOSE WHO -- IN ALL OF THESE ARE REFLECTED TO INDIVIDUALS WHO ARE NOT MENTALLY RETARDED. ISN'T THAT CORRECT?

A THAT'S A MISCONCEPTION THAT PEOPLE WHO HAVE MENTAL RETARDATION, THAT PEOPLE WHO DON'T HAVE MENTAL RETARDATION WOULD NOT BE ATTRACTED TO THEM. IT HAPPENS QUITE OFTEN.

Q OKAY. BUT ALL THESE CRITERIA THAT YOU SAY ARE MISCONCEPTIONS ABOUT THE RETARDED, THIS INDIVIDUAL ALSO MET ALL OF THOSE THE OPPOSITE OF ALL OF THOSE AND COULD HAVE MET THE OPPOSITE OF

ALL OF THOSE AS A NORMAL PERSON, A NON-MENTALLY RETARDED PERSON, I GUESS IS WHAT I'M SAYING.

A I'M NOT SURE I UNDERSTAND YOUR QUESTION.

Q IT'S A CONFUSING QUESTION ON MY PART.

THE COURT: HOLD ON.

MS. PAAVOLA: I THINK WE ARE ON THE WRONG TRACK HERE. THESE ARE NOT ---

THE COURT: YOU HAVE AN OBJECTION?

MS. PAAVOLA: YES. I OBJECT BECAUSE THESE ARE NOT THE CRITERIA FOR ASSESSING MENTAL RETARDATION ---

THE COURT: HE'S ON CROSS EXAMINATION. THE QUESTIONS ARE CONFUSING, THOUGH.

MR. ZELENKA: THEY ARE CONFUSING.

Q BUT WHAT YOU ARE CONCERNED ABOUT, ABOUT THAT SLIDE WAS THAT THESE ARE THINGS PEOPLE LOOK AT TO ASSESS WHETHER AN INDIVIDUAL IS MENTALLY RETARDED. CORRECT?

A NO. A PSYCHOLOGIST WHO IS DOING THE ASSESSMENT WOULDN'T LOOK AT ANY OF THAT ---

Q RIGHT.

A --- BUT AT ---

Q SOMEONE WHO IS NOT A ---

THE COURT: HOLD ON. LET HIM FINISH. FINISH WHAT YOU WERE SAYING, DOCTOR.

DR. TASSE: THANK YOU.

A FOR LAY PEOPLE, WHEN THEY LOOK AT SOMEBODY, THESE ARE

THINGS THAT COME INTO CONFLICT WITH THEIR IMAGE, DISTORTED HOWEVER IT MAY BE, THAT SOMEONE WITH MENTAL RETARDATION SHOULD LOOK AND ACT LIKE. IT HAS NOTHING TO DO WITH DIAGNOSTIC FEATURES.

Q CORRECT. BUT MANY OF THESE FEATURES MIGHT BE LOOKED AT BY AN INDIVIDUAL TO DETERMINE WHETHER HE WAS ADAPTIVE FUNCTIONING OR NOT. I MEAN, YOU WOULD LOOK AT WHETHER AN INDIVIDUAL COULD NOT READ. WOULDN'T YOU?

A CORRECT. AND READING AND WRITING MAY OR MAY NOT -- IT'S NOT A DIAGNOSTIC CRITERIA IN AND OF ITSELF.

Q RIGHT. BUT IT IS A FUNCTION THAT YOU WOULD BE LOOKING AT TO MAKE A DETERMINATION. "CAN THAT PERSON READ." CORRECT?

A IT'S PART OF THE EVALUATION. ABSOLUTELY.

Q "CAN THAT PERSON LEARN." THAT SAME PERSON. CORRECT?

A LEARNING IS NOT A PART OF THE DIAGNOSTIC FEATURES. NO.

Q "CAN THAT PERSON KNOW THE DIFFERENCE BETWEEN RIGHT AND WRONG."

A IT'S NOT A PART OF THE DIAGNOSTIC CRITERIA. NO.

Q "CAN THAT PERSON OPEN OR USE A BANK ACCOUNT."

A THAT'S NOT PART OF THE DIAGNOSTIC CRITERIA EITHER.

Q I THOUGHT MONEY CONCEPTS WERE.

A IT'S PART OF IT, BUT YOU DON'T RULE OUT MENTAL RETARDATION BECAUSE A PERSON OPENED UP A BANKING ACCOUNT.

Q NO. BUT YOU LOOK AT THE WHOLE PICTURE. DON'T YOU?

A IT'S ONE PIECE OF A SCALE. ABSOLUTELY.

Q "CAN THAT PERSON LEARN TO DRIVE A CAR AND OBTAIN A DRIVER'S LICENSE, PASS THAT TEST." YOU WOULD LOOK AT THAT. WOULDN'T YOU?

A NOT TO MAKE A DIAGNOSIS OF MENTAL RETARDATION. NO.

Q "CAN THAT PERSON HOLD A BASIC JOB." YOU WOULD LOOK AT THAT. WOULDN'T YOU?

A THAT'S AN IMPORTANT PIECE OF INFORMATION. YES. FOR WORK ADAPTIVE SKILLS.

Q "CAN THAT PERSON DEVELOP A RELATIONSHIP WITH ANOTHER INDIVIDUAL." THAT IS SOMETHING THAT YOU WOULD LOOK AT FOR ADAPTIVE FUNCTIONING.

A SOCIAL SKILLS. YES. THAT'S SOMETHING WE LOOK AT.

Q "DOES THAT PERSON HAVE GOOD HYGIENE." THAT'S SOMETHING YOU WOULD LOOK AT.

A THAT'S PART OF ADAPTIVE BEHAVIOR. YES.

MR. ZELENKA: I DON'T BELIEVE I HAVE ANY FURTHER QUESTIONS AT THIS TIME.

THE COURT: THANK YOU. RE-DIRECT?

MS. PAAVOLA: JUST A FEW BRIEF QUESTIONS.

THE COURT: NO, MA'AM. TAKE YOUR TIME.

RE-DIRECT EXAMINATION OF DOCTOR TASSE BY MS. PAAVOLA

Q DOCTOR TASSE, I JUST WANT TO CLEAR THIS POINT UP RIGHT OFF THE BAT. YOU HAVE NOT MADE FLYNN EFFECT ADJUSTMENTS TO ANY OF THE SCORES THAT YOU ARE RELYING ON. IS THAT CORRECT?

A I HAVE NOT. NO.

Q AND YOU DON'T NEED TO MAKE ANY ADJUSTMENTS TO THE SCORES BECAUSE EVEN WITHOUT THE FLYNN EFFECT, THEY ARE ALL WITHIN THE M-R RANGE. IS THAT CORRECT?

A THESE SCORES ARE IMPACTED BY THE FLYNN EFFECT, BUT IN THIS CASE WE DON'T HAVE TO CORRECT FOR IT.

Q ALL RIGHT. NOW, MISTER ZELENKA READ YOU THE SOUTH CAROLINA DEFINITION OF MENTAL RETARDATION WHICH, JUST TO REMIND YOU, IS "SIGNIFICANTLY SUB-AVERAGE GENERAL INTELLECTUAL FUNCTIONING EXISTING CONCURRENTLY WITH DEFICITS IN ADAPTIVE BEHAVIOR MANIFESTED DURING THE DEVELOPMENTAL PERIOD." IN YOUR OPINION, IS THAT ESSENTIALLY THE SAME AS BOTH THE DSM IV AND THE AAMR DEFINITION?

A YES.

Q AND ARE YOU FAMILIAR WITH THE SUPREME COURT'S DECISION IN ATKINS VERSUS VIRGINIA?

A SLIGHTLY, I'M NOT AN ATTORNEY OR THAT'S NOT ---

Q ARE YOU AWARE THAT IN THAT OPINION, THE COURT REFERS TO TWO DEFINITIONS OF MENTAL RETARDATION?

A TWO SYSTEMS. YES.

Q THE AAMR DEFINITION THAT YOU TESTIFIED TO TODAY.

A YES.

Q AND THE AMERICAN PSYCHOLOGICAL ASSOCIATION'S DEFINITION THAT YOU ALSO TESTIFIED TO TODAY.

A THAT WOULD BE THE DSM IV.

Q RIGHT. THE AMERICAN PSYCHOLOGICAL ASSOCIATION PUTS OUT THE

DSM IV. IS THAT RIGHT?

A THE AMERICAN PSYCHIATRIC ASSOCIATION.

Q I'M SORRY. THE AMERICAN PSYCHIATRIC ASSOCIATION.

A YES.

Q THEY PUBLISH THE DSM IV.

A CORRECT.

Q AND THE DSM IV IS THE BOOK THAT CONTAINS THE CRITERIA FOR THE AMERICAN PSYCHIATRIC ASSOCIATION'S DEFINITION.

A CORRECT.

Q AND THE OTHER DEFINITION YOU REFERRED TO IS THE AAMR, WHICH IS NOW THE AAIDD.

A THAT'S THE OTHER SYSTEM. YES.

Q AND WHAT IS THE BOOK THAT THEY PUBLISH FOR LISTING THEIR CRITERIA FOR THE TEST?

A IT'S CALLED THE -- I HAVE IT HERE. IT'S THE RED BOOK. IT'S THE DEFINITION CLASSIFICATION AND SYSTEMS OF SUPPORTS BOOK.

Q AND IT IS KNOWN AS THE RED BOOK?

A CURRENTLY IT IS KNOWN AS THE RED BOOK.

Q AND YOU AUTHORED THAT TEXT IN CONJUNCTION WITH OTHER PEOPLE.

A I'M ONE OF THE CO-AUTHORS. YES.

Q AND THAT MANUAL IS REFERRED TO BY PEOPLE IN YOUR FIELD EVERY DAY. IS THAT RIGHT?

A YES.

Q YOU GAVE SOME TESTIMONY ABOUT THE PRACTICE EFFECT DURING

YOUR DIRECT AND YOU WERE ASKED A LOT OF QUESTIONS ABOUT THIS 75 I.Q. SCORE THAT WAS OBTAINED BY DOCTOR SANDLER AND DOCTOR MCABEE.

A YES.

Q WAS THAT I.Q. TEST THE THIRD CONSECUTIVE TEST THAT MISTER SIMMONS HAD BEEN ADMINISTERED?

A YES. IN LESS THAN A YEAR. YES.

Q AND YOU REVIEWED THE TESTIMONY OF DOCTOR SANDLER AS WELL?

A I DID.

Q DO YOU RECALL HIM ACKNOWLEDGING THAT THE PRACTICE EFFECT MAY HAVE COME INTO PLAY WITH THAT PARTICULAR SCORE?

A YES. HE DID.

Q BECAUSE IT WAS THE THIRD IN A ROW THAT HE RECEIVED IN A SHORT PERIOD OF TIME.

A THAT'S CORRECT.

Q MISTER ZELENKA ASKED YOU SOME QUESTIONS ABOUT OTHER STATE'S SETTING A HARD LINE CUT-OFF SCORE OF, I THINK HE SAID 65 AND HE SAID SOME STATE'S HAD 70, SOMETHING LIKE THAT, AND I UNDERSTAND YOU SAID THAT YOU ARE NOT FAMILIAR WITH THOSE DEFINITIONS, BUT IN YOUR OPINION, WOULD SETTING HARD LINE CUT-OFFS OF 65 OR 70 BE CONSISTENT WITH THE REQUIREMENTS IN EITHER THE DSM IV OR THE RED BOOK?

A NO. BOTH SPEAK OF APPROXIMATE SCORES.

Q AND BOTH OF THOSE DEFINITIONS SAY YOU MUST TAKE INTO ACCOUNT THE STANDARD ERROR OF MEASUREMENT?

A YES.
Q CAN YOU RENDER AN OPINION ABOUT MENTAL RETARDATION BASED ON AN I.Q. SCORE ALONE?
A NO. YOU CANNOT.
Q IN EITHER CASE, CAN YOU SAY A PERSON IS NOT MENTALLY RETARDED BASED ON THE I.Q. SCORE?
A YOU COULD. I GUESS IF SOMEBODY HAS AN I.Q. OF 100, YOU WOULDN'T PURSUE THE EVALUATION.
Q OKAY. BUT IN GENERAL, ASSUMING SOMEONE HAS AN I.Q. SCORE WITHIN THE APPROPRIATE RANGE OF M-R, YOU WOULDN'T BE ABLE TO RULE M-R OUT OR IN, BASED ON THE I.Q. TESTING ALONE.
A IF IT MEETS THE FIRST PRONG, NO, YOU CANNOT.
Q YOU HAVE TO FURTHER ASSESS DEFICITS IN ADAPTIVE FUNCTIONING BEFORE THE AGE OF EIGHTEEN.
A YES. BEFORE THE AGE OF EIGHTEEN. YES.
Q AND THE WAY TO ASSESS DEFICITS AND ADAPTIVE FUNCTIONING IS WITH A STANDARD MEASUREMENT. IS THAT RIGHT?
A THAT'S THE RECOMMENDATION CURRENTLY. YES.
Q DID DOCTOR SANDLER OR DOCTOR MCABEE ASSESS DEFICITS AND ADAPTIVE FUNCTIONING WITH THE STANDARD MEASUREMENT?
A I'M SORRY. WHO DID YOU ASK ME?
Q DOCTOR SANDLER AND DOCTOR MCABEE.
A THEY DID NOT ADMINISTER A STANDARDIZED TEST. NO.
Q AND DENNIS KEYES DID ADMINISTER THE VINELAND, WHICH IS A STANDARD MEASUREMENT OF ADAPTIVE FUNCTIONING. IS THAT

RIGHT?

A HE DID IN THIS SORT OF ---

Q AND THAT'S THE VINELAND THAT YOU WERE TESTIFYING TO THAT YOU RELIED ON IN COURT WITH RESPECT TO PRONG TWO.

A YES.

Q DID ANY OTHER EXPERT WHO TESTIFIED AT TRIAL GIVE A SPECIFIC MEASUREMENT FOR MEASURING ADAPTIVE FUNCTIONING?

A NOBODY RECORDED A STANDARDIZED MEASUREMENT. NO.

Q ONLY DENNIS KEYES.

A CORRECT.

Q AND YOU AGREE WITH HIS RESULTS -- YOU ARE RELYING ON HIS RESULTS IN THAT REGARD?

A I'M RELYING ON HIS RESULTS IN PART. YES.

Q OKAY. YOU MAY HAVE ALREADY TESTIFIED ABOUT THIS BRIEFLY, BUT JUST TO REITERATE, DO YOU HAVE TO ACTUALLY BE DIAGNOSED WITH MENTAL RETARDATION PRIOR TO THE AGE OF EIGHTEEN TO MEET THE TEST?

A TO MEET THE -- NO. YOU KNOW, PEOPLE CAN BE DIAGNOSED FOR THE FIRST TIME AFTER THE AGE OF EIGHTEEN BUT WE MUST, AGAIN, MAKE A DETERMINATION THAT THOSE DEFICITS WERE PRESENT BEFORE THE AGE OF EIGHTEEN AND THAT MAY HAVE BEEN MISSED OR NOT DIAGNOSED FOR WHATEVER REASON.

Q BUT NOT BEING IDENTIFIED FOR TESTING PRIOR TO EIGHTEEN DOESN'T MEAN THAT YOU CAN'T HAVE MENTAL RETARDATION.

A NO. IT'S NOT LIKE A DOOR CLOSES AT NINETEEN THAT YOU CAN NEVER

THEN BE DIAGNOSED WITH MENTAL RETARDATION.

Q AND IN THIS CASE, IT'S YOUR OPINION THAT KENNETH SIMMONS HAS MENTAL RETARDATION AND MEETS ALL THREE PRONGS.

A YES.

Q LASTLY, DO YOU HAVE TO BE IMPAIRED IN ALL AREAS OF YOUR LIFE TO BE DIAGNOSED WITH MENTAL RETARDATION?

A NO. IN MANY, IN MOST CASES OF PEOPLE WITH MILD MENTAL RETARDATION, PEOPLE WILL HAVE STRENGTHS IN OTHER AREAS.

Q IS IT FAIR TO SAY YOU HAVE TO ASSESS DEFICITS AND ADAPTIVE FUNCTIONING AS A WHOLE? CAN YOU, FOR EXAMPLE, PICK OUT ISOLATED EVENTS OR SKILLS AND RENDER AN OPINION BASED ON THAT ALONE?

A I MEAN, THOSE INDIVIDUAL SKILLS MAY JUST CONFIRM THAT PERSON HAS STRENGTHS IN CERTAIN AREAS. OBVIOUSLY, WHAT WE ARE LOOKING AT IS THE WHOLE, ALL OF THE EVIDENCE WHETHER OR NOT THERE ARE SIGNIFICANT DEFICITS OR NOT INDEPENDENT OF OR HAVE CERTAIN SKILLS AND ABILITIES PRESENT AS WELL.

Q MISTER ZELENKA ASKED YOU A LOT OF QUESTIONS ABOUT INDIVIDUAL PARTS OF THE AREAS THAT ARE ASSESSED IN PRONG TWO, AND SO I'M JUST ASKING, CAN YOU PICK OUT THOSE, FOR EXAMPLE, CAN YOU SAY, "WELL, BECAUSE A PERSON IS ABLE TO GET A DRIVER'S LICENSE, HE CANNOT HAVE MENTAL RETARDATION."

A RIGHT. THERE ARE NOT EXCLUSIONARY CRITERIA.

Q ALL RIGHT. THANK YOU.

THE COURT: I DON'T NORMALLY ALLOW RE-CROSS. HAVE YOU GOT A

SHORT ONE? I CAN MAKE AN EXCEPTION. LET ME JUST ASK HIM A FEW QUESTIONS AND THEN I'LL COME BACK TO YOU. (SPEAKING TO MISTER ZELENKA)

THE COURT: DOCTOR, IS IT YOUR OPINION THAT KENNETH SIMMONS IS MENTALLY RETARDED USING THE DEFINITION AS SET FORTH IN THE RED BOOK?

DR. TASSE: HE, IN MY MIND, HE MEETS IT FOR BOTH. YES, THE RED BOOK AND THE DSM IV.

THE COURT: THAT'S MY NEXT QUESTION. IN DSM IV, DOES HE MEET THE DEFINITION OF MENTAL RETARDATION IN THAT?

DR. TASSE: IN MY OPINION, IN BOTH. BOTH DEFINITIONS.

THE COURT: AND USING THE DEFINITION AS SET FORTH IN THE STATE OF SOUTH CAROLINA, WHICH IS "SIGNIFICANTLY SUB-AVERAGE GENERAL INTELLECTUAL FUNCTIONING EXISTING CONCURRENTLY WITH DEFICITS IN ADAPTIVE BEHAVIOR AND MANIFESTED DURING THE DEVELOPMENTAL PERIOD." IS IT YOUR OPINION THAT HE MEETS THAT DEFINITION OF MENTAL RETARDATION?

DR. TASSE: YES, YOUR HONOR.

THE COURT: THANK YOU. MISTER ZELENKA? BRIEFLY.

RE-CROSS EXAMINATION OF DOCTOR TASSE BY MISTER ZELENKA

Q WHEN YOU DID YOUR ASSESSMENT DURING THE VINELAND, DID YOU REVIEW THE ANSWERS THAT WERE GIVEN TO DOCTOR KEYES WHEN HE DID THE ASSESSMENT?

A I DIDN'T DO THE ASSESSMENT WITH VINELAND. I JUST REVIEWED DOCTOR KEYES' VINELAND ASSESSMENT. DID I LOOK AT THE

ANSWERS? I LOOKED AT THEM QUICKLY. DID I RE-SCORE IT, *PER SE*? NO.

Q OKAY. WERE THERE ENOUGH RESPONSES ON THE VINELAND TO GET AN APPROPRIATE SCORE ON THE QUESTIONS THAT THE VINELAND ASKS THE RESPONDENTS?

A I'M ASSUMING THERE WERE BECAUSE WE HAD SCORES PROVIDED ON THE VINELAND.

Q AND YOU'RE SAYING THAT YOU LOOKED AT THIS DATA?

A I LOOKED AT IT BRIEFLY. YES.

Q WITH ALL THE BLANKS THAT ARE ON THE DATA AND ALL THE D-Ks WHICH MEANS, "DO NOT KNOW". WAS THAT A VALID ASSESSMENT? LET ME PROVIDE THAT AND ASK IF YOU HAVE SEEN THAT. (HANDS WITNESS DOCUMENT)

A YES. THIS IS THE -- THIS LOOKS LIKE THE COPY I HAD. YES.

Q THE FIRST PAGE OF THE TEST DATA IS VIRTUALLY BLANK. ISN'T IT?

A RIGHT. IT STARTS DOWN HERE.

Q DOWN HERE MEANING ---

A DOWN HERE AT SEVENTEEN.

Q --- OVER HALFWAY THROUGH, THERE ARE NO RESPONSES TO THE FIRST HALF. ISN'T THAT CORRECT?

A CORRECT.

Q IS THAT APPROPRIATE SCORING OF A VINELAND?

A THESE ITEMS ARE GENERALLY PLACED IN ORDER OF DIFFICULTIES. THESE ARE THE MORE SIMPLE ITEMS AND THESE GET MORE COMPLICATED. I'LL ADMIT I'VE DONE THIS WHERE YOU MAY GO

THROUGH SOME OF THESE AND IF THESE ARE ACHIEVED, YOU KNOW THAT THE EASIER ONES HAVE BEEN ACHIEVED AS WELL.

Q BUT THOSE WOULD BE SCORED. WOULDN'T THEY?

A YOU WOULD NORMALLY GO IN AND PUT TWO'S AFTERWARDS.

Q BUT HE DIDN'T DO THAT. DID HE?

A IN THIS COPY, THEY ARE BLANK. NO.

Q SO, YOU DIDN'T ASSESS THOSE BLANK SCORES THAT WERE ON THERE. IS THAT CORRECT?

A I DID NOT ASSESS THEM. NO.

Q SO, YOU DON'T KNOW BY LOOKING AT THAT THAT THOSE SCORES WERE ACTUALLY ACCURATE WITH ALL THE BLANKS ON THAT PARTICULAR FORM. ISN'T THAT CORRECT?

A WELL, THERE ARE BLANKS. I DON'T KNOW WHAT THE SCORE WOULD BE. NO.

Q OKAY. AND THERE ARE, ON THE NEXT PAGE, A LOT OF D-Ks.

A DON'T KNOW.

Q DON'T KNOW. THE RESPONDENT DIDN'T KNOW THE RESPONSES TO THOSE. DID HE?

A I SEE, ONE, TWO -- I SEE THREE. SO, OCCASIONALLY, THE RESPONDENT MAY SAY, "I DON'T KNOW. I DON'T REMEMBER." YOU THEN PUT D-K.

Q AND HOW MUCH ON THE NEXT PAGE?

A SOME OF THOSE ARE PERMITTED. I SEE ONE, TWO, THREE HERE TOO, OUT OF TWENTY-SOME ITEMS.

Q AND HOW MANY ON THE NEXT PAGE?

A I DON'T SEE ANY D-Ks.

Q AND ON THE NEXT PAGE?

A ONE, TWO.

Q OKAY. AND ARE THERE BLANKS ON THOSE PAGES?

A THERE ARE SOME ON THE PREVIOUS PAGE.

Q OKAY. IN FACT, ON THE PREVIOUS PAGE OF THE THIRTY-THREE ITEMS ON THAT PAGE, ONE, TWO, THREE, FOUR, FIVE, SIX, SEVEN, EIGHT, NINE HAVE A RESPONSE. ISN'T THAT CORRECT?

A YES.

Q NO FURTHER QUESTIONS.

THE COURT: THANK YOU. YOU MAY STEP DOWN. DOES 9:30 SUIT EVERYBODY TOMORROW?

MR. ZELENKA: YES, SIR.

MR. MORTON: YES, SIR.

THE COURT: ALL RIGHT. WE'LL RE-CONVENE AT 9:30 IN THE MORNING.

(COURT ADJOURNS AT 5:38 P.M.)

(COURT RE-CONVENES AT 9:30 A.M.)

MR. MORTON: YOUR HONOR, THE APPLICANT CALLS JIM AIKEN.

(AFTER BEING DULY SWORN BY THE CLERK OF COURT, JAMES EVANS AIKEN TESTIFIED AS FOLLOWS:)

THE COURT: AND WOULD YOU PLEASE GIVE US YOUR FULL NAME AND SPELL YOUR LAST FOR THE RECORD.

MR. AIKEN: JAMES EVANS AIKEN, A-I-K-E-N.

THE COURT: THANK YOU. MISTER AIKEN WILL YOU HAVE A SEAT, PLEASE?

MR. AIKEN: YES. I WILL. THANK YOU, SIR.

THE COURT: MISTER MORTON?

MR. MORTON: THANK YOU VERY MUCH, YOUR HONOR.

DIRECT EXAMINATION OF JAMES AIKEN BY MISTER MORTON

Q MISTER AIKEN, I REALIZE YOU'VE ALREADY TESTIFIED HERE BEFORE MISTER ZELENKA AND MANY OTHERS, BUT IF YOU WILL, PLEASE, TELL US WHAT YOUR EDUCATION IS AND WHAT YOU DO FOR A LIVING.

A I RECEIVED AN UNDERGRADUATE DEGREE FROM BENEDICT COLLEGE, COLUMBIA, SOUTH CAROLINA AND A MASTER'S DEGREE FROM THE UNIVERSITY OF SOUTH CAROLINA, BOTH IN COLUMBIA. AND I AM PRESIDENT OF JAMES E. AIKEN AND ASSOCIATES, INC. WHICH IS A PRISON/JAIL CONSULTING CONCERN.

A AND PLEASE RELATE TO US YOUR EMPLOYMENT HISTORIES AND WHAT YOUR DUTIES WERE FOR EACH OF THOSE POSITIONS.

A YES, SIR. AND I'LL BE VERY BRIEF. I STARTED IN CORRECTIONS, THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS IN 1971 IN THE CAPACITY OF A SOCIAL WORKER AT THE MANNING CORRECTIONAL INSTITUTION. FROM THERE I WAS PROMOTED TO THE RANK OF ADMINISTRATIVE ASSISTANT TO THE WARDEN OF THAT SAME FACILITY AND THEN FROM THERE I BECAME DEPUTY WARDEN OF THAT FACILITY. SO, SOCIAL WORKER, ADMINISTRATIVE ASSISTANT, THEN DEPUTY WARDEN. FROM THERE, I MOVED DOWN TO THE MAIN PRISON, WHICH WAS CCI OR THE CENTRAL CORRECTIONAL INSTITUTION, WHICH WAS THE LARGEST AND MOST SECURE PRISON WITHIN THE SOUTH CAROLINA CORRECTIONAL SYSTEM. I WAS EMPLOYED THERE IN THE

RANK OF DEPUTY WARDEN AT THAT FACILITY AND FROM THERE I BECAME WARDEN OF THE WOMEN'S PRISON AND FROM THERE I BECAME WARDEN OF CCI. I WENT BACK TO THAT FACILITY AND FROM THERE I WAS DEPUTY REGIONAL ADMINISTRATOR OF OVER SIXTEEN PRISONS IN THE SOUTH CAROLINA SYSTEM. FROM THERE I WAS PROMOTED AND APPOINTED TO THE RANK OF COMMISSIONER OF CORRECTIONS FOR THE STATE OF INDIANA AND IT COMPRISED APPROXIMATELY FORTY-SIX TO FORTY-SEVEN PRISONS THROUGHOUT THE STATE AS WELL AS PAROLE SERVICES, JUVENILE CORRECTIONS AS WELL AS ADULT CORRECTIONS. I SAT ON THE GOVERNOR'S STAFF AND PROVIDED ALL THE POLICY, ALL OF THE DAY TO DAY ACTIVITIES OF RUNNING A PRISON SYSTEM AS WELL AS TO INSURE ALL THE LAWS AND REGULATIONS, ET CETERA WERE ADHERED TO. FROM THERE I WAS PROMOTED TO THE RANK OF DIRECTOR OF CORRECTIONS FOR THE UNITED STATES VIRGIN ISLANDS. IN THAT PRISON SYSTEM, LIKE THE INDIANA PRISON SYSTEM, I DEVELOPED A SO-CALLED MARKET NICHE OF GOING INTO PRISON SYSTEMS AND REHABILITATING THEM, MAKING THEM MORE SECURE, UNDERSTANDING HOW TO DO THAT AS WELL AS TO REDUCE THE COST OF OPERATIONS. AND THE REASON WHY I WENT TO THE VIRGIN ISLANDS IS BECAUSE I SAW BACK THEN A PREVALENCE OF INTERNATIONAL TERRORISM AND A NEW TYPE OF CRIMINAL THAT'S BEING INTRODUCED INTO THE UNITED STATES AND I WANTED TO GET THAT INTERNATIONAL FLAVOR. FROM THERE I BECAME -- I STARTED JAMES E. AIKEN AND ASSOCIATES CONSULTING THROUGHOUT THE UNITED STATES AS WELL AS I'VE PROVIDED

TECHNICAL ASSISTANCE TO CANADA, PUERTO RICO, COSTA RICO AS WELL AS THE DUTCH KINGDOM. BACK IN 1986 WHEN I WAS THE WARDEN OF THE STATE PENITENTIARY, OR CCI, I WAS APPROACHED BY THE UNITED STATES DEPARTMENT OF JUSTICE TO PROVIDE TECHNICAL ASSISTANCE AND EXPERT ASSISTANCE TO CORRECTIONAL AGENCIES THROUGHOUT THE UNITED STATES ON A FEDERAL, STATE AND LOCAL LEVEL AND I PROVIDED THOSE SERVICES FOR AN EXTENDED PERIOD OF TIME REGARDING MANAGING THE HARD TO MANAGE VIOLENT INMATES, MANAGING THE YOUTHFUL OFFENDER, VIOLENT YOUTHFUL OFFENDER IN ADULT PRISONS, GANG MANAGEMENTS, TEACHING WARDENS HOW TO BE WARDENS, TEACHING EXISTING WARDENS HOW TO BE BETTER WARDENS, TEACHING WARDENS HOW TO BE WARDENS OF SUPER MAXIMUM SECURITY PRISONS. THAT WAS DONE AT ADX, THE MOST SECURE PRISON IN THE UNITED STATES WHERE ALL THE TERRORISTS ARE CURRENTLY LOCATED. I HAVE ALSO TAUGHT AND DEVELOPED CLASSIFICATION SYSTEMS. I'VE CLASSIFIED THOUSANDS AND THOUSANDS OF INMATES OVER MY CAREER AND ALSO I WAS INVOLVED IN LEADERSHIP DEVELOPMENT OF CORRECTIONAL ADMINISTRATORS ON FEDERAL, STATE AND LOCAL LEVELS THROUGHOUT THE UNITED STATES. I'VE BEEN IN JUST ABOUT EVERY JURISDICTION IN THE UNITED STATES PROVIDING THESE TYPES OF SERVICES TO INCLUDE ALASKA AND HAWAII.

Q AND DURING THIS EXPERIENCE THAT YOU JUST RELATED TO THE COURT, SPECIFICALLY, YOU HAVE HAD TO EVALUATE AND ASSESS THE SECURITY AND CONFINEMENT, BEHAVIORS, NEEDS OF INMATES.

CORRECT?

A YES, SIR. OVER THE LAST THIRTY-NINE YEARS, LOOKING AT ALL ASPECTS OF AN INMATE INCARCERATED: THEIR POTENTIAL FOR VIOLENCE, ACTUAL VIOLENCE, MANAGING CRITICAL EVENTS, RIOTS AND DISTURBANCES AND HOSTAGE SITUATION, THE USE OF FORCE AS WELL AS TRAINING OF STAFF TO ENSURE THAT TRAINING IS TRANSFORMED TO DAILY ACTIVITIES OF STAFF IN MANAGING, ESPECIALLY HIGH SECURITY INMATE POPULATIONS. ONE ADDITIONAL THING, I WAS APPOINTED IN 2004 BY THE LEADERSHIP OF THE HOUSE AND SENATE IN CONGRESS TO THE PRISON RAPE ELIMINATION COMMISSION AND THIS WAS A NINE-MEMBER COMMISSION THAT WE SPENT FIVE YEARS EVALUATING CORRECTIONAL SYSTEMS ALL OVER THE UNITED STATES TO DEVELOP STANDARDS AND WHEN THESE STANDARDS ARE FINALIZED -- IT IS WITH THE ATTORNEY GENERAL AT THIS PARTICULAR JUNCTURE -- IT WILL REQUIRE PEOPLE TO ADHERE TO THESE STANDARDS OR THEY CAN LOSE PARTIAL FEDERAL FUNDINGS. WE HAD SUBPOENA POWER AND WE HELD PUBLIC HEARINGS ALL OVER THE UNITED STATES.

Q WHAT -- GIVE US SOME EXAMPLES, MISTER AIKEN, OF THE TYPES OF PRISON POPULATIONS YOU'VE HAD TO MANAGE.

A I'VE HAD TO MANAGE THE MOST DISRUPTIVE, PREDATOR, DANGEROUS CRIMINAL POPULATION THAT I THINK HAS WALKED THE FACE OF THIS EARTH OR AT LEAST HAD THE OPPORTUNITY TO EVALUATE THOSE INDIVIDUALS IN PREPARING THEM FOR INCARCERATIONS THROUGHOUT, SO TO SPEAK. AN EXAMPLE, ZACHARIUS MASOUWE. I

DID A SECURITY EVALUATION OF HIM AND TESTIFIED IN HIS PROCEEDING AS TO WHETHER OR NOT THE FEDERAL BUREAU OF PRISONS WAS CAPABLE ---

THE COURT: THIS WAS THE GUY IN WASHINGTON INVOLVED IN -- THE SNIPER, MARYLAND SNIPER?

MR. AIKEN: NO, SIR. THAT WAS THE TWENTY-FIRST HIJACKER FOR 9/11. AND HE IS THE ONLY PERSON SO FAR, TRIED AND CONVICTED FOR THAT AND I DID THE SECURITY EVALUATION OF HIM TO INCLUDE SOME VERY SENSITIVE, OBVIOUSLY HIGH SECURITY PROTOCOLS THAT I HAD THE PRIVILEGE TO EVALUATE TO WHICH I CANNOT DISCUSS IN PUBLIC FOR OBVIOUS REASONS. SO, I'VE HAD TO DEAL WITH THAT TYPE OF POPULATION. I'VE HAVE ALSO HAD TO DEAL WITH SOME OF THE MOST NOTORIOUS CRIMINAL POPULATIONS, NOT ONLY IN SOUTH CAROLINA BUT IN OTHER JURISDICTIONS. I'VE HAD TO DEAL WITH INTERNATIONAL DRUG CARTELS AND THE SMUGGLING OF THOSE DRUGS THROUGH THE VIRGIN ISLANDS INTO THE UNITED STATES, THE JAMAICAN POSSE AND THE VERY HIGH, HIGH PREDATOR TYPE INMATE POPULATION, NOT ONLY WHEN THEY WERE IN THE STREETS BUT ALSO WHILE IN PRISON. THE SEXUAL PREDATOR ALSO, THOSE PEOPLE INVOLVED WITH RANDOM AND SYSTEMIC SEXUAL VIOLENCE WHILE INCARCERATED AND I'VE ALSO HAD TO PROVIDE EXECUTIONS. I'VE EXECUTED TWO INMATES PERSONALLY AND I'VE ALSO ORDERED AN INMATE KILLED IN A HOSTAGE SITUATION AND HE WAS KILLED BY A SNIPER.

MR. MORTON: YOUR HONOR, AT THIS TIME, I OFFER MISTER AIKEN AS AN EXPERT IN THE FIELD OF PRISON CLASSIFICATION AND PRISON SECURITY.

THE COURT: MISTER ZELENKA?

MR. ZELENKA: I HAVE NO VOIR DIRE FOR MISTER AIKEN. I'VE KNOWN HIM SINCE, I THINK, 1983 WHEN HE WAS WITH THE DEPARTMENT OF CORRECTIONS AND I JUST WOULD ASK -- I TAKE THAT BACK. I WOULD JUST ASK ONE QUESTION JUST FOR CLARIFICATION. ON THE MOUSOUI CASE THAT YOU TESTIFIED IN, DID YOU TESTIFY FOR THE GOVERNMENT OR FOR THE DEFENSE IN THAT CASE?

MR. AIKEN: I WAS ASKED BY THE DEFENSE TO EVALUATE THE SECURITY POSTURE OF THE FEDERAL BUREAU OF PRISONS AND TO GIVE AN EXPERT ANALYSIS OF THAT.

MR. ZELENKA: ALL RIGHT. THANK YOU.

MR. AIKEN: THANK YOU, SIR.

THE COURT: I'LL ACCEPT HIM AS AN EXPERT.

MR. AIKEN: THANK YOU, YOUR HONOR.

Q MISTER AIKEN, WERE YOU ASKED BY ME AND MS. PAAVOLA TO CONDUCT AN ASSESSMENT OF MISTER SIMMONS' CONFINEMENT HISTORY?

A YES, SIR.

Q AND WHAT DID YOU DO IN ORDER TO MAKE THAT ASSESSMENT?

A WELL IN THIS SITUATION, I LOOKED AT THE OFFICIAL RECORDS OF THE CRIMINAL CHARGES AGAINST HIM. I ALSO HAD AN OPPORTUNITY TO READ TRANSCRIPTS FROM A PROCEEDING OF A CRIMINAL ACT. I ALSO HAD AN OPPORTUNITY TO LOOK AT HIS SCDC RECORDS AND DO WHAT I CALL BACKTRACKING TO SEE IF THERE IS ANY TYPE OF NOTABLE INCIDENT DURING HIS PRE-INCARCERATION PERIOD THAT WOULD BE FOUND IN THE SCDC, OR SOUTH CAROLINA DEPARTMENT OF

CORRECTIONS, FILES.

Q AND AS A RESULT OF THAT ASSESSMENT, WHAT WERE YOUR OBSERVATIONS OF MISTER SIMMONS AND HIS PERFORMANCE IN THE DEPARTMENT OF CORRECTIONS?

A IN VERY SIMPLE TERMS, HE COULD BE ADEQUATELY MANAGED IN THE PRISON SETTING OF THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS WITHOUT CAUSING UNUSUAL RISK OF HARM TO STAFF, INMATES OR THE PUBLIC, UNDERSTANDING THAT PRISON SYSTEMS ARE INHERENTLY DANGEROUS PLACES TO HOUSE DANGEROUS PEOPLE.

Q WHAT DO YOU MEAN BY CLASSIFICATIONS? CAN YOU ELABORATE ON THAT A LITTLE BIT?

A WELL, I'LL SPEAK IN LAYMAN'S TERMS. CLASSIFICATION IS MERELY PUTTING THE RIGHT INMATE IN THE RIGHT LEVEL OF HOUSING, SECURITY AND SUPERVISION IN ORDER TO ADEQUATELY MAINTAIN AND SECURE BEHAVIOR PATTERNS THAT MAY BE ADVERSE TO THE SAFE ORDER OF THE OPERATIONS OF THE FACILITY.

Q HAVE YOU HAD THE OCCASION TO HAVE MANAGED DISRUPTIVE INMATES?

A MANY, MANY TIMES. I'VE AUTHORIZED USE OF FORCE TO INCLUDE LETHAL FORCE, THE DEPLOYMENT OF GAS, THE EMPLOYMENT OF PHYSICAL FORCE OR RESTRAINT, OF TYING A PERSON TO A BED IF NECESSARY TO ENSURE THAT THE STAFF AND INMATES ARE SAFELY MANAGED AND I'VE DONE THIS HUNDREDS OF TIMES, I'VE ORDERED IT HUNDREDS OF TIMES.

Q WHAT IS YOUR OPINION AS TO THE VARIABLE OF AGE WITH INMATES?
A WELL, IT'S NO MAGIC SCIENTIFIC WAY I GO ABOUT IT. I'LL USE MYSELF AS AN EXAMPLE. I'M NOT THE PERSON I WAS WHEN I WAS SEVENTEEN YEARS OLD. WHEN YOU ARE INCARCERATED IN A PRISON SYSTEM, THAT AGING PROCESS IS ACCELERATED, TO SAY THE LEAST. YOU BECOME OLDER, YOU BECOME LESS AGGRESSIVE, YOU SEASON OUT, YOU BECOME INSTITUTIONALIZED, ESPECIALLY WITH LONG-TERM OFFENDERS AND THE OLDER YOU GET, THE LESS THE PROBABILITY IS FOR YOU TO BE DISRUPTIVE OR DEMONSTRATE PREDATOR BEHAVIOR PATTERNS. THIS IS NOT ABSOLUTE, BUT ALSO YOU INCREASE YOUR PROBABILITY TO BE VICTIMIZED BY THE YOUNGER, MORE AGGRESSIVE INMATE POPULATION. MOST PEOPLE USED TO THINK, WELL, YOU KNOW, THE YOUNG KIDS COMING INTO PRISON, YOU'VE GOT TO LOOK OUT FOR THEM, THEY GET BEAT UP AND NOWADAYS THE OLDER CONVICTS ARE SAYING KEEP THOSE YOUNG ONES AWAY FROM ME BECAUSE THEY ARE SO DANGEROUS.
Q YOU HAVE HAD THE OPPORTUNITY TO LOOK AT MISTER SIMMONS' RECORDS, HAVE YOU NOT?
A YES. I HAVE.
Q HAVE YOU HAD A CHANCE TO TALK WITH MISTER SIMMONS?
A I DIDN'T USE THAT. I'VE CLASSIFIED THOUSANDS OF INMATES WITHOUT HAVING A PERSONAL INTERVIEW. INSTEAD, I RELIED ON THE OFFICIAL RECORDS, SUCH AS THE RECORDS YOU PROVIDED ME.
Q SHARE WITH US A LITTLE BIT ABOUT KENNETH SIMMONS AND WHETHER OR NOT YOU THINK HE COULD BE AN INMATE THAT COULD

BE MANAGED WITHIN THE DEPARTMENT OF CORRECTIONS.

A WELL, I'M LOOKING AT THE CRIME, NUMBER ONE. THE CRIME WILL ALWAYS BE THERE FROM AN OPERATIONAL PROSPECTIVE. THAT'S THE DRIVING FORCE FOR PLACEMENT OF A PERSON IN A PRISON SYSTEM. YOU LOOK AT THE CRIME FIRST. THAT'S VERY IMPORTANT. THAT'S THE DRIVING FORCE. THEN FROM THERE YOU LOOK AT THE INSTITUTIONAL RECORD, WHICH IS THE ADJUSTMENT OF A PERSON IN A PRISON SETTING. ALSO, YOU SAY CAN WE MANGE THIS TYPE OF BEHAVIOR. IN LOOKING AT HIS BEHAVIOR, I FOUND NOTHING WHERE HE'S INVOLVED IN SYSTEMIC VIOLENCE SUCH AS BEING A GANG LEADER, ET CETERA AND THOSE TYPES OF THINGS, A MORE DANGEROUS OR SHALL I SAY VERY DANGEROUS AND DISRUPTIVE INMATE POPULATION. I FOUND NOTHING OF THAT.

Q MISTER AIKEN, WERE YOU AVAILABLE TO TESTIFY FOR THE DEFENSE IN 1999? WERE YOU BEING USED AS A CONSULTANT THEN?

A YES, SIR. I HAD, IF I REMEMBER CORRECTLY, PROVIDED EXPERT TESTIMONY PRIOR TO 1999 IN SOUTH CAROLINA, IF I'M NOT MISTAKEN. I RESIDED IN NORTH CAROLINA DURING THAT PERIOD OF TIME AND I COULD HAVE BEEN AVAILABLE. YES.

Q WOULD IT BE SAFE TO SAY THAT MISTER SIMMONS, IN YOUR OPINION, AS FAR AS THE RANKING OF INMATES AND THEIR DANGEROUSNESS IN PRISON, HOW WOULD YOU RATE HIM?

A WELL, ALL INMATES ARE DANGEROUS AND IF THEY WEREN'T, THEY WOULDN'T BE IN PRISON. ON THE SCALE OF INMATES INCARCERATED IN A PRISON SYSTEM, HE WOULD BE LOW ON THAT SCALE.

Q AND WHY IS THAT?

A WELL, NUMBER ONE, THE NATURE OF THE OFFENSE. TO INVOLVE CRIMINAL SEXUAL VIOLENCE, THAT PRECLUDES HIM FROM MEMBERSHIP IN A GANG, OF HAVING AFFILIATION WITH A SECURITY THREAT GROUP WHETHER YOU BE UNITED KLANS OF AMERICA OR THE ARYAN BROTHERHOOD OR THE BLACK DISCIPLES OR THE LATIN KINGS OR WHOEVER, THEY DON'T LIKE SUCH OFFENDERS. SO, THAT PUTS HIM AT A HIGH LEVEL OF PROBABILITY OF HAVING SYSTEMIC AS WELL AS RANDOM VIOLENCE INFLICTED UPON HIM. NUMBER TWO IS THAT THE DEPARTMENT OF CORRECTIONS IS CAPABLE OF MANAGING THIS TYPE OF POPULATION. NUMBER THREE IS ---

Q THE POPULATION THAT HE WOULD BE IN.

A THAT IS CORRECT. HE WILL ALWAYS BE IN A HIGH SECURITY SETTING. YOU'RE NOT PREPARING HIM FOR RETURN TO SOCIETY, SO THEREFORE, HE WILL HAVE TO BE CONFINED WITH THIS MORE DISRUPTIVE POPULATION. ADDITIONALLY, THE DEPARTMENT OF CORRECTIONS CAN PROVIDE ADDITIONAL, MORE INTENSE SECURITY OVER HIM TO CONTROL HIS BEHAVIOR IF FOR ANY REASON HE DEMONSTRATES THAT LATER ON, BUT HE'S APPROXIMATELY FORTY-NINE OR FIFTY YEARS OLD SO, HE'S WELL OVER THAT HUMP, SO TO SPEAK. BUT THAT DOES NOT SAY THAT THEY ARE NOT GOING TO FORGET ABOUT THE POTENTIAL FOR HIS BEING DISRUPTIVE. IT'S ALWAYS THERE.

Q YOU DO NOT BELIEVE IT LIKELY OR YOU DO BELIEVE IT LIKELY OR UNLIKELY THAT HE WILL BE THE TYPE OF INMATE TO BE INVOLVED IN

THIS GANG OR THIS RANDOM OR THIS SYSTEMIC OR THIS ENDEMIC PRISON VIOLENT-TYPE INMATE?

A THE PROBABILITY OF THAT IS FAIRLY MINUSCULE.

THE COURT: WHAT DO YOU BASE THAT ON?

MR. AIKEN: BASED ON THE FACT THAT I LOOK AT HIS PREVIOUS CRIMINAL HISTORY. HE'S NOT BEEN INVOLVED WITH THE TYPE OF BEHAVIORS IN THE COMMUNITY SUCH AS DRIVE-BY SHOOTINGS AND GANG INVOLVEMENT IN THE COMMUNITY. DURING HIS INCARCERATION PERIOD, I FOUND NOTHING IN THE SCDC RECORDS TO SAY THAT HE'S BEEN INVOLVED WITH RANDOM AND CONTINUAL SYSTEMIC VIOLENCE WHILE INCARCERATED AND NUMBER THREE IS THAT BASED ON CLASSIFICATION AND MANAGING OF THOUSANDS AND THOUSANDS OF INMATES, I DON'T PLACE HIM AT A DISRUPTIVE LEVEL LIKE I'VE HAD TO DO THAT WITH OTHER INMATES IN OTHER POPULATIONS.

Q AND YOU'RE FAMILIAR WITH THE FACTS OF THIS CASE.

A YES, SIR. I AM.

Q AND YOU'RE ABLE TO SAY THAT DESPITE KNOWING THE FACTS OF THIS CASE.

A YES, SIR.

Q HOW WOULD -- I KNOW THAT THIS IS A QUESTION THAT MISTER ZELENKA MAY ASK, HAVE YOU -- YOU'VE TESTIFIED BEFORE.

A YES, SIR.

Q HAVE YOU TESTIFIED SOMEONE WAS NOT MANAGEABLE?

A BEG YOUR PARDON?

Q HAVE YOU TESTIFIED THAT, IN YOUR HISTORY AND YOUR EXPERIENCE

THAT HAVE YOU HAD TO REVIEW PERSONS WHO YOU DID CONSIDER PREDATOR-TYPE INMATES?

A WELL, YES. AND I STILL HAVE BEEN ABLE TO SAY THAT THEY CAN BE MANAGED. HOWEVER, THERE ARE OTHER POPULATIONS THAT I HAVE EVALUATED AND GAVE COUNSEL MY OPINION AND WAS TOLD NOT TO COME TO COURT.

Q AND WHY DO YOU FEEL -- LET ME BEFORE I GET THERE, WHAT TYPE OF ENVIRONMENT IS KENNETH SIMMONS, WOULD HE BE IN IF HE WERE GIVEN A LIFE SENTENCE WITHIN THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS?

A HE WILL ALWAYS BE IN A HIGH SECURITY SETTING. I DON'T CARE HOW GOOD HE IS OR HOW BAD HE IS WHILE IN PRISON. AGAIN, THE TYPE OF OFFENSE IS THE DRIVING FORCE HERE AND PROTECTION OF THE PUBLIC IS THE NUMBER ONE PRIORITY. SO, THEREFORE, BASED ON THAT TYPE OF CONVICTION HE WILL ALWAYS BE IN THE HIGH SECURITY SETTING.

Q WHICH WILL INCLUDE WHAT?

A THERE WILL ALWAYS BE A GUN BETWEEN HIM AND THE PUBLIC AND THAT HE WILL ALWAYS HAVE AN ADEQUATE AMOUNT OF SECURITY AROUND HIM IN ORDER TO PROTECT THE PUBLIC.

Q WILL HE BE ALLOWED OUT OF HIS CELL? TELL US A LITTLE BIT ABOUT THE TYPE OF INSTITUTION THAT HE WILL BE IN. I KNOW YOU JUST HAVE, BUT ELABORATE ON THAT JUST A LITTLE BIT FOR US.

A RIGHT. AND I DON'T WANT TO DIGRESS TOO MUCH BECAUSE THERE ARE A LOT OF VARIABLES INVOLVED. FOR EXAMPLE, WOULD HE BE

ALLOWED OUT OF HIS CELL. THE ANSWER TO THAT CAN BE YES, BUT YOU HAVE TO LOOK AT OTHER VARIABLES. ITS NOT SO MUCH HIM BEING A DANGER TO SOMEONE ELSE, BUT FOR HIM BEING VULNERABLE TO DANGER FROM OTHER INMATES. YOU HAVE TO CONSIDER THAT ALSO. HE WILL NOT BE PREPARED FROM WHAT I UNDERSTAND BASED ON THIS SENTENCE FOR RETURN TO SOCIETY. WE ARE NOT TRYING TO REHABILITATE HIM. THE DRIVING FORCE HERE IS INCAPACITATION AND KEEPING HIM STABILIZED FOR THE REST OF HIS LIFE JUST LIKE THEY HAVE DONE IN THE DEPARTMENT OF CORRECTIONS THUS FAR WITH HIM.

Q PLEASE ANSWER ANY QUESTIONS MISTER ZELENKA MAY HAVE.

A YES, SIR.

CROSS EXAMINATION OF JAMES AIKEN BY MISTER ZELENKA

Q MISTER AIKEN, WE'VE KNOWN EACH OTHER FOR MANY, MANY YEARS.

A YES.

Q AND THOSE YEARS CONCERN THE PERIOD WHEN YOU WERE THE WARDEN AT THE CENTRAL CORRECTIONAL INSTITUTION, YOUR RESPONSIBILITIES WITH EXECUTIONS AT THAT TIME AND IN ADDITION YOUR TESTIMONY AS AN EXPERT WITNESS FOR A SERIES OF DEFENDANTS IN A NUMBER OF CAPITAL CASES. ISN'T THAT CORRECT?

A THAT'S CORRECT, SIR. I THINK I RECALL YOU WERE THE LAST GUY I TALKED TO BEFORE I PERFORMED EXECUTIONS.

Q THAT WAS CORRECT AT THAT PARTICULAR TIME.

A YES, SIR.

Q AND IN THAT WORK, YOU'VE ALSO HAD TO MAKE DECISIONS WITH

PARTICULAR INMATES AS TO HOW THEY WERE GOING TO BE HOUSED, PARTICULAR TRUSTEE STATUS, MUCH AS YOU ARE BEING ASKED TO DO TODAY WITH MISTER SIMMONS. ISN'T THAT CORRECT?

A THAT'S CORRECT, SIR.

Q AND AS YOU WOULD RECOGNIZE, EVEN IN A CORRECTIONAL SETTING, PREDICTING FUTURE BEHAVIOR OF INMATES, WHILE YOU HAVE TO RELY ON PAST BEHAVIOR, IT'S NOT AN EXACT SCIENCE. IS IT?

A NO, SIR. AS I TEACH WARDENS, WE DON'T HAVE CRYSTAL BALLS.

Q YOU DON'T HAVE CRYSTAL BALLS AND YOU'RE JUST TRYING TO APPLY THOSE STANDARDS THAT YOU'VE APPLIED IN YOUR PRACTICE AND HISTORY AS A CORRECTIONAL OFFICIAL. ISN'T THAT CORRECT?

A THAT'S CORRECT AND THOSE STANDARDS ARE GENERALLY ACCEPTED STANDARDS THROUGHOUT THE PROFESSION.

Q BUT THOSE STANDARDS, EVEN THOSE STANDARDS BY THE DEPARTMENT OF CORRECTIONS ARE NOT FAILSAFE. ARE THEY?

A NO, SIR. WHEN I TEACH WARDENS, I STILL SAY YES, WE STILL HAVE PLANE CRASHES.

Q AND INDIVIDUALS WHICH YOU HAVE TESTIFIED ABOUT, AND THIS IS GOING TO YOUR CREDIBILITY AND KNOWLEDGE, INDIVIDUALS THAT YOU'VE TESTIFIED ABOUT IN COURT THAT THEY WOULD BE ADAPTABLE TO PRISON, HAVE ON OCCASION REVEALED INSTANCES WHERE THEY WERE NOT ADAPTABLE IN PRISON. ISN'T THAT CORRECT?

A WELL, THEY'VE ENDED UP BEING ADAPTABLE WHETHER WE HAD TO USE FORCE OR NOT. FOR EXAMPLE, I'VE CLASSIFIED AN INMATE AND UNFORTUNATELY HAD TO ORDER HIM KILLED AND HE WAS KILLED AND

SO IT'S NOT AN EXACT SCIENCE. THAT'S CORRECT, SIR.

Q AND YOU'VE TESTIFIED IN COURT ABOUT AN INDIVIDUAL BEING ADAPTABLE IN PRISON, MIKEL MAHDI. YOU DON'T RECALL THAT?

A NOT RIGHT OFFHAND, BUT GO AHEAD.

Q LET ME STEP BACK BECAUSE YOU SAID SOMETHING INTERESTING. WHEN YOU TALK ABOUT ADAPTABILITY OF THE DEFENDANT TO THE PRISON SETTING, IT STRIKES ME THAT YOU'RE ACTUALLY NOT TALKING ABOUT NECESSARILY THE ADAPTABILITY OF THAT INMATE, HIS MAKEUP, BUT YOU ARE ACTUALLY TALKING ABOUT THE ABILITY OF THE PRISON SYSTEM TO MANAGE THAT INMATE, TO FIND A BOX TO PLACE HIM IN, BECAUSE YOU SAID THERE COULD BE STEPS THAT COULD BE TAKEN AFTER AN INMATE BECAME UNMANAGEABLE. CORRECT?

A NOT NECESSARILY SO, SIR. I LOOK AT THE INDIVIDUAL AND WHEN LOOKING AT THE INDIVIDUAL, YOU HAVE TO HAVE SOME TYPE OF MEASUREMENT TO EVALUATE THAT INDIVIDUAL AND THAT IS THE CLASSIFICATION SYSTEM.

Q ARE YOU SAYING, TO A REASONABLE DEGREE OF CERTAINTY, THAT KENNETH SIMMONS WOULD NOT BECOME VIOLENT IN A PRISON SETTING THROUGH THE DURATION OF HIS LIFE?

A I'M NOT SAYING THAT, BECAUSE I DON'T HAVE A CRYSTAL BALL. WHAT I AM SAYING IS THAT THE DEPARTMENT OF CORRECTIONS IS CAPABLE OF MANAGING THE BEHAVIORS THAT HE HAS DEMONSTRATED THUS FAR. HE'S FIFTY YEARS OLD, APPROXIMATELY FIFTY YEARS OLD, AND I WOULD ALSO GO FURTHER TO STATE THAT IF THE DEPARTMENT OF CORRECTIONS COULD NOT MANAGE HIM, WHICH IS HIGHLY UNLIKELY,

THERE ARE PRISONS AND SYSTEMS THAT CAN MANAGE HIM SUCH AS THE FEDERAL PRISON SYSTEM.

Q NOW, THIS DEFENDANT, KENNETH SIMMONS, HAS A HISTORY OF VIOLENCE IN HIS CRIMINAL BACKGROUND. IS THAT NOT CORRECT?

A YES, SIR.

Q NOT ONLY WITH THE VICTIM IN THIS CASE, BUT HE ALSO HAS SOME CRIMINAL DOMESTIC VIOLENCE WITHIN HIS BACKGROUND.

A YES. BOTH BEING IN THE COMMUNITY. YOU'RE RIGHT.

Q AND HE ALSO HAS INVOLVEMENT IN THE DRUG COMMUNITY. ISN'T THAT CORRECT?

A YES, SIR. I DID REMEMBER READING THINGS ABOUT HIM BEING INVOLVED WITH DRUG ACTIVITY, ESPECIALLY USES OF DRUGS.

Q OKAY. AN DOESN'T DRUG ACTIVITY FREQUENTLY REVEAL SOME CONNECTION WITH GANG ACTIVITY?

A NOT NECESSARILY SO, WHEN YOU LOOK AT THE OPERATIONAL DEFINITION OF GANG ACTIVITY.

Q BUT IN THE PRISON SETTING ISN'T GANG ACTIVITY OFTEN RELATED TO ACQUIRING AND GETTING ACCESS TO DRUGS?

A THAT'S JUST ONE ASPECT OF IT, BUT THE COMMON DENOMINATOR OF GANGS AND SECURITY THREAT GROUPS IS POWER AND CONTROL. THEY WANT TO RUN THE PRISON.

Q OKAY. BUT ARE YOU SAYING THAT IF MISTER SIMMONS WAS IN THE GENERAL PRISON POPULATION, HE WOULD NEVER BECOME A GANG MEMBER?

A I CAN SAY THAT, BASED ON THE INFORMATION THAT I HAVE OVER ALL

THESE YEARS IN MANAGING HIGH SECURITY THREAT GROUPS, THAT WITH HIS CRIMINAL SEXUAL MISCONDUCT, THE PROBABILITY OF HIM BEING INVOLVED WITH ANY S-T-G OR SECURITY THREAT GROUP OR GANG IS FAIRLY MINUSCULE, TO SAY THE LEAST.

Q BASED UPON THE FACT THAT HE MURDERED AN 89-YEAR-OLD AFRICAN AMERICAN FEMALE, IN A PRISON SETTING, WILL THAT SUBJECT HIM, IN A GENERAL PRISON SETTING, TO A VULNERABILITY TO GANGS, BASED UPON WHAT YOU HAVE TESTIFIED?

A THAT IS CORRECT, SIR.

Q AND IN THAT SETTING, WOULDN'T THAT INDIVIDUAL BE SEEKING FOR SOMEONE TO AID, ASSIST, PROTECT HIM IN THAT PRISON SETTING?

A AND THAT'S WHERE THE RUB COMES, SO TO SPEAK. NOBODY WANTS TO BE ASSOCIATED WITH SEX OFFENDERS AND SEX OFFENDERS -- AND I DON'T WANT TO USE A COLLOQUIAL PHRASE BUT I CAN'T FIND ANY OTHER -- HE DOESN'T HAVE ANY JUICE. HE DOESN'T RUN ANYTHING. HE'S ON THE LOWEST PART OF THE INFORMAL ORGANIZATION OF A PRISON.

Q SO, YOU'RE SAYING, TO A REASONABLE DEGREE OF CERTAINTY IN YOUR PROFESSION, THAT NO ONE WOULD WANT TO AID KENNETH SIMMONS IF HE WERE UNDER THREAT FROM A GANG?

A WHAT I AM SAYING TO YOU BASED UPON MY DEGREE OF EXPERIENCE IS THAT IT WOULD BE UNUSUAL IF A GANG CAME ONTO HIS BEHALF ON SOMETHING LIKE THAT.

Q BUT IT WOULDN'T BE UNUSUAL THAT A GANG, BASED UPON WHAT YOU TESTIFIED ABOUT THEIR DISLIKE OF AN INDIVIDUAL DUE TO SOME OF

THE CRIMINAL ACTIVITY, MIGHT ACT VIOLENTLY TOWARDS HIM?

A YES. HE COULD BE VICTIMIZED. THAT IS CORRECT, SIR.

Q AND ISN'T THE FLIP SIDE OF VICTIMIZATION, SELF-DEFENSE, ACTING OUT VIOLENTLY?

A IN PROTECTION, YES. AND THAT'S THE REASON WHY YOU HAVE PROFESSIONAL STAFF AND TRAINED STAFF RUNNING PRISONS AND IF THEY WERE NOT THERE IT WOULD BE COMPLETE CHAOS.

Q OKAY. BUT WOULDN'T AN INDIVIDUAL WHO IS FEARING FOR HIMSELF MIGHT NOT SEEK TO ACT OUT AGAINST OTHERS THAT THEY ARE SENSING A THREAT FROM?

A THERE IS THAT POSSIBILITY AND THAT'S THE REASON YOU HAVE STAFF, YOU HAVE CLASSIFICATION SYSTEMS, YOU HAVE CONTRABAND CONTROL MEASURES, YOU HAVE ALL OF THESE SYSTEMS THAT ARE IN PLAY TO REDUCE THAT TO THE MOST REDUCED LEVEL OF PROBABILITY.

Q NOW, I MENTIONED BEFORE, MIKEL MAHDI, WHEN YOU TESTIFIED IN A PLEA HEARING BEFORE JUDGE CLIFTON NEWMAN THAT MISTER MAHDI WAS ADAPTABLE TO PRISON AND YET AT THE TIME, DURING THE TRIAL, MISTER MAHDI HAD A PRISON KEY SECURED IN HIS MOUTH AT ONE POINT IN TIME. DOES THAT REFRESH YOUR RECOLLECTION ON MISTER MAHDI?

A I DO HAVE SOME RECALL OF THAT CASE. YES, SIR.

Q OKAY. MISTER MAHDI WAS ALSO CHARGED WITH SOME VIOLENT ACTIVITY ONCE HE GOT DOWN TO THE DEPARTMENT OF CORRECTIONS, EVEN WHILE HE WAS IN A SECURED ENVIRONMENT ON

DEATH ROW IN SOUTH CAROLINA ALONG WITH ANOTHER INDIVIDUAL. DO YOU RECALL THAT INFORMATION?

A WELL, I WOULD ASSUME THAT HE WOULD BE ON DEATH ROW. HE DID GET THE DEATH SENTENCE. AND NUMBER TWO, YOU AS WELL AS I KNOW, DEATH ROW IS NOT NECESSARILY THE MOST SECURE PLACE WITHIN A PRISON SYSTEM. NOW, WHETHER HE SHOULD HAVE REMAINED ON DEATH ROW IS NOT MY CALL. I DON'T HAVE THE PARTICULARS. BUT WHAT I AM SAYING IS THAT IS A PERSON HAD A HANDCUFF KEY AND IN A SUPERMAX ENVIRONMENT, THAT PERSON NEEDS TO STAY THERE, WHETHER UNDER THE SENTENCE OF DEATH OR NOT. FOR EXAMPLE, TIMOTHY MCVEIGH, HE WAS AT ADX, WHICH IS THE MOST SECURE PRISON IN THE WORLD AND THEN HE WAS SHIPPED OVER TO TERRA HAUTE, WHICH IS DEATH ROW. DEATH ROW IS NOT NECESSARILY THE MOST SECURE PLACE IN A PRISON SYSTEM.

Q BUT YOU ARE GIVING AN OPINION BASED UPON THE SOUTH CAROLINA PRISON SYSTEM THAT INDIVIDUALS WOULD BE ADAPTABLE TO PRISON, WHEN, IN FACT, YOU HAVE TO RECOGNIZE THAT EVEN THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS HAS NOT BEEN ABLE TOO MANAGE INDIVIDUALS ON DEATH ROW IN A SIMILAR SETTING TO MISTER SIMMONS BY INDIVIDUALS WHO ARE SIMILARLY SITUATED AS MISTER SIMMONS.

A AGAIN, I REFER TO TWO THINGS. NUMBER ONE, WE DON'T HAVE A CRYSTAL BALL. THAT'S CORRECT. NUMBER TWO, IS THAT THIS IS NOT AN ABSOLUTE SCIENCE AND THAT'S CORRECT. NUMBER THREE, I HAVE BEEN TO LEIBER, I HAVE BEEN TO THE MAX UNIT AT KIRKLAND. I KNOW,

I KNOW THAT KIRKLAND CAN BE AND CAN MANAGE THIS HIGH SECURITY-TYPE POPULATION TO PREVENT, CONTAIN, AND RESPOND TO RANDOM, AS WELL AS, SYSTEMIC VIOLENCE THAT INMATES INFLICT. ALSO, I KNOW THAT AN INMATE CAN BE SHIPPED OR SENT TO THE FEDERAL BUREAU OF PRISONS IF THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS DEEMS IT APPROPRIATE IN ORDER TO HAVE A PROPER SECURITY ENVELOPE AND AS FAR AS MISTER SIMMONS IS INVOLVED, HE'S AT THE LOWEST EBB OF ANY OF THAT HAPPENING.

Q OKAY. SO, YOU ACKNOWLEDGE THAT YOU HAVE MADE MISTAKES IN THE PAST BECAUSE THERE'S NOT A CRYSTAL BALL. CORRECT?

A I'M NOT PERFECT AND I'LL BE THE FIRST TO TELL YOU, BUT THE POINT IS YOU DO EVERYTHING YOU CAN TO FAIL-SAFE AND WHEN YOU FAIL-SAFE THAT MIGHT INCLUDE ORDERING A SNIPER TO BLOW SOMEBODY AWAY AND I'VE DONE THAT, TOO.

Q AND YOU'VE BEEN INVOLVED IN GETTING INMATES, SOME INMATES THAT WERE CHARGED AND CONVICTED OF A NUMBER OF VIOLENT CRIMES, CRIMINAL OFFENSES, TRUSTEE STATUS ACCESS UNDER YOUR WATCH, TO AN INDIVIDUAL WHO WAS INVOLVED IN SECURING THAT INDIVIDUAL'S DEATH IN THE DEPARTMENT OF CORRECTIONS, MISTER PEEWEE GASKINS. YOU WERE OVER THAT, YOU MADE THOSE CORRECTIONAL DECISIONS. ISN'T THAT CORRECT?

A NOT TOTALLY. NUMBER ONE, PEEWEE GASKINS WAS NOT A TRUSTEE. HE WAS ASSIGNED TO CELL BLOCK TWO. THAT'S NUMBER ONE. NUMBER TWO, I'D JUST GONE DOWN THERE AS THE WARDEN AND QUITE FRANKLY, MY JOB WAS TO STRAIGHTEN THAT PLACE OUT. AND

FINALLY, WE GOT IT TORN DOWN. THAT WAS THE ONLY WAY TO STRAIGHTEN IT OUT IN MY OPINION, OR CALL FOR AN AIR STRIKE.

Q MISTER AIKEN, WHEN YOU WERE ASKED TO DO THE ASSESSMENT OF MISTER SIMMONS, DID YOU LOOK AT HIS JAIL RECORDS AT THE DORCHESTER COUNTY JAIL?

A NO, SIR. THEY WERE NOT AVAILABLE TO ME. WHAT I DID IS WHAT I COMMONLY DO, WHICH I CALL BACKTRACKING. YOU KNOW AS WELL AS I DO THAT INMATES THAT ARE SO DISRUPTIVE IN JAILS ARE OFTEN SENT TO THE DEPARTMENT OF CORRECTIONS ON SAFE-KEEPER STATUS. I LOOKED FOR THAT. I LOOKED FOR INFORMATION IN THE SCDC FILES THAT WOULD GIVE ME ANY INDICATION THAT HE WAS INVOLVED WITH RANDOM OR SYSTEMIC VIOLENCE. THERE WAS NOTHING IN THE RECORD THAT REFLECTED THAT. AND THAT, THE DEPARTMENT OF CORRECTIONS HAS DONE A VERY GOOD JOB OVER THE YEARS OF TRYING TO GATHER AS MUCH INFORMATION AS THEY COULD ON THE INMATES TO DO THIS CLASSIFICATION AND I'VE CLASSIFIED INMATES WITH MUCH LESS INFORMATION.

Q JUST SO I'M CLEAR ON THAT, SO YOU DIDN'T HAVE ANY DORCHESTER COUNTY JAIL RECORDS THAT YOU REVIEWED WHILE MISTER SIMMONS WAS IN CUSTODY AFTER HIS ARREST UNTIL HE WAS CONVICTED AND SENTENCED TO DEATH. IS THAT CORRECT?

A YES, SIR. AND MY METHODOLOGY WAS TO DO BACKTRACKING WITH THE SCDC FILES.

Q AND HAVE YOU LOOKED AT MISTER SIMMONS' RECORD IN THE DEPARTMENT OF CORRECTIONS SINCE HE'S BEEN ON DEATH ROW UP

TO THE CURRENT DATE?

A I WOULDN'T KNOW HOW CURRENT THE DATE IS BUT I DO KNOW THAT INITIALLY THE RECORDS WOULD BE GATHERED AT THAT BEGINNING AND LOOKED BACKWARDS FROM THAT AND I'VE DONE THAT MANY TIMES BEFORE.

Q OKAY. DOES MISTER SIMMONS, IN THE DEPARTMENT OF CORRECTIONS, HAVE ANY DISCIPLINARY VIOLATIONS?

A WELL, THERE WERE SOME NOTATIONS OF IT. AS YOU KNOW, EVERYTHING IS DOCUMENTED IN THE DEPARTMENT OF CORRECTIONS WHETHER YOU ARE INNOCENT, WHETHER YOU'RE GUILTY OR WHETHER THE CHARGES WERE DROPPED AND YOU HAVE NOT RECEIVED ANY SANCTIONS AND THEREFORE IT DIDN'T HAPPEN, BUT WE TILL PUT IT IN YOUR RECORD AND I'VE HAD OPPORTUNITY TO LOOK AT THAT.

Q AND WHAT DISCIPLINARY VIOLATIONS DID MISTER SIMMONS HAVE?

A THERE WAS AN ALTERCATION WITH HIM AND STAFF AND THE CHARGES WERE DISMISSED BECAUSE THE INTERNAL AFFAIRS INVESTIGATION WAS CONTINUING AND THAT INFORMATION -- I DIDN'T RECOVER IT WHICH MEANS TO ME THAT THERE WERE NO SANCTIONS AGAINST HIM.

Q DID YOU INTERVIEW STAFF ABOUT THAT?

A NO. WHAT I DID WAS TO RELY ON THE RECORD AND THE RECORD IS YEARS OF STAFF WATCHING HIM TWENTY-FOUR HOURS A DAY AND THAT'S WHAT I RELIED ON.

Q AND THIS IS MISTER SIMMONS BEING HOUSED IN ESSENTIALLY THE SECOND MOST SECURE SETTING IN THE DEPARTMENT OF

CORRECTIONS?

A I WOULDN'T SAY THE SECOND, BUT WHAT I WOULD SAY IS HE WAS IN ON DEATH ROW AND HE WAS IN A VERY SECURE ENVIRONMENT. YES.

Q NO FURTHER QUESTIONS, YOUR HONOR. THANK YOU, MISTER AIKEN.

A THANK YOU, SIR.

MR. MORTON: JUST A COUPLE OF FOLLOW-UP.

RE-DIRECT EXAMINATION OF JAMES AIKEN BY MISTER MORTON

Q MISTER AIKEN, YOU BELIEVE THAT HAD YOU BEEN CALLED AS AN EXPERT IN 1999 TO TESTIFY IN HIS TRIAL, YOU COULD HAVE TESTIFIED ADEQUATELY AS TO THE LIKELIHOOD OF HIS ADAPTABILITY IN THE DEPARTMENT OF CORRECTIONS.

A YES, SIR.

Q AND BASED AGAIN ON WHAT?

A BASED AGAIN ON THE CRIMINAL RECORD AND WHATEVER RECORDS OF CONFINEMENT THAT WERE AVAILABLE AT THE TIME.

Q AND MISTER AIKEN, MISTER ZELENKA HAS ASKED YOU ABOUT VARIOUS SITUATIONS IN WHICH YOU TESTIFIED TO, DO YOU TAKE YOUR CLASSIFICATION AND WHAT YOU SAY HERE IN COURT SERIOUSLY HOW – IN OTHER WORDS, I'M ASKING, YOU HAVE TO SIGN YOUR NAME TO THESE THINGS AND HAVE HAD TO MANY TIMES BEFORE. CORRECT?

A YES, SIR. I'VE HAD TO SIGN MY NAME TO THOUSANDS AND THOUSANDS OF PIECES OF PAPER CLASSIFYING INMATES, BUT IT'S MORE THAN THAT. I'VE HAD TO STAND AT THE FRONT GATE AND WELCOME OFFICERS AND SPEAK TO THEM, RESPECTED THEM IN THE MORNING AND I DON'T PAY THEM ENOUGH TO WALK OUT OF THERE OR IN A

GURNEY BECAUSE OF A CLASSIFICATION SYSTEM THAT DOESN'T WORK AND I TAKE THAT DAY IN AND DAY OUT. STAFF ARE THE BACKBONE OF ANY PRISON SYSTEM AND YOU HAVE TO SHOW RESPECT FOR THEM AND YOU HAVE TO DO EVERYTHING WITHIN YOUR POWER TO PROTECT THEM AND IF AT ANYTIME THAT I FELT THAT I DIDN'T MAKE THE RIGHT DECISION WITH WHAT WAS BEFORE ME, I COULDN'T MAKE IT AND I CAN HOLD MY HEAD UP TODAY THAT I HAVE DONE THAT FOR THOUSANDS OF OFFICERS AND I RESPECT THEM EVERY DAY.

Q NOT TO SAY THAT YOU HAVEN'T MADE MISTAKES IN THE PAST OR THAT YOU CAN ALWAYS PREDICT FUTURE BEHAVIOR.

A LIKE I SAID, I'VE HAD TO ORDER A SNIPER TO KILL SOMEBODY. THAT'S NOT FUN, BUT THE POINT IS, THAT OFFICER DESERVED TO GO HOME THAT NIGHT AND THAT OFFICER DID GO HOME.

Q AND HOW COMFORTABLE ARE YOU TODAY SAYING THAT YOU FEEL THAT THE DEPARTMENT OF CORRECTIONS COULD MANAGE THIS MAN?

A I'LL JUST PUT IT THIS WAY, I CAN PUT MY NAME TO IT.

Q THANK YOU VERY MUCH.

THE COURT: YOU MAY STEP DOWN.

MR. AIKEN: THANK YOU, YOUR HONOR.

THE COURT: THANK YOU. MAY HE BE EXCUSED?

MR. MORTON: YES, SIR.

MR. ZELENKA: YES, SIR.

THE COURT: MISTER MORTON.

MR. MORTON: YOUR HONOR, I THINK AT THIS POINT DUE TO SCHEDULING CONCERNS, MISTER ZELENKA WOULD LIKE TO CALL SOMEONE

OUT OF TURN AND, OF COURSE, WE HAVE NO OBJECTION TO THAT.

THE COURT: MR. ZELENKA.

MR. ZELENKA: THE STATE WOULD CALL WALTER BAILEY.

(AFTER BEING DULY SWORN BY THE CLERK OF COURT, WALTER BAILEY TESTIFIED AS FOLLOWS:)

CLERK OF COURT: PLEASE HAVE A SEAT AND STATE YOUR NAME FOR THE RECORD.

MR. BAILEY: R. WALTER BAILEY.

FOR THE STATE'S CASE (OUT OF ORDER)

DIRECT EXAMINATION OF WALTER BAILEY BY MISTER ZELENKA

Q MISTER BAILEY, WHAT'S YOUR CURRENT PROFESSION?

A I AM AN ATTORNEY IN SOUTH CAROLINA. SUMMERVILLE.

Q HOW LONG HAVE YOU BEEN PRACTICING LAW?

A SINCE 1972.

Q IN YOUR ROLE AS AN ATTORNEY, WERE YOU EVER THE SOLICITOR TO THIS JUDICIAL CIRCUIT?

A I WAS, FROM ABOUT 1992 FOR ELEVEN YEARS AFTER THAT AND THEN I WORKED IN THE SOLICITOR'S OFFICE FOR A YEAR AND A HALF OR SO A FEW YEARS AFTER I WAS SOLICITOR, TO FINISH UP THINGS THAT I'D STARTED.

Q IN YOUR ROLE AS SOLICITOR, DID YOU SEEK TO ACQUAINT YOURSELF WITH DEATH PENALTY LAW IN SOUTH CAROLINA?

A YEAH. I HAD TO BECAUSE A LOT THE -- A HANDFUL OF CASES THAT PRE-DATED MY ELECTION THAT WERE WITH A DEATH PENALTY NOTICE THAT HAD BEEN SERVED AND SO I HAD TO HANDLE THOSE CASES.

Q AND IN PREPARING AND UNDERSTANDING OF THE LAW TO PREPARE FOR THOSE CASES, DID YOU BECOME A PUBLISHED AUTHOR?

A I DID WRITE A DEATH PENALTY MANUAL JUST, INITIALLY FOR MY OWN BENEFIT AFTER READING CASES AND OUTLINING THEM JUST SO I WOULD HAVE SOMETHING AS A QUICK REFERENCE IN TRIAL AND THE BAR DID EVENTUALLY PUBLISH THAT. YES, SIR.

Q OKAY. AND THAT WAS *THE SOUTH CAROLINA CAPITAL TRIAL*, THE FIRST EDITION, WITH JUDGE CLARY AND YOURSELF AS THE AUTHORS?

A THAT'S CORRECT.

Q AND THE PORTION OF THAT BOOK THAT WAS PREPARED BY YOU, WAS THAT BASICALLY YOUR OWN AND YOUR ENTIRE WORK PRODUCT?

A YES.

Q IN THAT BOOK?

A YES, SIR.

Q AND DID YOU UTILIZE YOUR OWN MATERIAL IN DEVELOPING AND UNDERSTANDING OF THE NATURE OF THE LAW AND HOW TO PROCEED IN CAPITAL CASES BOTH IN THE GUILT PHASE AND THE PENALTY PHASE, ARGUMENT AND JURY REQUESTS?

A YEAH. I READ ALL THE SOUTH CAROLINA DEATH PENALTY CASES, ALL THE UNITED STATES SUPREME COURT DEATH PENALTY CASES AND OUTLINED THEM AND PUT THEM IN THE BOOK AND DID REFER TO THAT FREQUENTLY WHEN I WAS PREPARING DEATH PENALTY TRIALS OR ACTUALLY TRYING CASES.

Q OKAY. NOW, GOING SPECIFICALLY TO MISTER SIMMONS' CASE, DO YOU RECALL ROUGHLY WHEN YOU FIRST BECAME INVOLVED IN THAT

MATTER?

A WELL, SHORTLY AFTER -- WHEN I BECAME INVOLVED, I WENT TO THE CRIME SCENE. THAT WAS MY INITIAL INVOLVEMENT. THERE WAS SOME PERIOD OF TIME BEFORE HE WAS ARRESTED AND I WAS, YOU KNOW, WORKING WITH THE POLICE AND TRYING TO DEVELOP LEADS AND THAT KIND OF THING OVER A YEAR OR SO BEFORE MISTER SIMMONS WAS ARRESTED, I BELIEVE IN COLUMBIA, ON ANOTHER CHARGE.

Q NOW, HE WASN'T INITIALLY ARRESTED IMMEDIATELY AFTER THE CRIMINAL EVENT INVOLVING THE DEATH OF LILLIE L. BOYD. IS THAT CORRECT?

A THAT'S CORRECT. IT WAS UNSOLVED FOR A PERIOD OF TIME.

Q AND IN THE INVESTIGATION WHICH OCCURRED IN THAT PARTICULAR CASE, WERE ATTEMPTS MADE TO GO THROUGH A SERIES OF SUSPECTS THROUGH THE USE OF DNA MATERIAL?

A YES.

Q AND DID THE STATE LAW ENFORCEMENT DIVISION PREPARE THAT DNA TESTING THAT WAS DONE IN THAT PARTICULAR CASE, IF YOU RECALL?

A THEY FARMED THAT OUT TO LIFECODES, BECAUSE AT THAT PARTICULAR POINT IN TIME THEY WERE IN THE PROCESS OF SWITCHING FROM RFLP TO PCR DNA ANALYSIS AND AT THAT TIME WERE SENDING THAT OUT.

Q OKAY. NOW, LIFECODES THAT YOU ARE REFERRING TO IS LIFECODES CORPORATION WHICH WAS A PRIVATE GENETIC DNA TESTING LABORATORY IN STANFORD, CONNECTICUT. IS THAT CORRECT?

A THAT'S CORRECT.

Q AND AT THAT TIME LIFECODES AND SOME OTHER PRIVATE LABS WERE RESPONSIBLE OR WERE UTILIZED, I SHOULD SAY, UTILIZED IN THE PCR OR MITOCHONDRIAL DNA TESTING TECHNIQUE.

A THAT IS CORRECT. UNTIL SLED COULD GET ONLINE AND GET CERTIFIED AND GET THEIR ANALYSTS CERTIFIED, THEY WERE DOING THAT FOR SLED.

Q OKAY. AND IN THIS PARTICULAR SETTING, DID YOU EVENTUALLY GET SOME INFORMATION ABOUT A POTENTIAL OR ALLEGED DNA MATCH THAT WAS FOUND INVOLVING THIS DEFENDANT AND MATERIAL FROM THE VICTIM AND THE CRIME SCENE?

A YES, SIR. WE DID.

Q AND LET ME SHOW YOU TWO LETTERS THAT I'D LIKE TO HAVE INTRODUCED INTO EVIDENCE. IF I COULD HAVE THESE MARKED AS STATE'S #1 AND #2. (COURT REPORTER COMPLIES) STATE'S EXHIBIT #1 IS A LETTER REPORT DATED JANUARY 23, 1998 FROM LIFECODES TO CHIEF ROY WHITEHEAD OF SUMMERVILLE, SOUTH CAROLINA AND STATE'S EXHIBIT #2, IS A FEBRUARY 2, 1998 LETTER TO CHIEF ROY WHITEHEAD FROM LIFECODES STYLED "ADDITIONAL REPORT". LET ME REFER THESE TO YOU, MISTER BAILEY. (HANDS WITNESS DOCUMENTS)

A YES, SIR. I'M FAMILIAR WITH THOSE.

Q AND STATE'S EXHIBITS #1 AND #2, WAS THAT MATERIAL THAT PROVIDED YOU THE INITIAL INFORMATION CONCERNING THE STATISTICAL MATCH THAT WAS INVOLVED WITH THE DEFENDANT IN THIS PARTICULAR CASE?

A TO THE BEST OF MY RECOLLECTION, THIS WAS THE INITIAL WRITTEN INFORMATION THAT I GOT. I MIGHT HAVE GOTTEN A VERBAL REPORT FROM SOMEBODY, BUT THIS APPEARS TO BE THE FIRST WRITTEN INDICATION I GOT THAT THEY FOUND A MATCH.

Q AND SUBSEQUENT TO THAT INFORMATION, DID YOU BECOME INVOLVED IN DISCOVERY WITH THE DEFENSE, OR HAD YOU BEEN INVOLVED WITH DISCOVERY WITH THE DEFENSE AT THAT TIME?

A I DON'T KNOW IF I WAS INVOLVED AT THAT TIME, BUT I DID BECOME INVOLVED IN DISCOVERY, BECAUSE AS IN ANY DEATH PENALTY CASE, ONCE THE CHARGES WERE FILED AGAINST KENNETH SIMMONS AND HE HAD COUNSEL APPOINTED.

Q OKAY. AND GENERALLY DESCRIBE YOUR DISCOVERY POLICY FOR THE COURT.

A I'VE GOT AN OPEN FILE DISCOVERY POLICY AND I TRY TO GATHER ANY INFORMATION THAT MIGHT BE HELPFUL TO ME OR THE DEFENSE AND PROVIDE THAT TO THE DEFENSE. I WOULD SEND THEM A COPY OF EVERYTHING I HAD AND ITEMIZED IT IN CASE THERE WAS ANY QUESTION AND AT SOME POINT, I DON'T KNOW IF I DID IT AT THAT TIME OR NOT, BUT I WOULD FILE THE DISCOVERY TRANSMITTAL LETTERS AND ASK THEM TO BE FILED WITH THE COURT AS EXHIBITS SO THERE WOULD BE A RECORD OF WHAT WAS ACTUALLY DISCLOSED IN CASE ANY QUESTION CAME UP.

Q OKAY. AND THOSE EXHIBITS ARE ON FILE AT THE DORCHESTER COUNTY COURTHOUSE?

A YES.

Q IN THE CLERK'S OFFICE.
A YES.
Q AND SUBSEQUENT TO THAT PARTICULAR TIME, WERE SPECIFIC REQUESTS MADE FOR ADDITIONAL DATA AND REPORTS THAT LIFECODES HAD BY THE DEFENSE?
A YES.
Q I'D LIKE TO HAVE THIS MARKED AS STATE'S EXHIBIT #3. (COURT REPORTER COMPLIES) MISTER BAILEY, LET ME SHOW YOU STATE'S EXHIBIT #3, AN OCTOBER 22, 1998 LETTER TO WALTER M. BAILEY FROM MICHAEL L. BAIRD, VICE-PRESIDENT OF LABORATORY OPERATIONS WITH LIFECODES AND SEE IF YOU CAN IDENTIFY THAT. (HANDS DOCUMENT TO MISTER BAILEY)
A YES, SIR.
Q AND WHAT IS THAT DOCUMENT?
A THAT'S THE RESPONSE TO MY FORWARDING SPECIFIC DISCOVERY REQUESTS THAT I HAD RECEIVED FROM THE DEFENSE TO LIFECODES TO HAVE THEM ANSWER STUFF THAT WAS WITHIN THEIR REALM OF EXPERTISE AND BEYOND MINE AT THE TIME.
Q AND THAT DEFENSE WOULD BE JERRY THEOS, THE DEFENSE TEAM?
A JERRY THEOS AND JIM BELL.
Q AND MISTER BELL?
A YES, SIR.
Q AND IF I HAVEN'T DONE SO ALREADY, YOUR HONOR, I WOULD MOVE INTO EVIDENCE STATE'S EXHIBITS #1, #2 AND #3.
THE COURT: ANY OBJECTION?

MR. MORTON: NO, SIR.

THE COURT: WITHOUT OBJECTION.

(WHEREUPON, THREE LETTERS ARE ENTERED INTO EVIDENCE AS STATE'S EXHIBITS #1, #2, AND #3, WITHOUT OBJECTION. #1, 01/23/98 LETTER FROM LIFECODES TO WHITEHEAD, #2, 02/22/98 LETTER FROM LIFECODES TO WHITEHEAD AND #3, 10/22/98 LETTER FROM BAILEY TO BAIRD)

(MISTER MORTON LOOKS AT STATES'S #3, DOESN'T OBJECT)

Q MISTER BAILEY, DOES THAT LETTER REFLECT THAT ON OR AFTER OCTOBER 22, 1998, WAS THE TIME THAT YOU RECEIVED A COPY OF THE DNA CASE FILE FROM LIFECODES?

A YES, SIR.

Q DOES THAT ALSO REFLECT THAT THAT WAS THE ENTIRE DNA CASE FILE THAT WAS BEING PROVIDED TO YOU FROM NINE LIFECODES CASES INCLUDING CHAIN OF CUSTODY FORMS, CORRESPONDENCE, LAB NOTES AND AUTORADS?

A IT APPEARED TO BE A COMPLETE RESPONSE TO WHAT THE DEFENSE HAD ASKED FOR AND IT ALSO APPEARED TO BE A COMPLETE COPY OF THE LIFECODES FILE WHICH WAS SENT TO ME AND I, IN TURN, SENT THAT TO MISTER THEOS.

Q AND THAT IS SET OUT AT SUBPARAGRAPH, IDENTIFIED AS #1 AND #11, THAT YOU WERE RECEIVING THOSE MATERIALS. IS THAT CORRECT?

A YES, SIR.

Q AND ONCE YOU RECEIVED THOSE MATERIALS, DID YOU DIRECTLY PROVIDE THAT TO THE DEFENSE OR DID YOU ELIMINATE OR REMOVE

ANY MATERIALS FROM THAT?

A WHATEVER I GOT WAS COPIED AND SENT TO THEM, TO THE DEFENSE.

Q DO YOU HAVE YOUR PRESENT CASE FILE IN THAT PARTICULAR CASE OF THE MATERIAL THAT YOU WOULD HAVE PROVIDED?

A I LEFT THAT WITH THE SOLICITOR'S OFFICE WHEN I RETIRED. I DON'T HAVE ACCESS TO IT.

Q THEN HAVE YOU BEEN ADVISED THAT THAT MATERIAL, YOUR NOTEBOOKS, NO LONGER ARE WITHIN THE CUSTODY OF THE SOLICITOR'S OFFICE?

A YOU ADVISED ME OF THAT A SHORT WHILE AGO.

Q WITH RESPECT TO THAT MATERIAL THAT YOU RELIED UPON, DO YOU KNOW OF ANY DATA THAT WAS SUGGESTED TO YOU TO HAVE NOT BEEN PROVIDED TO YOU FROM ANY INDIVIDUAL AT LIFECODES, IF THEY WERE HOLDING SOMETHING BACK IN ANY WAY, SHAPE OR FORM?

A IF YOU ARE TALKING ABOUT THE TIME WHEN THIS CASE WAS GOING ON, THE ANSWER IS NO. I'VE SINCE BEEN ADVISED THAT THERE IS SOME QUESTION ABOUT SOME PORTION OF THE FILE MAY NOT HAVE BEEN ENCLOSED OR A PAGE MISSING, BUT I HAD NO KNOWLEDGE OF THAT AT THE TIME. I RECEIVED THE INFORMATION, I REVIEWED IT, IT WAS COPIED AND FORWARDED ON TO THE DEFENSE.

Q AND THAT INFORMATION THAT YOU ARE REFERRING TO IS INFORMATION THAT YOU'VE LEARNED ABOUT WITHIN THE LAST MONTH. IS THAT CORRECT?

A YES, SIR.

Q NOW, IN MAKING YOUR ASSESSMENTS DURING THE TRIAL, YOU

PRESENTED TESTIMONY FROM DOCTOR MICHAEL BAIRD CONCERNING THE PROBABILITY OR THE LIKELIHOOD THAT THE DEFENDANT'S DNA WAS FOUND IN A PARTICULAR SPECIMEN THAT WAS BEING EVALUATED. IS THAT CORRECT?

A YES, SIR.

Q DID THE CALCULATION THAT YOU RELIED UPON COME FROM THE NUMBERS WHICH WERE SET OUT IN THE SECOND REPORT?

A YES, SIR.

Q EXCUSE ME, THE FEBRUARY 2, 1998 REPORT?

A THE ADDITIONAL REPORT, PAGE THREE, I THINK.

Q OKAY. AND THAT CONCLUSION REVEALS AT PAGE THREE, I BELIEVE, WHAT IS THE OCCURRENCE?

A IN THE BLACK DATA BASE ONE IN EIGHT MILLION, TWENTY-NINE THOUSAND, THREE HUNDRED AND SIXTEEN.

Q AND THAT'S THE INFORMATION THAT YOU HAD, YOU RELIED UPON, YOU PLACED UPON YOUR CHART THAT YOU INTRODUCED AT TRIAL AND DOCTOR BAIRD TESTIFIED CONCERNING. IS THAT CORRECT?

A YES, SIR.

Q WHEN YOU PREPARED FOR PRESENTING DNA TESTIMONY AT THE TRIAL, HOW DID YOU GO ABOUT PREPARING TO HAVE THAT INDIVIDUAL TESTIFY?

A I REVIEWED THE RESULTS. I HAD BEEN TO A COUPLE OF SEMINARS AND DONE SOME READING ON DNA. I NEVER BECAME A DNA EXPERT, BUT I DID LEARN ENOUGH AT THAT TIME TO UNDERSTAND THE STEPS THAT THEY WOULD GO THROUGH IN THE DNA ANALYSIS AND THE

STATISTICAL PROBABILITIES THAT THEY WOULD ARRIVE AT WHEN THEY DETERMINED THERE WAS A MATCH AND I WOULD COMBINE WHAT BASIC INFORMATION THAT I HAD WITH A SPECIFIC REPORT AND FORMULATE THE QUESTIONS THAT WOULD ELICIT THE ANSWER THAT I WOULD HAVE IN THE REPORT AND WOULD GO OVER THAT WITH THE WITNESS PRIOR TO TRIAL, MAKE ANY CHANGES OR CORRECTIONS AND THEN ASK THOSE QUESTIONS AND WOULD GET THE ANSWERS WHICH, HOPEFULLY, WOULD BE CONSISTENT WITH THE WRITTEN REPORT, WHICH IS WHAT I DID IN THIS CASE.

Q OKAY. NOW, DURING THIS PARTICULAR TRIAL THERE ALSO WAS A QUESTION AS TO THE COMPETENCY AND THE MENTALITY OF THE DEFENDANT. IS THAT CORRECT?

A THAT IS CORRECT.

Q AND THE DEFENDANT WAS INITIALLY EVALUATED BY THE DEPARTMENT OF MENTAL HEALTH?

A YES.

Q DOCTOR BEHRMANN.

A YES.

Q AND DOCTOR VIDIC.

A YES.

Q AND DOESN'T IT REFER HIM OVER TO THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS?

A THAT'S CORRECT.

Q AND IN THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS' DETERMINATION OF MENTAL RETARDATION, THAT WAS DONE BY A

DOCTOR LESLIE SANDLER AND A DOCTOR THOMAS MCABEE. IS THAT CORRECT?

A THAT'S CORRECT.

Q AND DID YOU USE DOCTOR SANDLER AND DOCTOR MCABEE TO TESTIFY AT THE TRIAL?

A DOCTOR SANDLER TESTIFIED. I DON'T RECALL WHETHER OR NOT DOCTOR MCABEE TESTIFIED AT THAT TIME.

Q LET ME SHOW YOU WHAT WAS INTRODUCED AT TRIAL AS STATE'S EXHIBIT #7.

MR. ZELENKA: YOUR HONOR, I DON'T KNOW IF WE NEED TO RE-INTRODUCE THIS.

THE COURT: I WOULD THINK WE WOULD.

MR. ZELENKA: LET ME HAVE STATE'S EXHIBIT #7 —

THE COURT: AT THE TRIAL.

MR. ZELENKA: — AT THE TRIAL MARKED AS STATE'S EXHIBIT #4 AND STATE'S EXHIBIT #8, THE EVALUATION REPORT.

THE COURT: WILL BE #5?

MR. ZELENKA: STATE'S EXHIBIT #5.

THE COURT: AND MISTER ZELENKA, STATE'S EXHIBIT #4 FOR THE PCR THAT WAS STATE'S EXHIBIT #7 AT TRIAL. WHAT IS IT?

MR. ZELENKA: NUMBER 4, THE ADMITTED CURRICULUM VITAE OF LESLIE SANDLER AND STATE'S EXHIBIT #5 FOR THIS PROCEEDING IS THE FEBRUARY 10, 1999 FORENSIC PSYCHOLOGICAL COMPETENCY EVALUATION BY THE SOUTH CAROLINA DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS. WE'D MOVE THOSE INTO EVIDENCE.

THE COURT: ANY OBJECTION?

MR. MORTON: NO, SIR, YOUR HONOR.

THE COURT: WITHOUT OBJECTION.

(WHEREUPON, A CURRICULUM VITAE OF DOCTOR SANDLER IS ENTERED INTO EVIDENCE AS STATE'S EXHIBIT #4, AND AN EVALUATION REPORT IS ENTERED INTO EVIDENCE AS STATE'S EXHIBIT #5, WITHOUT OBJECTION)

THE COURT: HELP ME OUT HERE. IS DOCTOR SANDLER THE DOCTOR WHO I GOT THE ORDER FROM, FROM OUT OF STATE?

MR. ZELENKA: YES, SIR.

THE COURT: THAT WERE IN THE AFFIDAVITS THAT WERE SUBMITTED TO ME BEFORE THE TRIAL?

MS. PAAVOLA: YES, SIR.

THE COURT: THANK YOU.

Q MISTER BAILEY, WHEN DID YOU FIRST BECOME AWARE OF DOCTOR SANDLER'S INVOLVEMENT IN THIS PARTICULAR CASE?

A WHEN THE CASE WAS SENT FROM THE DEPARTMENT OF MENTAL RETARDATION TO THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS. DOCTOR SANDLER, AT THAT TIME, WAS A LEAD PSYCHIATRIST AND HE GOT INVOLVED IN THE CASE AND WHEN I FOUND OUT HE WAS THE ONE DOING THE EVALUATION, THEN I HAD CONTACT WITH HIM.

Q HAD YOU USED – HAD DOCTOR SANDLER BEEN INVOLVED IN ANY OF YOUR OTHER PRIOR CASES?

A I DON'T BELIEVE SO. I NEVER HEARD OF HIM UP UNTIL THE TIME HE WAS ASSIGNED THE CASE BY THE DEPARTMENT.

Q ASSIGNED THE CASE BY THE DEPARTMENT MEANING THE DEPARTMENT

OF DISABILITIES ---

A --- DISABILITIES AND SPECIAL NEEDS.

Q HE WAS A COURT EXPERT IN THIS PARTICULAR PROCEEDING FOR THOSE PURPOSES. IS THAT CORRECT?

A YES, SIR.

Q AND IT WAS HIS RESPONSIBILITY TO MAKE AN INDEPENDENT EVALUATION CONCERNING THE PARTICULAR MENTAL STATE OF THE DEFENDANT. IS THAT CORRECT?

A THAT IS CORRECT.

Q AND HE WAS NOT RETAINED BY THE PROSECUTION TEAM.

A NO. NO, SIR.

Q BUT UTILIZED BY THE PROSECUTION IN THIS PARTICULAR CASE.

A HE WAS CALLED AS A WITNESS IN THE TRIAL.

Q NOW, WHEN YOU MET WITH DOCTOR SANDLER, DID YOU ALSO PROVIDE HIM DEFENSE MATERIAL?

A YES, SIR. I PROBABLY GAVE HIM A COMPLETE COPY OF THE FILE THAT I HAD AS FAR AS INCIDENT REPORTS AND -- PROBABLY THE WHOLE THING.

Q OKAY. AND DEFENSE MATERIAL FROM THEIR EXPERTS?

A ANYTHING THAT I HAD PERTAINING TO MENTAL STATUS ISSUES, I WOULD HAVE SENT THAT ON TO DOCTOR SANDLER OR TO THE OTHER DOCTOR MCABEE OR WHATEVER, ONE OF THE OTHERS.

Q IN FACT, WHEN THE EVALUATION WAS DONE BY DOCTOR SANDLER AND DOCTOR MCABEE, THE DEFENSE TEAM WAS PRESENT, IN FACT, IN THAT EVALUATION AND RECORDED THAT EVALUATION. ISN'T THAT

CORRECT?

A MY RECOLLECTION IS THAT MISTER THEOS WAS PRESENT.

Q IN PREPARATION FOR YOUR CASE, DID YOU ACQUIRE THE CURRICULUM VITAE FOR THE WITNESS, DOCTOR SANDLER?

A YES, SIR.

Q WAS THERE ANYTHING ON THAT CURRICULUM VITAE THAT SUGGESTED THAT DOCTOR SANDLER'S QUALIFICATIONS TO GIVE OPINIONS WAS EVER SUBJECT TO ANY PROBATION OR ANY OTHER MATTERS?

A NO. I WAS NOT AWARE OF ANY PROBLEM FROM ANY OTHER SOURCE.

Q NOT AWARE OF ANY PROBLEM FROM ANY OTHER SOURCE. DID DOCTOR SANDLER EVER TELL YOU AT ANY TIME THAT HE HAD BEEN ON PROBATION IN 1988 IN PENNSYLVANIA?

A NO.

Q DID ANYONE EVER INDICATE THAT TO YOU BEFORE LAST MONTH?

A NO.

Q LET ME SHOW YOU WHAT HAS BEEN INTRODUCED AS AFFIANT'S EXHIBIT #1 AND ASK IF YOU HAVE EVER SEEN THAT.

A I SAW THAT WITHIN THE LAST WEEK, YES SIR. NOT PRIOR TO THAT.

Q WERE YOU EVER AWARE OF THE EXISTENCE OF THAT ORDER IN ANY WAY, SHAPE OR FORM?

A NO.

Q NOT BEING AWARE OF ITS EXISTENCE, DID THE DEFENSE EVER PROVIDE THAT TO YOU AT ANY TIME DURING YOUR TRIAL?

A NO. I NEVER SAW THAT UNTIL ABOUT A WEEK AGO.

Q DID THE DEFENSE EVER INDICATE TO YOU ANY KNOWLEDGE ABOUT

THAT?

A NO.

Q HOW DO YOU PREPARE, IF YOU DO BACKGROUND, ON COURT WITNESSES?

A IF IT'S AN EXPERT WITNESS, AS FAR AS PREPARING BACKGROUND, I WOULD GET A C-V. I WOULD REVIEW IT. THAT WOULD GENERALLY BE THE EXTENT OF IT. IF I HAD ANY KNOWLEDGE OF SOME PROBLEM WITH A WITNESS, EITHER STATE OR A POTENTIAL DEFENSE WITNESS, THEN I'D RESEARCH IT. IN THE CASE OF DOCTOR SANDLER, I HAD NO INKLING THAT THERE WAS ANYTHING IN HIS BACKGROUND THAT WOULD BE ADVERSE OR BRADY MATERIAL OR ANYTHING OF THAT NATURE. AT THE TIME, HE WAS THE LEAD PSYCHIATRIST FOR THE STATE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS AND I HAD NO REASON TO THINK THERE WAS ANY PROBLEM WITH HIM.

Q DO YOU DO CRIMINAL RECORD CHECKS OF EXPERT WITNESSES?

A NO.

THE COURT: WAS THIS A PSYCHIATRIST OR WAS HE A LICENSED PSYCHOLOGIST?

MR. ZELENKA: HE'S A PSYCHOLOGIST.

MR. BAILEY: I MIS-SPOKE.

THE COURT: THAT'S ALL RIGHT.

Q DO YOU DO CRIMINAL RECORD CHECKS OF COURT WITNESSES?

A NO. NO.

Q WOULD THIS INFORMATION HAVE APPEARED ON A CRIMINAL RECORD CHECK IF ONE WAS DONE?

A IT APPEARED TO BE AN ADMINISTRATIVE PROCEEDING WHERE HE WAS SANCTIONED BY THE STATE LICENSING BOARD OF PENNSYLVANIA AND I WOULD ASSUME YOU WOULD NOT FIND THAT ON A RAP SHEET IF I HAD RUN ONE.

Q AND THAT WAS OVER TEN YEARS BEFORE YOU EVEN CALLED HIM AS A WITNESS. ISN'T THAT CORRECT?

A IT WAS MORE -- I THINK IT WAS '88 AND THE TRIAL WAS OVER TEN YEARS AFTER THAT.

Q FEBRUARY AND MARCH OF 1999.

A YES, SIR.

Q IF YOU HAD THAT INFORMATION IN 1998, 1999, WHAT WOULD YOU HAVE DONE WITH IT?

A DISCLOSED IT TO THE DEFENSE.

Q AND WHY WOULD YOU HAVE DONE THAT?

A BECAUSE POTENTIALLY, THEY COULD USE THAT FOR IMPEACHMENT, ALTHOUGH I WOULD HAVE RESISTED THAT ON THE GROUNDS OF REMOTENESS, BUT I WOULD HAVE BEEN CONCERNED ENOUGH ABOUT IT TO DISCLOSE IT IF I HAD KNOWN ABOUT IT.

Q OKAY.

A FOR ME TO DISCOVER THAT, I WOULD HAVE TO ROUTINELY, ON ANY EXPERT, A COURT EXPERT OR ANY EXPERT THAT I WOULD CALL ON BEHALF OF THE STATE, WOULD HAVE TO ROUTINELY GET THEIR C-V AND DETERMINE WHETHER THEY HAD EVER PRACTICED, BEEN LICENSED AND CONTACT EACH STATE OF THAT ADMINISTRATIVE AGENCY IN CHARGE OF DISCIPLINARY SANCTIONS OR LICENSING AND

TRY TO GET A COPY OF ANY KIND OF ADVERSE MATERIAL THERE. I DON'T KNOW ANYBODY THAT DOES THAT.

Q AND HE NEVER LOST HIS LICENSE, EVEN ACCORDING TO THAT ORDER. ISN'T THAT CORRECT?

A THAT'S CORRECT. I THINK HE WAS PUT UNDER SUPERVISION FOR A YEAR.

Q NOW, IN YOUR ASSERTION OF RESISTING, THAT WOULD HAVE BEEN RESISTING BY MAKING A MOTION IN COURT. IS THAT CORRECT?

A COULD YOU ASK THAT AGAIN? I'M NOT SURE...

Q YOU SAID YOU RESISTED. TO CLARIFY, RESISTED WOULD BE —

A RESISTED WOULD BE ANY EFFORT TO IMPEACH HIM ON THE MATERIAL IN THIS ORDER ON THE GROUND OF REMOTENESS.

Q NOW, IN YOUR TRAINING IN CAPITAL CASES, DID YOU BECOME AWARE OF THE ABILITY OF THE DEFENSE TO PRESENT EVIDENCE, OPINIONS, INFORMATION ABOUT THE DEFENDANT'S ADAPTABILITY TO PRISON?

A YES.

Q AND YOU WERE PRESENT IN COURT WHEN MISTER AIKEN TESTIFIED. IS THAT CORRECT?

A IN THE PCR JUST TODAY? YES, SIR.

Q AND ARE YOU FAMILIAR WITH MISTER AIKEN'S TESTIMONY?

A YES.

Q HAS HE TESTIFIED IN OTHER CASES THAT YOU'VE HANDLED BEFORE?

A YEAH, ON BOTH SIDES.

Q ON BOTH SIDES. SO, WHAT DOES THAT MEAN?

A I MEAN ON PROSECUTION AND I'VE CROSS EXAMINED HIM AND I'VE

ALSO CALLED HIM ON OTHER DEATH PENALTY CASES I'VE BEEN APPOINTED IN.

Q AND IN YOUR CROSS EXAMINATION OF MISTER AIKEN, WHAT ARE YOUR THEORIES THAT YOU WOULD UTILIZE?

A YOU MEAN THEORETICALLY IF HE HAD BEEN CALLED AS A WITNESS BY MISTER THEOS AND MISTER BELL IN THIS CASE?

Q YES.

A WHAT MY CROSS EXAMINATION WOULD HAVE BEEN?

Q YES.

A THAT ---

MR. MORTON: OBJECT.

THE COURT: AND THE OBJECTION, I ASSUME, IS SPECULATIVE BECAUSE HE WASN'T CALLED? WHERE ARE YOU GOING WITH THIS, MISTER ZELENKA?

MR. ZELENKA: WHETHER -- THE PURPOSE OF POST CONVICTION RELIEF, THE ADAPTABILITY OF PRISON EVIDENCE, IS WHETHER THE DEFENSE WAS INEFFECTIVE IN FAILING TO CALL MISTER AIKEN AS A WITNESS TO TESTIFY. THE STANDARDS ARE, FIRST OFF, WHETHER THAT'S REASONABLE AND SECOND, UNDER THE PREJUDICE PRONG WHETHER IT'S REASONABLY LIKELY THE RESULTS WOULD HAVE BEEN DIFFERENT. HAD THAT WITNESS TESTIFIED HE WOULD HAVE BEEN SUBJECTED TO A LINE OF QUESTIONING BY SOLICITOR BAILEY, OR NO QUESTIONING BY SOLICITOR BAILEY, AS A MATTER OF STRATEGY. TO REALLY LOOK AT THE FULL PICTURE, I THINK, IT WOULD BE APPROPRIATE TO DETERMINE WHAT WOULD MISTER BAILEY HAVE DONE HAD THAT INFORMATION BEEN PRESENTED TO MAKE A CORRECT ASSESSMENT AS TO WHETHER, IN FACT, THAT SECOND PRONG HAS BEEN

SATISFIED. NOT WITH RESPECT TO THE FIRST PRONG, BUT WITH RESPECT TO THE SECOND PRONG.

MR. MORTON: IT STILL CALLS FOR SPECULATION, YOUR HONOR. I DON'T HAVE ANY OBJECTION TO MISTER ZELENKA ASKING HIM WOULD HE HAVE CROSS EXAMINED MISTER AIKEN, MIGHT THAT HAVE AFFECTED THE PREJUDICE PRONG, MIGHT THE JURY HAVE LEARNED SOME STUFF, BUT AS FAR AS WHAT THE EXACT OR WHAT THE CROSS EXAMINATION WOULD HAVE BEEN, I THINK, OF MISTER AIKEN, WITHOUT HIM HAVING TESTIFIED, IS SPECULATION.

THE COURT: ALL RIGHT. I'M GOING TO OVERRULE THE OBJECTION. I'LL ALLOW IT.

A I WOULD HAVE CROSS EXAMINED MISTER AIKEN AND I HAVE CROSS EXAMINED MISTER AIKEN ON ABOUT AT LEAST SIX OCCASIONS AND THE CROSS EXAMINATION WOULD HAVE BEEN BASED ON THE FACT THAT WITH THE EXCEPTION OF CHANGING THE NAMES OF THE DEFENDANT, MISTER AIKEN'S TESTIMONY ESSENTIALLY CAN, IT'S THE SAME THING IN EVERY CASE AND WHEN YOU BOIL IT RIGHT DOWN, WHAT HE'S TESTIFYING TO IS NOT PRISON ADAPTABILITY, BUT THE DEPARTMENT OF CORRECTIONS OF SOUTH CAROLINA HAS A LEVEL OF CONTROL OVER ANYBODY, FROM THE MOST MEEK AND MILD INMATE THAT YOU HAVE THERE TO THE WORSE OF THE WORST. IN OTHER WORDS, THE DEPARTMENT OF CORRECTIONS CAN ADAPT TO THOSE ----

MR. MORTON: YOUR HONOR, I OBJECT.

THE COURT: WHAT'S THE OBJECTION?

MR. MORTON: WELL, HE'S NOT AN EXPERT ON PRISON ADAPTABILITY,

HE'S NOT AN EXPERT ON WHAT MISTER AIKEN IS, IN EFFECT, TESTIFYING TO. HE'S COMING IN HERE TESTIFYING AS TO BEING AS EXPERT IN PRISON ADAPTABILITY WHICH THE COURT HAS ALREADY DETERMINED THAT MISTER AIKEN IS. WITH ALL DUE RESPECT, MISTER BAILEY IS NOT.

THE COURT: WELL, I'M GOING TO ALLOW HIS TESTIMONY. MISTER BAILEY IS, WAS A VERY SEASONED PROSECUTOR AND HE'S CROSS EXAMINED THIS MAN A NUMBER OF TIMES AND HE CAN TELL US WHAT HIS CROSS EXAMINATION WOULD HAVE BEEN.

A THAT'S ESSENTIALLY WHAT IT WOULD HAVE BEEN, THAT HE'S NOT REALLY TESTIFYING TO THAT PARTICULAR PERSON'S ADAPTABILITY. IN THE PAST, HE'S NOT DONE THAT AND HIS TESTIMONY, AS I SAID, IS PRETTY MUCH THE SAME IN EVERY CASE. IT'S PREDICTABLE. ALSO, THERE ARE SITUATIONS WHERE, AS YOU POINTED OUT IN YOUR QUESTIONING, THAT HE'S BEEN WRONG.

MR. MORTON: YOUR HONOR, I OBJECT.

THE COURT: GO AHEAD. STATE YOUR OBJECTION.

MR. MORTON: IT'S NOT IN RESPONSE TO A QUESTION. HE'S JUST...

THE COURT: OVERRULED. I ASSUME YOU'VE CROSS EXAMINED HIM ON HIM NOT ALWAYS BEING RIGHT? IS THAT WHAT YOU ARE SAYING, MISTER BAILEY?

MR. BAILEY: YES, SIR. THERE WERE SITUATIONS WHERE HE WOULD HAVE PEOPLE WHO HAVE ESCAPED AND PEOPLE WHO HAVE DONE VIOLENT ACTS AFTER HE'S TESTIFIED THAT THEY WERE NOT THE KIND OF PEOPLE THAT WOULD HAVE PERFORMED THOSE ACTS AND I WOULD HAVE BROUGHT THAT OUT.

Q OKAY. IN PREPARING YOUR CLOSING ARGUMENT IN 1999, DID YOU REVIEW THE CASE LAW WHICH EXISTED IN 1999 TO MAKE YOUR DETERMINATIONS OF WHAT AREAS TO SEEK TO ADDRESS AND WHAT AREAS NOT TO GO INTO?

A YES, SIR. I TRIED TO MAKE SURE I DIDN'T CROSS THE LINE ON VIOLATING ANY PROBLEMS WITH CLOSING ARGUMENTS AND TRIED TO FIGURE OUT WHAT THE LIMITS WERE AND NOT TO EXCEED THOSE LIMITS.

Q OKAY. AND SOME OF THOSE LAWS HAVE CHANGED SINCE YOU HANDLED THOSE CASES IN 1999, HAVEN'T THEY?

A THE LAW AS FAR AS CONDITIONS OF INCARCERATION HAS CHANGED. I BELIEVE AT THE TIME OF THAT TRIAL, THE DEFENSE OPENED THE DOOR TO CONDITIONS OF INCARCERATION AND THE STATE COULD GET INTO IT AND YOU'D HAVE BOTH SIDES TESTIFYING AS TO WHAT WERE CONDITIONS OF INCARCERATION.

Q OKAY.

A THAT DOOR, I THINK, WOULD PROBABLY HAVE BEEN OPENED BASED ON MISTER AIKEN'S TESTIMONY THAT HE GENERALLY GAVE ABOUT HOW HARD CONDITIONS WERE IN PRISON AND, IN FACT, THAT DID HAPPEN ON OTHER OCCASIONS WHERE I CROSSED MISTER AIKEN ON CONDITIONS OF INCARCERATION AFTER HE OPENED THE DOOR TO IT.

Q OKAY. AND IN YOUR BOOK, DID YOU ANALYZE A CASE BY THE SOUTH CAROLINA SUPREME COURT FROM 1989 BEFORE YOU TRIED THIS CASE CONCERNING SOLICITOR'S ARGUMENTS ON ADAPTABILITY TO PRISON?

A I WOULD HAVE READ THE ENTIRE BOOK PRIOR TO TRIAL AND SO, IF IT

WAS IN THERE, THEN YEAH, I WOULD HAVE RUN INTO IT. I CAN'T RECALL THE SPECIFIC CASE.

Q I WANT TO SHOW YOU A PORTION OF YOUR BOOK, *ADAPTABILITY TO PRISON*, PAGE 267, AND SEE IF THAT REFRESHES YOUR RECOLLECTION. (HANDS BOOK TO WITNESS)

A I THINK YOU'RE REFERENCING STATE VERSUS PATTERSON.

Q AND WITHIN YOUR BOOK, WHAT DID PATTERSON STATE, THAT YOU ARE ASSESSING?

A THAT THERE WAS NO ERROR IN THE SOLICITOR ARGUING THAT INMATES COME AND GO AS THEY PLEASE, THEY CAN COME OUT FOR VISITS, THEY HAVE TO REPORT BACK TO THEIR CELLS FOR EVENING MEALS.

Q AND AT THE TIME YOU TRIED THE CASE, WAS THERE A QUESTION AS TO WHETHER YOU COULD ASK THE JURY TO PUT THEMSELVES IN THE SHOES OF THE VICTIM IN MAKING A DETERMINATION OF WHETHER, IN FACT, THIS DEFENDANT COMMITTED THE CRIME IN THE WAY HE DID, WHETHER THE VICTIM SUFFERED IN A CERTAIN MANNER?

A YEAH. YOU'RE ASKING IF THERE WAS CASE LAW AT THAT TIME THAT DEALT WITH THAT ISSUE?

Q YES.

A YEAH. I BELIEVE THERE WAS. I COULDN'T CITE A CASE AT THIS POINT IN TIME. THE REASON I GOT INTO THAT WAS THAT PHYSICAL TORTURE WAS ONE OF THE AGGRAVATING CIRCUMSTANCES AND WHAT THE VICTIM WAS GOING THROUGH WAS PART AND PARCEL, INDISPENSABLE PART AND PARCEL TO THE PHYSICAL TORTURE AGGRAVATOR.

Q AND THE PORTION OF PHYSICAL TORTURE AGGRAVATOR BEING THE VICTIM WAS ACTUALLY SUFFERING PAIN AT THE TIME OF THAT PARTICULAR EVENT. IS THAT CORRECT?

A BASED ON THE PATHOLOGIST'S TESTIMONY, SHE WAS IN EXCRUCIATING PAIN.

MR. ZELENKA: I DON'T THINK I HAVE ANY FURTHER QUESTIONS OF SOLICITOR BAILEY AT THIS TIME.

THE COURT: CROSS?

MR. MORTON: THANK YOU VERY MUCH, YOUR HONOR.

CROSS EXAMINATION OF SOLICITOR BAILEY BY MISTER MORTON

Q SOLICITOR BAILEY, HAD YOU EVER USED LIFECODES BEFORE 1999?

A BEFORE 1999, I MAY HAVE, I CAN'T REMEMBER. IT SEEMS LIKE I HAVE USED THEM MORE THAN ONCE OR SLED HAD USED THEM MORE THAN ONCE.

Q HAD YOU EVER HAD DOCTOR MICHAEL BAIRD TESTIFY FOR YOU BEFORE?

A I DON'T RECALL.

Q YOU DON'T RECALL WHETHER YOU HAD OR NOT OR YOU DON'T RECALL EVER HAVING USED HIM?

A I DON'T RECALL WHETHER OR NOT, OTHER THAN THIS PARTICULAR CASE, I HAD EVER CALLED DOCTOR BAIRD AS A WITNESS. I MIGHT HAVE, I MIGHT NOT HAVE. I DON'T RECALL.

Q IF HE HAD, YOU DON'T REMEMBER IT.

A IF I DID, I DON'T REMEMBER IT.

Q OKAY. AND YOUR TESTIMONY HERE TODAY IS THAT WHAT YOU

RECEIVED FROM LIFECODES AND DOCTOR BAIRD, YOU FORWARDED ON TO MISTER THEOS.

A YES.

MR. MORTON: I HAVE NO FURTHER QUESTIONS, YOUR HONOR.

THE COURT: RE-DIRECT?

MR. ZELENKA: NOTHING ON REDIRECT.

THE COURT: THANK YOU, MISTER BAILEY.

MR. BAILEY: THANK YOU, JUDGE.

THE COURT: MAY MISTER BAILEY BE EXCUSED FROM HIS SUBPOENA?

MR. ZELENKA: NO OBJECTION.

MR. MORTON: THAT'S FINE WITH US, YOUR HONOR.

THE COURT: ANY ADDITIONAL WITNESSES FOR TODAY BY THE DEFENSE?

MR. MORTON: NO, YOUR HONOR.

THE COURT: ANYTHING FOR THE RECORD BY THE STATE BEFORE WE BREAK FOR TODAY?

MR. ZELENKA: NOTHING.

THE COURT: BY THE APPLICANT?

MR. MORTON: NO, SIR, YOUR HONOR.

THE COURT: AS YOU ALL KNOW, TOMORROW WE WILL NOT BE HAVING TESTIMONY AND SO WE WILL NOT BE HERE TOMORROW. THURSDAY WE WILL BE STARTING LATE. MISTER ZELENKA HAS THAT ARGUMENT IN THE SOUTH CAROLINA SUPREME COURT AND SO LET ME SEE THE LAWYERS IN CHAMBERS, PLEASE, AND WE WILL STAND AT EASE FOR A FEW MINUTES. I WILL INFORM EVERYBODY AS TO WHAT TIME.

(COURT ADJOURNS AT 12:05 P.M.)

FEBRUARY 4 - AFTERNOON RESUMES AT 1:00 P.M.)

MR. MORTON: YOUR HONOR, JUST A FEW HOUSEKEEPING MATTERS BEFORE WE GET STARTED. I HAD IDENTIFIED MISTER AIKEN'S C-V BUT IT WAS NOT ADMITTED AND I DON'T THINK MISTER ZELENKA HAS AN OBJECTION, SO WE WOULD ---

MR. ZELENKA: NO OBJECTION.

MR. MORTON: IT WILL BE AFFIANT'S EXHIBIT #7.

THE COURT: WHAT WAS #6?

COURT REPORTER: HIS I.Q. TEST RESULTS, MISTER SIMMONS'.

THE COURT: ALL RIGHT.

(WHEREUPON, DR. AIKEN'S C-V IS ENTERED INTO EVIDENCE APPLICANT'S EXHIBIT #7, WITHOUT OBJECTION)

MR. MORTON: AND YOUR HONOR, I THINK MISTER YOUNG HAS SOME INTRODUCTIONS AS WELL.

MR. YOUNG: YOUR HONOR, WE PRE-MARKED THE EXHIBITS. AT THIS TIME, I'D CALL DOCTOR STEPHEN LAMBERT TO THE STAND.

THE COURT: MISTER LAMBERT. PLACE YOUR LEFT HAND ON THE BIBLE AND RAISE YOUR RIGHT, PLEASE.

(AFTER BEING DULY SWORN BY THE CLERK OF COURT, DOCTOR STEPHEN LAMBERT TESTIFIED AS FOLLOWS:)

CLERK OF COURT: PLEASE HAVE A SEAT AND STATE YOUR NAME FOR THE COURT REPORTER.

DR. LAMBERT: STEVE LAMBERT. L-A-M-B-E-R-T.

DIRECT EXAMINATION OF DR. STEVE LAMBERT BY MISTER YOUNG

Q DOCTOR LAMBERT, CAN YOU TELL ME HOW YOU BECAME INVOLVED IN THE CASE OF MISTER SIMMONS?

A I WAS CONTACTED BY EMILY PAAVOLA TO REVIEW THE FORENSIC DNA TESTING IN THIS CASE.

Q AS FAR AS THE DNA TESTING GOES, CAN YOU GIVE ME A THUMBNAIL SKETCH OF YOUR EXPERIENCE AND QUALIFICATIONS TO REVIEW DNA?

A OKAY. I'VE GOT A BACHELOR'S DEGREE IN CHEMISTRY FROM MARS HILL COLLEGE. I HAVE A Ph.D. IN BIOCHEMISTRY FROM THE UNIVERSITY OF SOUTH CAROLINA IN 1990. AFTER RECEIVING MY Ph.D., I WAS EMPLOYED AT THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION IN THEIR FORENSIC DNA LABORATORY AS A DNA ANALYST AND REMAINED IN THE FORENSIC DNA LAB AT SLED UNTIL 2008. SINCE THEN, I'VE RETIRED. WHILE AT SLED, I PERFORMED ANALYSIS ON THOUSANDS OF CASES, ATTENDED THE FBI ACADEMIES, FORENSIC DNA TYPING CLASS IN QUANTICO, VIRGINIA AND IN 1990 I WAS ALSO A VISITING SCIENTIST AT THE FBI RESEARCH FACILITY IN QUANTICO IN THE SUMMER OF 1990. I TRAINED UNDER THE SUPERVISION OF A COURT QUALIFIED ANALYST AT THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION AND HAVE ATTENDED NUMEROUS SYMPOSIA AND MEETINGS SINCE THEN.

Q LET ME SHOW YOU WHAT HAS BEEN MARKED AS APPLICANT'S EXHIBIT #8 AND ASK IF YOU RECOGNIZE THAT.

A YES, SIR. THIS IS MY CURRICULUM VITAE.

MR. YOUNG: YOUR HONOR, AT THIS TIME WE WOULD OFFER APPLICANT'S EXHIBIT #8 INTO EVIDENCE.

THE COURT: ANY OBJECTIONS, MISTER ZELENKA?

MR. ZELENKA: NO OBJECTION.

(WHEREUPON, DR. LAMBERT'S CURRICULUM VITAE IS ENTERED INTO EVIDENCE AS APPLICANT'S EXHIBIT #8, WITHOUT OBJECTION)

MR. YOUNG: YOUR HONOR, AT THIS TIME WE'D ASK THAT DOCTOR LAMBERT BE QUALIFIED AS AN EXPERT IN THE AREA OF FORENSIC DNA AND STATISTICAL ANALYSIS.

THE COURT: ANY CROSS EXAMINATION OF HIS QUALIFICATIONS?

MR. ZELENKA: NONE, YOUR HONOR.

THE COURT: ADMITTED FOR THAT PURPOSE AS AN EXPERT.

Q DOCTOR LAMBERT, CAN YOU TELL US WHAT ALL YOU LOOKED AT TO EXAMINE THE DNA ISSUES INVOLVED IN MISTER SIMMONS' CASE?

A YES, SIR. I RECEIVED COPIES, BOTH ELECTRONIC AND HARD COPIES, OF THE MATERIAL THAT WAS PROVIDED BY LIFECODES, WHICH WAS THE COMPANY WHICH DID THIS ORIGINAL TESTING OUT OF NEW YORK. THEY PROVIDED IT TO THE DEFENSE BACK AT THE TIME OF TRIAL. I REVIEWED THAT DATA. I ALSO REVIEWED THE TRANSCRIBED TESTIMONIES OF MS. CRANE AND DOCTOR BAIRD FROM THE ORIGINAL TRIAL.

Q DID YOU REVIEW MISTER THEOS' FILE?

A I DID.

Q AND AT SOME POINT IN TIME, DID YOU GO LOOK AT THE PHYSICAL EVIDENCE, OR WHAT WAS LEFT OF THE PHYSICAL EVIDENCE?

A I DID.

MR. YOUNG: YOUR HONOR, JUST FOR HOUSEKEEPING PURPOSES, MY UNDERSTANDING IS THAT THE TRIAL TRANSCRIPT HAS BEEN ADMITTED INTO

EVIDENCE. I JUST WANT TO MAKE SURE I'M CORRECT ON THAT.

MR. ZELENKA: IT IS A PART OF THIS RECORD. IT HAS NOT BEEN ADMITTED, BUT ---

THE COURT: IT HASN'T BEEN ADMITTED, BUT IT'S ALWAYS A PART OF THE RECORD. I DON'T THINK YOU HAVE TO ADMIT IT. IT IS PART OF THE RECORD.

MR. YOUNG: THANK YOU.

Q DOCTOR LAMBERT, I'M GOING TO SHOW YOU WHAT HAS BEEN MARKED AS APPLICANT'S EXHIBIT #9. (SHOWS DOCUMENT TO MISTER ZELENKA, WHO DISCUSSES THE DOCUMENT WITH MS. PAAVOLA)

MR. ZELENKA: NO OBJECTION, YOUR HONOR.

THE COURT: ALL RIGHT. AND, #9 IS WHAT?

MR. YOUNG: THE FILE FROM LIFECODES ---

MR. ZELENKA: FROM ORCHID CELLMARK.

MR. YOUNG: FROM ORCHID CELLMARK, WHO MANAGES THE FILES OF THE FORMER LIFECODES FACILITY.

THE COURT: WITHOUT OBJECTION.

(WHEREUPON, A LIFECODES FILE IS ENTERED INTO EVIDENCE AS APPLICANT'S EXHIBIT #9, WITHOUT OBJECTION)

MR. YOUNG: YOUR HONOR, AT THIS TIME WE WOULD OFFER APPLICANT'S EXHIBIT #10, THE AFFIDAVIT OF JOAN GULLIKSEN, SAYING THAT IS THE FULL FILE THAT SHE SENT US, HIGH-QUALITY SCANS OF THE DNA RUNS.

THE COURT: WITHOUT OBJECTION.

(WHEREUPON, THE GUILLIKSEN' AFFIDAVIT IS ENTERED INTO EVIDENCE

AS APPLICANT'S EXHIBIT #10, WITHOUT OBJECTION)

Q DOCTOR LAMBERT, WHEN YOU WENT THROUGH THE CODES FROM THE FILE, FROM ORCHID CELLMARK -- I'M JUST GOING TO SAY ORCHID CELLMARK BECAUSE THAT'S WHO WAS MANAGING THE FILE AND WHO SENT US THE FILE. DID YOU GO THROUGH THAT FILE AND COMPARE IT WITH THE DEFENSE ATTORNEY'S FILE?

A I DID.

Q DID YOU NOTICE ANYTHING THAT WAS CONTAINED IN THE FILE FROM ORCHID CELLMARK THAT WAS NOT CONTAINED IN THE DEFENSE ATTORNEY'S FILE?

A I DID.

Q I'LL SHOW YOU WHAT HAS BEEN MARKED APPLICANT'S EXHIBIT #16 AND ASK IF YOU RECOGNIZE THAT.

A I RECOGNIZE THIS. THIS IS MARKED AS PAGE FIFTEEN FROM THE ORCHID CELLMARK FILE THAT THEY PROVIDED THAT IS NOT PRESENT IN MISTER THEOS' FILE.

Q OKAY. AND WE WILL COME BACK TO THAT PAGE.

MR. YOUNG: AT THIS TIME, I WOULD OFFER APPLICANT'S EXHIBIT #16 INTO EVIDENCE.

THE COURT: ANY OBJECTION TO #16?

MR. ZELENKA: NO OBJECTION.

(WHEREUPON, PAGE FIFTEEN FROM THE ORCHID CELLMARK FILE IS ENTERED INTO EVIDENCE AS APPLICANT'S EXHIBIT #16, WITHOUT OBJECTION)

Q DOCTOR LAMBERT, CAN YOU TELL US A LITTLE BIT ABOUT WHAT DNA

TESTING WAS PERFORMED IN MISTER SIMMONS' CASE, WHAT WERE THE ORIGINAL SAMPLES AND WHAT DID THEY DO TO THEM?

A THE SAMPLES THAT WERE TESTED AT LIFECODES WERE THE SEXUAL ASSAULT EVIDENCE THAT WAS COLLECTED FROM MS. BOYD'S BODY AT THE AUTOPSY. THEY IDENTIFIED SEMEN AT THE SLED LABORATORY. HOWEVER, THERE WASN'T ENOUGH TO PERFORM THE TESTING THAT WE WERE PERFORMING AT THE TIME. MS. LILLY GALLMON WAS THE CASE ANALYST ON THIS CASE, DETERMINED THERE WASN'T ENOUGH TO DO RFLP TESTING WHICH WAS THE TESTING THAT SLED WAS DOING BACK IN '96. SO, THERE WERE PRIVATE LABORATORIES THAT DID A MORE SENSITIVE TYPE OF TESTING. THAT IS, THEY COULD TEST SMALLER AMOUNTS OF MATERIAL AND IT WOULD, THROUGH CONSULTATION WITH THE SOLICITOR IN THIS CASE, IT WAS DECIDED TO SEND IT OUT TO LIFECODES, WHICH IS THE LABORATORY IN NEW YORK THAT WAS PERFORMING THE MORE SENSITIVE KIND OF TESTING.

Q WHAT'S THAT TESTING CALLED, THE SENSITIVE TESTING?

A ALL OF THOSE TESTS EMPLOY WHAT IS CALLED PCR, WHICH IS POLYMERASE CHAIN REACTION WHICH IS A PROCEDURE THAT'S NOT UNIQUE TO FORENSICS, BUT WHAT IT DOES IS, IT TAKES SMALL AMOUNTS OF DNA AND CREATES MULTIPLE COPIES OF THAT. WHEN WE DID THE RFLP TESTING, YOU COULD ONLY TEST WHAT YOU COLLECTED FROM THE CRIME SCENE. WHEN YOU DO PCR TESTING, YOU DUPLICATE, BASICALLY XEROX THOUSANDS AND MILLIONS OF COPIES OF DNA THAT'S THE EXACT DUPLICATE OF YOUR ORIGINAL STARTING MATERIAL. THAT WAY YOU CAN TEST MATERIALS THAT YOU

NEVER WERE ABLE TO TEST BEFORE.

Q OKAY. AND IN THE TRIAL TESTIMONY, THEY'VE TALKED ABOUT THIS DQ ALPHA TEST. WHAT IS THAT?

A DQ ALPHA WAS ONE OF THE TESTS THAT WAS DEVELOPED TO USE PCR AS A MEANS OF EXAMINING DNA. DQ ALPHA IS A LOCATION ON OUR DNA AND DQ ALPHA HAS SIX TYPES THAT ARE ABLE TO BE DETERMINED AT THAT LOCATION. YOU GET TWO TYPES WHEN YOU ARE CONCEIVED. YOU GET ONE OF THOSE TYPES FROM YOUR MOM, ONE OF THEM FROM YOUR DAD, SO TYPICALLY YOU'RE GOING TO HAVE, WITH YOUR DQ ALPHA TYPE, YOU ARE GOING TO HAVE, SAY YOU'RE A 2-3. YOU HAVE TWO FROM MOM, YOU GOT THREE FROM DAD OR POTENTIALLY, YOU COULD GET THE SAME THING FROM MOM AND DAD, YOU COULD BE A 2-2. IT ALL JUST DEPENDS ON WHAT YOUR PARENTS HAVE. BUT DQ ALPHA IS A SITE ON THE DNA THAT'S DIFFERENT FROM PERSON TO PERSON.

Q DID YOU PREPARE A SERIES OF SLIDES TO HELP EXPLAIN THE DQ ALPHA ISSUES IN THIS CASE?

A YES.

Q THIS HAS BEEN MARKED AS APPLICANT'S EXHIBIT #15. I'D ASK IF YOU RECOGNIZE THAT.

A YES. I DO. THESE ARE THE SLIDES THAT I PREPARED FOR DQ ALPHA POLYMARKER.

Q WOULD THESE SLIDES ASSIST YOU IN TELLING THE COURT ABOUT THIS TESTING AND THESE ALLELE ISSUES?

A YES.

MR. YOUNG: YOUR HONOR, AT THIS TIME I WOULD ASK TO DISPLAY THESE SLIDES. I'D MOVE APPLICANT'S EXHIBIT #15 INTO EVIDENCE.

THE COURT: MISTER ZELENKA?

MR. ZELENKA: YOUR HONOR, THIS IS THE FIRST TIME I'VE SEEN THESE. LET ME...(LOOKS AT DOCUMENT)

THE COURT: WELL, I AM GOING TO LET HIM USE IT FOR DEMONSTRATIVE PURPOSES RIGHT NOW AND THEN AFTER WE GO THROUGH EVERYTHING, WE'LL DEAL WITH THE INTRODUCTION.

Q DOCTOR LAMBERT, IF YOU CAN, TELL US WHAT IS THIS THAT WE ARE LOOKING AT HERE? (DISPLAYING IMAGE ON LARGE SCREEN)

A WHAT YOU ARE LOOKING AT IS A CARTOON THAT I PREPARED, BASICALLY, OF A STRIP THAT'S USED TO DO THE DQ ALPHA TESTING. AND DQ ALPHA, ON THIS PARTICULAR TEST, THERE WERE SIX ALLELES OR TYPES THAT YOU COULD DETECT. AND WHAT HAPPENED WAS, YOU TOOK DNA FROM THE CRIME SCENE, YOU RAN IT THROUGH THE PCR PROCESS, YOU AMPLIFIED IT, SPECIFICALLY AT THE DQ ALPHA SPOT ON OUR HUMAN DNA AND THEN YOU TOOK THAT DNA THAT YOU AMPLIFIED AND YOU PLACED IT IN A BATH WITH THESE STRIPS AND ON THESE STRIPS WERE OTHER PIECES OF DNA THAT RECOGNIZED THE DIFFERENT DQ ALPHA TYPES. YOUR DQ ALPHA TYPE THAT CAME FROM YOUR EVIDENCE WOULD WASH OVER THE STRIP THAT WOULD FIND ITS SPOT AND THEN IT WOULD STICK TO THAT CIRCLE. THERE WOULD BE A COLOR REACTION OCCUR AND YOU WOULD GET BASICALLY DOTS ON A STRIP THAT THE ANALYST WAS ABLE TO READ. NOW, THE TYPES THAT SHOW UP ON THE STRIPS; YOU'VE GOT TYPE 1, 2, 3, AND 4, BUT

THERE WERE SUBTYPES OF 1. THERE WERE ACTUALLY A 1.1, A 1.2 AND A 1.3 AND SO YOU'VE GOT THREE SUBTYPES OF 1 AND THEN IT ALSO TURNS OUT THAT YOU'VE GOT THREE SUBTYPES OF 4, BUT YOU CAN ONLY DISTINGUISH BETWEEN THE 4.1, YOU COULD DISTINGUISH IT AND IDENTIFY IT. 4.2 AND 4.3 WERE SO SIMILAR THAT THEY BOUND TO THE SAME DOT. SO, THIS IS WHAT THE TESTS LOOKED LIKE. YOU ALSO HAVE A "C" DOT HERE WHICH WAS A CONTROL, AN INTERNAL CONTROL. IT AMPLIFIED SOMETHING COMPLETELY DIFFERENT THAN DQ ALPHA AND IF IT WORKED, THAT INDICATED THAT YOUR REAGENTS AND YOUR TEMPERATURE AND EVERYTHING THAT YOU SET UP WORKED, TO SHOW THAT THE TEST WORKED. SO, IN THIS FIRST SLIDE, ACROSS THE TOP, THIS REPRESENTS THE STRIP THAT MS. BOYD, HER DNA WAS AMPLIFIED AND WASHED ONTO THIS STRIP AND THIS WAS WHAT HER DQ ALPHA TYPE SHOWED UP TO BE. SHE WAS A 2, BECAUSE THE 2 DOT BLACKENED AND ALSO A 4. AND THEN YOU CAN DISCRIMINATE BETWEEN, AT THE FAR END OF THE STRIP OVER HERE, SHE WAS ACTUALLY A 4.2/4.3. SO THAT WAS THE DQ ALPHA TYPE OF MS. BOYD. SHE WAS A 2, 4.2, 4.3.

Q DOES THAT MEAN YOU DON'T KNOW WHETHER OR NOT SHE'S A 4.2 OR A 4.3? THE TEST JUST KIND OF LUMPS THEM TOGETHER?

A RIGHT.

Q OKAY. AND HOW ABOUT THE NEXT LINE DOWN?

A THE NEXT LINE DOWN IS A REPRESENTATION OF A VAGINAL SWAB THAT, THEY TOOK THAT VAGINAL SWAB, THEY EXTRACTED THE SEMEN OFF OF THAT SWAB. THEY SPLIT UP THE SPERM AND THE, WHAT'S

CALLED THE FEMALE FRACTION, THE VAGINAL CELLS, THE PATETEIAL CELLS FROM THE VICTIM'S VAGINA, AS BEST THEY COULD THEY SEPARATED THOSE INTO TWO FRACTIONS AND TESTED THEM SEPARATELY. THIS REPRESENTS WHAT WAS CALLED A MALE FRACTION OR THE SPERM FRACTION. SO, THIS WOULD BE WHATEVER CAME FROM THAT SPERM FRACTION FROM HER TEST. UNFORTUNATELY, IT WASN'T PURE SPERM AND THAT -- WE SEE THAT QUITE OFTEN, ESPECIALLY BACK IN '96. WE'RE BETTER AT SEPARATING THOSE FRACTIONS OUT NOW THAN WE WERE BACK THEN. BUT YOU'D SEE A MIXTURE AND THAT'S WHAT WE SEE IN THIS CASE. THE TYPE THAT TYPED OUT FROM THAT STRIP, WE SEE A 1.1 AND MS. BOYD DOES NOT HAVE A 1 ALLELE OR A 1 DOT. AND SO NOW THIS IS GOING TO COME FROM SOMEBODY OTHER THAN MS. BOYD AND IN THIS CASE FROM THE SEMEN DONOR. THE 2, BELONGS TO MS. BOYD, BUT IT POTENTIALLY COULD BELONG TO ANYONE ELSE THAT COULD HAVE CONTRIBUTED TO THAT SAMPLE. WE DON'T KNOW BECAUSE IT'S A MIXTURE. IDEALLY, WE WOULD LIKE TO HAVE THE SEMEN DONOR'S DNA ALL BY ITSELF WITH JUST TWO NUMBERS, JUST LIKE MS. BOYD HAS. A 2, 4 ALLELE. IN THIS CASE, WE'VE GOT MULTIPLE ALLELES. SO, WE'VE GOT A 2, NOW. THERE'S AN ASTERISK HERE, WHICH IS USED IN THIS NOMENCLATURE BECAUSE UNFORTUNATELY, THEY CAN'T DISTINGUISH THE 1.2 TYPE OUT BY ITSELF. YOU CAN ONLY INFER ITS PRESENCE BECAUSE THERE IS NOT A DOT SPECIFICALLY FOR THE 1.2. AND I'LL SHOW YOU THAT IN A SECOND WHEN WE LOOK AT MISTER SIMMONS' TYPE. AND THERE ALSO WAS A 4 DOT LIT UP, SO

NOW YOU MOVE TO THE OTHER END OF THE STRIP AND YOU SEE THAT THE 4.2, 4.3 DOT LIT UP. SO, WE KNOW IT'S A MIXTURE BECAUSE TO HAVE TYPES, MORE THAN JUST TWO TYPES HERE: A 1.1, 2, NOW THE POTENTIAL FOR THAT 1.2 AND ALSO THE 4.2, 4.3. YOU'VE ONLY GOT TWO PARENTS, SO YOU'RE ONLY GOING TO GET ONE NUMBER FROM EACH PARENT, SO IN THIS CASE, WE KNOW THAT WE'VE GOT A MIXTURE OF TWO INDIVIDUALS. BECAUSE IT CAME FROM MS. BOYD AT HER AUTOPSY, WE'RE CONFIDENT THAT SHE IS ONE OF THE INDIVIDUALS. SO, YOU CAN SEE EVERYTHING HERE THAT MS. BOYD HAS, YOU ALSO SEE THAT DOT LIT UP ON THE EVIDENCE AND THAT'S BECAUSE SHE'S PART OF THE MIXTURE. AND SO THE OTHER PERSON IS THE PERSON OF INTEREST. THAT'S THE SEMEN DONOR.

Q DO YOU KNOW, BASED ON THIS, DO YOU KNOW HOW MANY PEOPLE COULD HAVE CONTRIBUTED TO THIS SAMPLE? DO YOU KNOW THAT IT'S JUST MS. BOYD AND ONE PERPETRATOR?

A NO.

Q WHY NOT?

A BECAUSE OF THE WAY THIS TEST IS SET UP, THERE CAN BE ANYWHERE FROM TWO PEOPLE, WE KNOW THERE IS AT LEAST TWO, BUT WE DON'T KNOW AT THE TOP END HOW MANY PEOPLE ARE CONTRIBUTING TO THIS. IF ALL THE DOTS LIT UP, THEN WE WOULD KNOW THAT YOU WOULD HAVE MULTIPLE PEOPLE AND SO IT'S SOMEWHERE IN BETWEEN TWO AND QUESTION MARK. IT COULD JUST BE TWO; BUT THERE COULD BE MORE PEOPLE THAT CONTRIBUTED TO THAT STRIP.

Q OKAY. TELL ME ABOUT MISTER SIMMONS' NUMBERS IN THIS 1.2 ISSUE.

A MISTER SIMMONS' NUMBERS ARE HERE ON THE BOTTOM. YOU SEE HERE, HE IS A 1 AND HE DOESN'T HAVE A 2, 3 OR 4 LIGHT UP. SO, HE'S A 1 SOMETHING. AND SO WE MOVE ON THE OTHER SIDE OF THE CHART, HE'S A 1.1. SO, THAT'S GOT A, THE 1.1 HAS A DOT THAT'S EXCLUSIVE TO IT. AND SO WE KNOW THAT AT LEAST HE'S A 1.1. THE 1.2, 1.3, 4 DOT LIT UP SO THAT MEANS THAT HE IS NOW EITHER A 1.2, 1.3. HE CAN'T BE A 4, BECAUSE HIS 4 DOT DIDN'T LIGHT UP OVER HERE AND HIS 1.3 DOT DIDN'T LIGHT UP AND SO BECAUSE HE'S A SINGLE SOURCE SAMPLE, IT CAME EXCLUSIVELY FROM HIM. IT WASN'T MIXED WITH ANYTHING ELSE. WE KNOW BY INFERRING THAT HE'S A 1.1, 1.2. THAT'S THE REASON YOU HAVE ALL THE 1.3 DOT AND THIS PORTION OF THE STRIP HERE. IT'S CONFUSING. IT ISN'T THE IDEAL TEST. THE IDEAL TEST WOULD BE TO SEE EVERY SINGLE ALLELE LIGHT UP BUT THIS WAS THE BEST THEY COULD DO AND THIS WAS ACTUALLY THE BEST THAT TEST EVER GOT TO BE.

Q SO, IT'S MY UNDERSTANDING THAT THE 1.2 ALLELE IS FOUND BY THE PROCESS OF ELIMINATION?

A RIGHT. IT DOESN'T HAVE A DOT THAT'S EXCLUSIVE TO IT AND THAT WAS BROUGHT OUT IN THE ORIGINAL TRIAL.

Q DOES THAT CREATE A PROBLEM WHEN YOU'RE LOOKING AT THE VAGINAL SWAB?

A IT DEFINITELY DOES AND IT SHOULD BE NOTED THAT LIFECODES DID NOT HAVE MISTER SIMMONS' SAMPLE WHEN THEY DID THE ORIGINAL TESTING AND SO WHEN THEY ORIGINALLY REPORTED THIS ON THE ORIGINAL REPORT, THEY DISPLAYED THIS TYPE AS A 1.1, 2, AND THEN

THEY HAD TO TAKE INTO ACCOUNT THE POSSIBILITY OF THAT 1.2. THEY REPORTED THAT CORRECTLY. AND THEN THE 4.2, 4.3. SO THEY REPORTED IT OUT CORRECTLY. BUT THERE'S NOT ONLY MISTER SIMMONS, HIS TYPE COULD CONTRIBUTE TO THAT TO GIVE YOU THIS DNA TYPE. HIS TYPE IS ONE OF THE ONES THAT COULD CONTRIBUTE TO IT, BUT THERE ARE OTHER DQ ALPHA TYPES THAT COULD POSSIBLY CONTRIBUTE TO THAT.

Q AND DID YOU PREPARE A SLIDE ON THOSE TYPES?

A YES. (CHART PORTRAYED ON THE SCREEN) IF YOU LOOK AT THE VAGINAL SWAB UP TOP, WE SAW THIS ON THE PREVIOUS SLIDE, THESE ARE THE OTHER POSSIBLE TYPES THAT COULD CONTRIBUTE TO THIS STRIP THAT COULD POTENTIALLY BE DONORS TO THIS DNA. THE FIRST ONE WOULD BE SOMEBODY WHO HAS A 1.1, 1.1. SO WE'VE GOT THE 1 HERE AND THE 1.1 DOT LIGHTS UP AND YOU CAN SEE, YOU CAN BASICALLY OVERLAY THIS TYPE OVER THAT AND THERE WOULDN'T BE ANY MORE DOTS THAT LIT UP. THE 3 DOT DOESN'T LIGHT UP. IT'S NOT LIT HERE. THE 1.3 ISN'T GOING TO LIGHT UP, THE 4.1. YOU COULD COMBINE THIS 1.1, 1.1 PERSON WITH MS. BOYD AND GET THE SAME EXACT RESULT THAT YOU GOT FOR THE VAGINAL SWAB FROM THE EVIDENCE. THE SAME THING FOR A 1.1, 2 INDIVIDUAL. NOW, WE SHOWED ON THE PREVIOUS SLIDE THAT MISTER SIMMONS IS A 1.1, 1.2 AND SO HIS TYPE IS ALSO INCLUDED. THE 1.1, 1.1 TYPE IS INCLUDED. THE 1.1, 2 INDIVIDUAL WOULD BE INCLUDED BECAUSE AGAIN, THAT 3 DOT IS NOT GOING TO LIGHT UP. YOU CAN TAKE THIS STRIP RIGHT HERE, OVERLAY IT ON THAT RIGHT THERE AND GET THE SAME RESULT.

THE LAST TYPE THAT COULD POSSIBLY CONTRIBUTE TO THAT IS A PERSON WHO IS A 1.1, 4.2/4.3. YOU COULD TAKE THIS STRIP, OVERLAY IT ON THAT STRIP AND GENERATE THE SAME RESULTS AND SO THAT'S FOUR DIFFERENT TYPES THAT COULD POTENTIALLY HAVE CONTRIBUTED TO THAT EVIDENCE.

Q OKAY. THE TEST, ARE THERE OTHER MARKERS ASSOCIATED WITH THIS TEST?

A THERE ARE, IN ADDITION TO THIS TEST, THE COMPANY THAT CREATED THIS TEST CAME OUT WITH A SECOND, THAT KIND OF CORRELATED TO THIS TEST, CALLED A POLYMARKER AND THAT TEST WAS PERFORMED IN THIS CASE.

Q DID YOU PREPARE A SLIDE ON THIS?

A YES. (PORTRAYS ON SCREEN) THESE ARE THE POLYMARKER RESULTS FOR MS. BOYD'S DNA TYPE. THE "S" DOT HERE IS THE SAME THING AS THAT "C" DOT ON THE PREVIOUS SLIDE. IT'S THE TEST TO SHOW THAT IT WORKED AND SO YOU CAN SEE THAT IT WORKED ON ALL THREE OF THESE SAMPLES WHEN THEY TESTED THEM. SO, YOU GET INTO THIS TEST AND INSTEAD OF DQ ALPHA WHERE YOU ARE LOOKING AT ONE LOCATION, ON THIS TEST, YOU ARE LOOKING AT FIVE ADDITIONAL LOCATIONS FOR A TOTAL OF SIX. SO, IT'S DQ ALPHA WOULD BE ONE AND THEN THE FIVE ADDITIONAL ONES FROM POLYMARKER WOULD GIVE YOU A TOTAL OF SIX DIFFERENT DNA SITES THAT YOU WERE LOOKING AT. MS. BOYD HERE AT THIS LOCATION LDLR, THERE'S TWO POSSIBLE TYPES AND SO THEY KIND OF LEARNED THEIR LESSON WITH DQ ALPHA AND THEY SIMPLIFIED IT DOWN. THEY'VE GOT A TYPE "A", "B"

OR TYPE "AB" AT LDLR. THE SAME THING FOR THE GYPA; YOU'RE AN "A", "B" OR AN "AB" PERSON. FOR HBGG, THAT SITE, THERE ARE THREE POSSIBILITIES, "A", "B" OR "C". FOR D7S8, THERE ARE TWO POSSIBILITIES, "A" OR "B" AND THEN FOR THE GC LOCATION, THERE ARE THREE POSSIBILITIES, "A", "B", OR "C". SO, MS. BOYD TYPED OUT AT THE LDLR, SHE'S AN "AB". SHE WAS A "AB" AT THE GYPA. SHE WAS AN "A", "C" AT THE HBGG SITE AND SHE, AT D7S8, SHE WAS AN "A". AT GC, SHE WAS A "B". NOW, YOU LOOK AT THE EVIDENCE AND IF YOU SEE ANY DIFFERENCES BETWEEN MS. BOYD, WHO WE KNOW IS IN EVIDENCE, AND HER STANDARD, THEN THAT WOULD POTENTIALLY COME FROM THE PERPETRATOR, FROM THE SEMEN DONOR. SO, YOU LOOK AT THE LDLR, WELL, SHE'S AN "AB" BUT THE SEMEN DONOR HAD BEEN, HE COULD BE AN "A", HE COULD BE A "B", HE COULD BE AN "AB". THERE'S ALL THOSE POSSIBILITIES, SO YOU'RE BASICALLY EVERYBODY IN THIS ROOM COULD BE INCLUDED AT THIS LOCATION. THERE ARE ONLY TWO TYPES, THE "A" AND THE "B" AND SO SHE WOULD HAVE OBSCURED ANY DONATION FROM THE SEMEN DONOR. THE SAME PROBLEM AT GYPA. SHE'S AN "AB". SO, NEITHER OF THOSE TWO LOCATIONS, THE LDLR OR THE GYPA TELL US ANYTHING. WHEN YOU GET TO THE HBGG, NOW, SHE'S AN "A", "C", SO THAT OPENS UP THE POSSIBILITY FOR A "B" INDIVIDUAL, HOWEVER, WE JUST SAW THE "A" AND THE "C" DOTS LIGHT UP. SO, THOSE WERE CONSISTENT WITH MS. BOYD. SO, THE ONLY PEOPLE WHO ARE ELIMINATED AT THIS LOCATION WOULD BE PEOPLE IN THE POPULATION WHO WOULD HAVE A "B". SO, THAT DOES ELIMINATE SOME FOLKS. THESE DIDN'T ELIMINATE ANYBODY OUT OF

THE POPULATION. (INDICATING) BUT NOW, WE'RE WHITTLING IT DOWN A LITTLE BIT. YOU GET TO THE D7S8, SHE'S AN "A" AND YOU SEE THAT IN THE EVIDENCE, BUT YOU ALSO SEE A VERY LIGHT "B" SHOW UP AND THEY INDICATED THAT ON THE REPORT. IT WAS LIGHTER THAN THE "A". SO, WE KNOW THAT IN THE MIXTURE HERE, THERE'S MORE OF MS. BOYD THAN THERE WAS OF THE SEMEN DONOR. SO, THAT THE "B" IS LIGHT AND YOU GET TO THE GC LOCATION AND THE "A" AND THE "C" ALSO LIT UP AND THEY ARE VERY LIGHT, BUT THE "B" MATCHES MS. BOYD. SO, NOW WHAT THEY'VE LOOKED AT WHEN THEY'VE HAD MULTIPLE PEOPLE SUBMITTED IN THIS CASE TO COMPARE TO SEE IF THERE ARE POSSIBLE CONTRIBUTORS TO THIS SAMPLE, THEY PARTICULARLY HONED IN ON THE PRESENCE OF THIS "B" AND ALSO THIS "A" AND "C". YOU GET DOWN TO MISTER SIMMONS. HE'S A "B" PERSON. THAT DOESN'T DO YOU ANY GOOD BECAUSE EVERYBODY IS AN "AB" PERSON HERE. HE'S AN "AB" JUST LIKE MS. BOYD BUT AGAIN AT THE GYPA, THAT DOESN'T DO YOU ANY GOOD. AT THE HBGG, HE'S CONSISTENT WITH THE EVIDENCE HERE. HE'S AN "A", "C" PERSON. BUT IN ADDITION TO HIM, ANYBODY WHO IS AN "AA" PERSON, ANYBODY WHO'S A "CC" PERSON OR ANYBODY WHO'S AN "AC" PERSON COULD POSSIBLY BE INCLUDED IN THAT LOCATION. AT D7S8, HE'S AN "A", "B" PERSON. HE'S CONSISTENT WITH THE "B" SHOWING UP. NOW, IF YOU ASSUME AT GC THAT THERE IS ONLY ONE CONTRIBUTOR TO THIS SEMEN SAMPLE, WHICH CAN'T BE CLEAR BUT IT'S AN ASSUMPTION THAT THE LABORATORY MADE WHEN THEY WERE INCLUDING AND EXCLUDING PEOPLE, THE PERSON WHO CONTRIBUTED TO THIS

SAMPLE HAS TO BE AN "A", "C" PERSON. THAT WAS CONSISTENT WITH MISTER SIMMONS. BUT AGAIN, WE ARE NOT TALKING ABOUT IDENTITY HERE. WE'RE TALKING ABOUT JUST WHITTLING DOWN LITTLE BITS OF THE POPULATION. HE'S INCLUDED AS A POSSIBLE CONTRIBUTOR.

Q OKAY. IS THAT ALL THAT THEY DID AS FAR AS THE FIRST – DID THEY DO ANOTHER DNA TEST?

A THEY DID.

Q AND WHAT'S THAT TEST CALLED?

A THAT TEST IS CALLED THE CTT TEST AND IT BECOMES MORE SIMILAR TO THE TEST THAT WE CURRENTLY RUN AT THE STATE LAW ENFORCEMENT DIVISION. IT WAS A PRECURSOR TO THE TESTS THAT ARE CURRENTLY RUN. IT STANDS FOR THREE ADDITIONAL LOCATIONS THAT THEY ARE TESTING. CSF1PO, TPOX AND ANOTHER LOCATION CALLED THO1.

Q I'M GOING TO SHOW YOU WHAT'S BEEN INTRODUCED AS STATE'S EXHIBIT #1, WHICH IS THE INITIAL REPORT REGARDING THE DQ ALPHA AND THE POLYMARKER RESULTS FOR MISTER SIMMONS. IS THAT CORRECT?

A YES.

Q YOU'VE LOOKED THROUGH THAT REPORT?

A YES.

Q IS THERE AN ERROR ON THAT REPORT?

A THERE IS.

Q CAN YOU TELL ME WHAT'S WRONG WITH THAT REPORT?

A IN ADDITION TO SOME ASSUMPTIONS THAT THEY MADE AND THE WAY

THAT THEY QUOTED THEIR STATISTICS, THERE IS AN ERROR ON PAGE THREE OF THE REPORT UNDER THE "COMBINED FREQUENCY OF OCCURRENCE OF THE AFRICAN AMERICAN POPULATION" SO THEY'VE GOT THIS TABLE THAT SAYS, "RACE, BLACK." THE COMBINED FREQUENCY OF OCCURRENCE THEY LIST AS 81,103. THEY MADE A MATHEMATICAL OR TYPOGRAPHICAL ERROR. IT'S ACTUALLY 8110.3.

Q SO, 8110.3?

A THAT'S CORRECT.

Q THOSE WERE THE STATISTICS -- WHAT IS THAT A STATISTIC OF?

A WHAT THEY DID WAS THEY COMBINED THE RESULTS FOR THE TESTING OF MISTER SIMMONS. THEY TOOK THE HLADQA1 RESULT AND CALCULATED HOW RARE HIS DNA PATTERN AT DQ ALPHA WAS IN THE POPULATION AND THEY GOT ABOUT 7% OF THE POPULATION IN THIS TABLE ON PAGE THREE. THEN THEY CALCULATED FOR EACH ONE OF THOSE POLYMARKER SITES AND CALCULATED THE FREQUENCY OF THOSE AND THEY RANGE FROM ABOUT 60% OF THE POPULATION DOWN TO ABOUT 4% OF THE POPULATION FOR "GC". BECAUSE THESE ARE UNRELATED EVENTS, THERE'S A MATHEMATICAL FORMULA THAT SAYS YOU CAN MULTIPLY THOSE TOGETHER, IT'S CALLED THE PRODUCT RULE, AND GET A COMBINED FREQUENCY OF OCCURRENCE FOR THE ENTIRE PROFILE. AND SO, THEY TOOK THESE NUMBERS ON THIS CHART, MULTIPLIED THEM TOGETHER AND AGAIN, THEY GOT 81,103 BUT IT'S ACTUALLY 8,110.3.

Q IS THERE A LABORATORY PROCEDURE TO CORRECT FOR A MATHEMATICAL ERROR LIKE THAT?

A IF YOU DETERMINE THAT YOU'VE MADE AN ERROR IN A REPORT, THE PROCEDURE AT OUR LABORATORY AND EVERY OTHER LAB THAT I'M AWARE OF, ONCE YOU REALIZE THAT YOU'VE GOT AN ERROR IN THAT REPORT, YOU GO THROUGH A PROCESS OF ISSUING A CORRECTIVE REPORT.

Q DID THEY EVER DO THAT?

A THEY NEVER ISSUED A CORRECTIVE REPORT FOR THIS REPORT.

Q AND I'M GOING TO COME BACK TO THE RANDOM ACT PROBABILITY THAT -- THEY JUST CALCULATED THE PROBABILITY OF SOMEBODY EXACTLY LIKE MISTER SIMMONS?

A THAT'S CORRECT.

Q THEY DID NOT INCLUDE THE POSSIBILITY OF ANY ONE OF THESE OTHER GENOTYPES THAT YOU'VE TESTIFIED COULD HAVE CONTRIBUTED TO THE SAMPLE.

A THAT'S CORRECT. THEY MADE AN ERROR OF CALCULATING THE FREQUENCY OF MISTER SIMMONS' PROFILE WHEN ACTUALLY WHAT YOU CALCULATE IS THE FREQUENCY OF HOW OFTEN WOULD YOU EXPECT TO SEE THE EVIDENCE SHOW UP IN THE POPULATION. EVERY ONE OF US HERE IN THIS ROOM HAS A NUMBER ASSOCIATED WITH OUR DNA PROFILE AND IF YOU TEST ENOUGH SITES, YOU'VE PRETTY MUCH ESTABLISHED IDENTITY, UNLESS YOU'VE GOT AN IDENTICAL TWIN. WHAT WE'RE CONCERNED WITH AND WHAT LIMITS OUR NUMBER IS HOW RARE THE EVIDENCE IS. WE ALL KNOW THAT WE'RE INDIVIDUALS AND WE'RE UNIQUE. WHAT WE'RE CONCERNED WITH IS THE EVIDENCE. THEY MADE THE ERROR IN THEIR CALCULATIONS OF

QUOTING MISTER SIMMONS' DNA PROFILE WHICH IS COMPLETELY IRRELEVANT TO THE QUESTION OF HOW RARE IS THE EVIDENCE.

Q I'M ALSO GOING TO HAND YOU WHAT HAS BEEN MARKED AS – WHAT HAS BEEN INTRODUCED AS STATE'S EXHIBIT #2. IT'S TITLED "ADDITIONAL REPORT" AND IN THAT REPORT, I BELIEVE, THEY REPORT THE ADDITIONAL FINDINGS OF THE CTT TEST FOR MISTER SIMMONS. IS THAT CORRECT?

A THAT'S CORRECT.

Q DID THEY CORRECT FOR THE MATHEMATICAL ERROR IN THE ADDITIONAL REPORT?

A THE MATHEMATICAL MISTAKE, WHICH AGAIN IS SEPARATE FROM THE WAY THEY QUOTED THE STATISTICS, THEY APPARENTLY CORRECTED FOR IT. I DON'T KNOW IF THEY REALIZED THAT THEY MADE IT ON THE PREVIOUS REPORT OR THEY COMPLETELY RE-DID THEIR CALCULATIONS AND IT JUST WENT UNDER THE RADAR AND THEY NEVER REALIZED THEY MADE A MISTAKE, BUT THEY MANAGED TO CORRECT IT ON THE SECOND REPORT. HOWEVER, THEY STILL HAD THE PROBLEM THAT THEY WERE QUOTING A MEANINGLESS NUMBER. THEY ARE QUOTING MISTER SIMMONS' FREQUENCY OF HIS DNA PROFILE WHICH IS COMPLETELY IRRELEVANT TO THE EVIDENCE.

Q ALL OF YOUR NUMBERS ON HERE, THE "A" THE "B", THE TYPES, THERE'S ALL OF THAT REFLECTED IN STATE'S EXHIBIT #1? WHICH I GUESS WOULD BE, I GUESS IT WOULD JUST BE FOR MISTER SIMMONS.

A ACTUALLY, YEAH, THEY JUST PUT MISTER SIMMONS' TYPE IN STATE'S EXHIBIT #1.

Q WAS THERE AN EARLIER REPORT THAT REFLECTED THE RESULTS FOR MS. BOYD AND THE EVIDENTIARY SITE?

A THERE WAS.

Q DID ALL OF YOUR NUMBERS COME FROM THAT EARLIER REPORT WITH REGARD TO THE SAMPLE FOR MS. BOYD AND THE EVIDENCE SAMPLE?

A IT DID.

MR. YOUNG: YOUR HONOR, AT THIS TIME I WOULD RE-OFFER AFFIANT'S #15.

MR. ZELENKA: NO OBJECTION.

(WHEREUPON, THE DQA1 CHART IS ENTERED INTO EVIDENCE AS AFFIANT'S EXHIBIT #15, WITHOUT OBJECTION)

Q IN ADDITION TO REVIEWING THE FILE FROM LIFECODES/ORCHID CELLMARK, DID YOU HAVE AN OCCASION TO REQUEST ANOTHER COPY OF THE SCANS AND/OR GELS AND CAN YOU EXPLAIN WHAT THOSE ARE?

A YES, I DID. THE GELS IN PARTICULAR THAT I WAS INTERESTED IN GETTING A BETTER COPY OF WAS THE CTT GELS. THAT WAS THE LAST TESTING THAT WAS PERFORMED ON THE EVIDENCE AND ON MISTER SIMMONS'S STANDARD. THE COPIES WERE SO POOR IN THE FILES THAT THE DEFENSE WAS PROVIDED THAT I REQUESTED THEY GO BACK AND SCAN THE ORIGINAL COPIES.

Q I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS AFFIANT'S EXHIBIT #17 AND ASK YOU IF YOU RECOGNIZE THAT.

A THESE ARE THE SCANS THAT ORCHID CELLMARK PROVIDED FROM THAT ORIGINAL LIFECODES DATA FOR THE CTT. ALSO THEY INCLUDED

-- APPARENTLY THEY ALSO ATTEMPTED RLFP IN THIS CASE, BUT DIDN'T HAVE ANY LUCK WITH THE RESULTS. SO, THERE ARE RADIOGRAMS AND THEN THERE'S ACTUAL GEL SCANS FOR THE CTT.

Q WITH REGARD TO THE CTT TESTS, DID YOU FIND ANYTHING INTERESTING WITH REGARD TO THE GELS?

A I WAS PARTICULARLY INTERESTED IN LOOKING AT THE VAGINAL SWAB, THAT IS THE MALE FRACTION FROM THE VAGINAL SWAB TO SEE IF THERE WAS ANY BANDS, THAT IS, ANY CTT TYPES THAT WERE PRESENT THAT WERE NOT FOUND IN MS. BOYD'S DNA. THAT IS, WE KNOW IT'S A MIXTURE AND WE SEE THAT IN THESE SCANS, THAT HER DNA IS BY FAR THE MOST, THE MOST OF THAT SAMPLE. A VAST MAJORITY OF THAT SAMPLE WAS MS. BOYD'S DNA AND SO THE DNA THAT WE SEE ON THESE SCANS PRIMARILY BELONGS TO HER. SO, AT THIS POINT, WE'RE LOOKING FOR ANYTHING ELSE THAT POSSIBLY SHOWS UP AND THERE ARE VERY, VERY LIGHT BANDS THAT POTENTIALLY SHOW UP ON THESE SAMPLES, BUT NOTHING THAT I WOULD FEEL COMFORTABLE IN CALLING.

Q DID THEY RUN THE CTT TEST MORE THAN ONCE?

A THEY ATTEMPTED IT A COUPLE OF TIMES. YES.

Q IS THAT REFLECTED IN THEIR NOTES, REPORTS, ANYWHERE IN THEIR LAB BOOK?

A NOT IN THE REPORTS. ACTUALLY, THEY NEVER LISTED THE RESULTS OF THE CTT TEST ON ANY OF THE EVIDENCE OR EVEN ON MS. BOYD IN THE REPORTS. THEY ONLY LISTED MISTER SIMMONS' TYPE. THE TYPE THAT'S IMPORTANT IS WHAT WAS FOUND IN THE EVIDENCE COLLECTED

FROM HER AUTOPSY. THEY NEVER LISTED THAT IN ANY OF THE REPORTS ISSUED FROM LIFECODES.

Q AND WITH REGARD TO EVIDENTIARY SAMPLES, THERE WERE TWO EVIDENTIARY SAMPLES. RIGHT?

A THAT THEY ATTEMPTED TO TEST WITH CTT. THEY HAD TWO VAGINAL SWABS THAT THE PATHOLOGIST COLLECTED. ONE WAS REFERRED TO AS 56384 AND THERE WAS ANOTHER ONE THAT HAD THE ACCESSION NUMBER AT LIFECODES AT 56386.

Q WHEN YOU WERE GOING THROUGH THE LIFECODES NOTES, DID YOU FIND ANY REFERENCES WITH REGARD TO SAMPLE 56384 AND WHETHER OR NOT IT STILL EXISTED IN THOSE NOTES?

A THEY TESTED THAT SAMPLE, THE DQ ALPHA POLYMARKER, AND EVERY TIME YOU TEST THAT SAMPLE, YOU TAKE A LITTLE BIT OF IT, CONSUME IT, AND THEN YOU RUN THE NEXT TEST. IT APPARENTLY GOT TO THE POINT -- THEY ATTEMPTED CTT ON IT, REALLY DIDN'T GET A RESULT AT ALL FROM CTT. THEY ATTEMPTED TO TEST IT AGAIN AND THEY HAVE A NOTE IN THEIR LAB NOTES THAT SAYS THAT SAMPLE WAS CONSUMED.

Q DO YOU KNOW WHAT DATE THEY ATTEMPTED TO DO THE CTT TEST ON IT?

A IT WAS -- THE FINAL CTT TEST WAS ON 1-29-98. THEY ATTEMPTED A PREVIOUS TEST ON JANUARY 23, 1998 THAT THEY DIDN'T USE ANY RESULTS FROM THAT TEST IN THEIR REPORTING.

Q I'M GOING TO ASK YOU TO LOOK AT PAGE 150 OF WHAT'S BEEN SUBMITTED AS APPLICANT'S EXHIBIT #9. (MR. YOUNG HANDS DOCUMENT TO THE WITNESS.)

A OKAY.

Q IS THERE A REFERENCE TO SAMPLE 56384 ON THAT PAGE?

A THERE IS.

Q AND WHAT DOES THAT SAY?

A IT SAYS, "NO SAMPLE 56384 LEFT" AND THIS IS ON A PAGE WHERE THEY WERE ATTEMPTING TO DO CTT TESTING. THEY'VE GOT THE OUTLINE OF THEIR LAB NOTES FOR THAT TEST.

Q IS THAT PAGE DATED?

A AT THE TOP OF THE PAGE IT SAYS 1-15-98.

Q SO, PRIOR TO THE CTT TEST THAT WAS DATED JANUARY 23RD, THEY REPORTED THAT THE SAMPLE "84" WAS EXHAUSTED?

A THAT'S CORRECT.

Q AND THERE ARE NO RESULTS ON THE JANUARY 23RD EXAM FOR THE EVIDENTIARY SAMPLE "84"?

A ON THE 23RD, THE FEMALE FRACTION OF "84" SHOWS UP ON THAT GEL SCAN. NOTHING IS PRESENT IN THAT LANE, THERE ARE NO BANDS THAT ARE THERE TO INTERPRET. THE MALE FRACTION, APPARENTLY, THAT WAS WHAT WAS CONSUMED.

Q OKAY.

A SO THEY DON'T HAVE A CTT RESULT FOR 384.

Q WERE SOME SLIDES PREPARED TO HELP US TALK ABOUT THESE CTT TESTS AND HOW THEY LOOK AND WORK?

A YES.

Q I'M GOING TO SHOW YOU APPLICANT'S #13 AND ASK YOU IF YOU ARE FAMILIAR WITH THOSE.

A #13 IS A PART OF THAT PAGE WE WERE JUST REFERRING TO, PAGE 150 OF THE FILE WHERE IT SAYS, "NO 56384 WAS LEFT." THE REMAINING PAGES REPRESENT SCANS OF THE CTT ANALYSIS OF THE LIFECODES LABORATORY AND THE LAST PAGE REPRESENTS SOME FREQUENCY ESTIMATES THAT ARE APPROPRIATE IN THIS CASE.

Q I'LL SHOW YOU WHAT'S BEEN MARKED AS APPLICANT'S #16. I THINK WE TALKED ABOUT THAT. THAT'S A PAGE OUT OF THE FILE. IS THAT -- ARE THE CTT RESULTS FOR ANY EVIDENTIARY SAMPLES REFLECTED ANYWHERE IN THEIR FILE EXCEPT FOR PAGE 15?

A AS FAR AS RESULTS, THAT MEANS THEY LOOK AT THE CTT SCAN AND THEY WRITE DOWN THE CTT TYPES THEY SEE, THEY ARE GOING TO WRITE DOWN A SET OF NUMBERS. AT "C" YOU SEE A 10,12. AT TPOX YOU SEE SOME OTHER NUMBERS. THAT WASN'T PRESENT IN ANY OF THEIR FILE. THERE IS NOT A PAGE IN THE LAB BOOK THAT ACTUALLY WRITES DOWN WHAT THEY DETERMINE THAT TYPE TO BE.

Q OKAY.

MR. YOUNG: SO, LET ME MAKE SURE WE'RE CLEAR ON THE RECORD. I THINK APPLICANT'S #16 IS IN. AT THIS TIME I'D OFFER APPLICANT'S #13.

MR. ZELENKA: NO OBJECTION TO #13.

(WHEREUPON, A FIVE-PAGE POWERPOINT SLIDE PRESENTATION IS ENTERED INTO EVIDENCE AS APPLICANT'S EXHIBIT #13, WITHOUT OBJECTION)

Q DOCTOR LAMBERT, CAN YOU TELL US WHAT THIS IS THAT WE'RE LOOKING AT HERE? (SHOWS SLIDE ON SCREEN)

A THAT WAS THE PORTION OF THAT PAGE THAT I WAS PREVIOUSLY

DESCRIBING AND IT'S ZEROED IN ON THE NOTE THAT NONE OF THAT SAMPLE 56384 WAS LEFT.

Q OKAY. WHAT IS IT WE'RE LOOKING AT HERE?

DR. LAMBERT: I DON'T KNOW IF YOU CAN TURN THE LIGHTS OFF, YOUR HONOR, IF THAT WOULD MAKE IT EASIER TO SEE.

THE COURT: YES, WE CAN TURN THEM DOWN. IT LOOKS LIKE IT'S UPSIDE DOWN TO ME OR SIDEWAYS. (BAILIFF TURNS DOWN LIGHTS)

DR. LAMBERT: YEAH, THAT WORKS BETTER.

A IT ACTUALLY IS RIGHT SIDE UP. WHAT THIS IS, IS THE GEL THAT LIFECODES RAN THAT CONTAINED EVIDENCE. RIGHT HERE, THIS IS 384 AND YOU SEE THAT THERE AREN'T ANY LINES IN THAT LANE AND SO 384 DIDN'T GIVE US ANY RESULTS. THAT'S ONE OF THE VAGINAL SWABS. WHAT THIS IS, THIS IS THE "C" OF CTT. CF1PO UP IN THIS PORTION OF THAT SCAN. THIS IS THE TPOX DOWN HERE IN THE MIDDLE. THIS IS THE SECOND "T" AND THEN AT THE BOTTOM THIS IS THE THO1. SO, THESE ARE THREE DIFFERENT LOCATIONS ON THE DNA THAT WERE TESTED AT LIFECODES. IN THE NEXT LANE HERE, YOU SEE SAMPLE 386, WHICH IS THE MALE FRACTION OF THAT VAGINAL SWAB. SO, IF THERE WAS SPERM THAT WAS PRESENT THAT WOULD GIVE A DNA TYPE, IT SHOULD BE PRESENT IN THIS SAMPLE RIGHT HERE. WHAT YOU SEE RIGHT NEXT TO IT IS THE FEMALE FRACTION OF THAT SAME SAMPLE AND THE ONLY BANDS THAT WE ARE SEEING HERE AT THE CSF1PO BELONGED TO MS. BOYD, THESE TWO TYPES HERE WHICH IS A 10,12. (INDICATING) THE ONLY PROBLEM WITH THIS GEL IS IT'S GOT SOME CURVATURE IN IT. THE GEL LINES ARE KIND OF WAVY. DO YOU

SEE HOW THERE ARE SQUIGGLING HERE JUST A LITTLE BIT? (INDICATING) THAT MEANS THAT THERE WAS SOMETHING THAT DISRUPTED THE RUNNING OF THAT GEL AND LIFECODES CHOSE NOT TO USE THOSE RESULTS IN THEIR REPORTING BUT ONE OF THE PROBLEMS WITH THIS IS THAT MISTER SIMMONS ACTUALLY TYPES AS A DIFFERENT TYPE AT THE CSF1PO LOCATION AS HE DOES WHEN THE GEL IS RAN CORRECTLY.

Q MEANING WHAT?

A THERE WAS SOME DISPARITY BETWEEN THE GEL RUN ON THE 23RD OF JANUARY AS OPPOSED TO THE GEL RUN ON THE 29TH OF JANUARY. THEY DON'T NOTE THAT IN ANY OF THEIR CASE NOTES THAT THIS GEL WAS EVEN RUN. THERE IS NO INDICATION IN ANY OF THEIR FILE THAT THAT GEL WAS ATTEMPTED. TYPICALLY YOU WOULD SAY, "TRIED IT, RAN IT, DIDN'T WORK, HERE'S WHY IT DIDN'T WORK, I'M GOING TO TRY IT AGAIN." THEY DON'T ACKNOWLEDGE THAT IT WAS EVEN RUN IN THE FIRST PLACE AND THE DEFENSE WASN'T MADE AWARE OF THAT.

Q SO, THEY THREW THESE RESULTS OUT?

A THEY DID.

Q AND IF THESE RESULTS WERE GOOD, IT WOULD EXCLUDE MISTER SIMMONS?

A IT WOULD.

Q BUT YOU RECOGNIZE THAT THERE IS A PROBLEM WITH THE TEST?

A I DO.

Q AND THAT'S BASED ON THE WAVES AND THE BANDS?

A THAT'S CORRECT. AND AS A DNA ANALYST, I CAN SEE WHY THEY RAN

IT AGAIN. I THINK THEY SHOULD HAVE DOCUMENTED IT IN THEIR CASE FILE. WHAT YOU DON'T SEE IS ANYTHING OTHER THAN MS. BOYD SHOWING UP RIGHT HERE AND HERE. (INDICATING) THERE'S NO OTHER BANDS THAT ARE SHOWING UP ON THIS GEL THAT WOULD BELONG TO MISTER SIMMONS OR ANYONE ELSE. YOU SEE MISTER SIMMONS' TYPE OVER HERE. IT'S A LOT DARKER. THEY OVERLOADED HIS BAND AND SO IT'S KIND OF HARD TO SEE, BUT WHAT WE SHOULD SEE IF HE WAS INCLUDED IN THIS, WOULD BE SOME BANDS RIGHT THERE (INDICATING) AND YOU SEE MAYBE A FAINT HINT OF SOMETHING, BUT YOU ALSO SEE FAINT HINTS OF SOMETHING IN OTHER PLACES. I THINK THAT PROBABLY QUALIFIES AS AN INCONCLUSIVE RESULT. THEY SHARE THE SAME TYPE RIGHT HERE AND SO YOU REALLY CAN'T SAY ANYTHING ABOUT IT. AT THE THO1 THEY BOTH SHARE A BAND AND THERE'S AN ARTIFACT THAT SHOWS UP HERE THAT ALL OF FORENSIC DNA ANALYSIS IS VERY WELL AWARE OF THAT'S CALLED STUTTER. HE'S A 7/8. MS. BOYD IS AN 8. THAT STUTTER IS GOING TO SHOW UP IN THE 7TH POSITION SO BY DEFAULT YOU CANNOT INTERPRET ANYTHING THAT FALLS IN THE 7TH POSITION UNLESS IT'S REALLY DARK AND ON THIS ONE, IT'S BARELY SHOWING UP AT ALL AND SO IT'S CONSISTENT WITH STUTTER.

Q SO, DID THEY -- THEY RAN IT AGAIN?

A THEY DID.

Q WHAT ARE WE LOOKING AT HERE? (SHOWING SLIDE ON SCREEN)

A THIS IS PROBABLY THE BEST RESULT OF THE CTT TESTING THAT THEY RAN AND THIS SHOULD HAVE BEEN THE ONE THAT THEY RELIED ON.

WHAT YOU SEE HERE OR AS MISTER SIMMONS' TYPE, YOU SEE THESE LADDER BANDS HERE ARE STRAIGHT SO WE DON'T HAVE THE SQUIGGLE PROBLEM. THEY'VE CORRECTED THAT AND SO THIS IS AN ACCEPTABLE RUN THAT YOU COULD MAKE INTERPRETATIONS FROM. MS. BOYD AND MISTER SIMMONS HAVE THE SAME EXACT DNA TYPE AT THIS FIRST LOCATION. THEY ARE BOTH A 10,12 AT CSF1PO. SO, YOU CAN'T DRAW ANY CONCLUSIONS FROM THAT. THERE ARE NO BANDS SHOWING UP OTHER THAN A 10,12 BUT BECAUSE THE SEMEN DONOR IS SO MUCH LIGHTER THAN MS. BOYD, YOU CAN'T DRAW ANY CONCLUSIONS AT THAT LOCATION. THEY INCLUDED THAT LOCATION IN THEIR FREQUENCY CALCULATIONS AND AS WE'LL SEE, THOSE FREQUENCY CALCULATIONS WERE PRETTY LARGE. THEY MADE THAT PATTERN LOOK REALLY RARE WHEN, IN FACT, IT'S NOT NEARLY AS RARE AS THEY TESTIFIED TO AT TRIAL. WITH THE MIDDLE LOCATION HERE, THIS IS THE TPOX AND THIS PROBABLY GIVES US OUR BEST HINT OF BANDS THAT ARE SHOWING UP. THIS IS MS. BOYD'S TYPE HERE AND YOU CAN SEE MISTER SIMMONS' TYPE THERE. (INDICATING) YOU CAN SEE A HINT OF FAKE BANDS SHOWING UP RIGHT HERE AND ALSO BANDS THERE, BUT THEY DON'T RUN ALL THE WAY ACROSS THE LANE AND SO THOSE ARE SUSPECT. WE'RE NOT REALLY SURE WHAT'S GOING ON WITH THEM. WE'VE ALSO GOT WHAT APPEARS TO BE A BUBBLE OR A BEND MARK THAT'S PRESENT ON THIS GEL. YOU SEE, THIS ISN'T RUNNING STRAIGHT ACROSS, IT'S IN THE 56386 FEMALE FRACTION LANE AND IT RUNS DIAGONALLY, BUT IT ALSO POTENTIALLY EXTENDS INTO THAT MALE FRACTION LANE OF 56386. SO, IT COULD

NULLIFY THE FACT THAT THAT BAND IS THERE IN THE FIRST PLACE. THERE'S ALSO VERY EVIDENTLY PRESENT, A BAND DOWN BELOW HERE AND ALSO ONE THAT'S IN THE STUTTER POSITION, BUT THIS ONE IS PRETTY JUST AS PREVALENT AS THESE BANDS ARE UP HERE, THAT THEY LOOKED AT TO MATCH MISTER SIMMONS. THEY IGNORED THIS BAND DOWN HERE. AND WHEN THEY ALSO GET DOWN TO THE THO1 RESULTS, HERE IS WHERE MISTER SIMMONS' RESULTS, HERE'S THE BAND THAT SHOULD MATCH HIM, BUT THAT'S IN THE STUTTER POSITION AND WHEN I'M TALKING ABOUT STUTTER, EVEN MISTER SIMMONS HAS STUTTER RIGHT THERE. THAT'S A STUTTER BAND. WE EXPECT TO SEE THAT. HERE'S ANOTHER STUTTER BAND AT THE CSF1PO. SO, WE KNOW STUTTER EXISTS AND SO YOU CAN'T INTERPRET THIS PATTERN HERE. BUT YOU ALSO SEE FAINT BANDS THAT ARE DOWN AT THE BOTTOM THAT WOULD INDICATE, IF THOSE ARE REAL, THEY WOULD INDICATE THAT MISTER SIMMONS WAS EXCLUDED, BECAUSE THEY DON'T MATCH HIM. WE'VE GOT A BAND AT 5 AND 6 AT THE THO1 POSITION AND THAT WOULD ACTUALLY EXCLUDE HIM. I'M NOT SAYING THAT HE'S EXCLUDED. I WOULD THROW THIS WHOLE RESULT OUT AS INCONCLUSIVE. IF YOU TRUST THESE BANDS THAT ARE SHOWING UP HERE, YOU'VE GOT TO INTERPRET THESE BANDS THAT ARE DOWN THERE THAT ARE JUST AS PROMINENT.

Q DID THEY DO THAT?

A NO.

Q IF THOSE BANDS ARE ALL THERE, DOES THAT TELL YOU ANYTHING ABOUT HOW MANY POSSIBLE CONTRIBUTORS THERE ARE TO THAT

EVIDENTIARY SAMPLE?

A IF THESE TWO BANDS HERE ARE REAL, WHICH LIFECODES INTERPRETED THEM AS BEING REAL, AND THERE'S A BAND HERE FROM MS. BOYD AND AT TPOX THERE'S ALSO ANOTHER BAND SHOWING UP AT THE 6 POSITION, THAT WOULD INDICATE THERE IS MORE THAN ONE SEMEN CONTRIBUTOR. SO THERE WOULD ACTUALLY BE THREE PEOPLE PRESENT IN THAT SAMPLE.

Q OKAY. AFFIANT'S #16, WHICH WE TALKED ABOUT THEY REPORTED THE RESULTS FOR THE CTT TEST, CAN YOU TELL ME IF THIS CHART CORRESPONDS TO THE CHART ON AFFIANT'S #16?

A THIS ISN'T A SCAN OF EXHIBIT #16, BUT IT REPRESENTS THE NUMBERS THAT ARE PRESENT ON #16.

Q SO, FOR INSTANCE, FOR THE FIRST LOT, FI56389. CAN YOU TELL ME WHAT THAT IS BASED ON...

A THAT'S MS. BOYD'S BLOOD STANDARD IS THE FIRST ROW HERE IN THE TABLE.

Q DO THEY INDICATE THAT THEY EVER RAN THE CTT TEST ON MS. BOYD'S KNOWN BLOOD SAMPLE?

A WHAT WAS FOUND ON PAGE 15 THAT WAS IN LIFECODE'S FILE, THEY DIDN'T EVEN INDICATE THAT THEY RAN THAT SAMPLE, EVEN THOUGH IT IS PRESENT ON THESE CTT SCANS THAT WE JUST LOOKED AT.

Q DO YOU KNOW WHAT BANDS, OR WHAT NUMBERS THEY ASSIGNED TO MS. BOYD, FOR INSTANCE, FOR THE CSF1PO BOX THAT'S EMPTY ON THE —

A IT SHOULD BE A 10,12, BUT THEY NEVER INTERPRETED HER SAMPLE.

THEY NEVER REPORTED IT. IT NEVER SHOWED UP ON A REPORT LIKE HER DQ ALPHA POLYMARKER WOULD. SO, THEY WENT TO THE TROUBLE TO REPORT THE DQ ALPHA POLYMARKER. THEY NEVER REPORTED THE CTT RESULTS FROM MS. BOYD OR FOR THE EVIDENCE THAT IS THE VAGINAL SWABS.

Q THE NEXT LINE DOWN, THE FB68555-60. CAN YOU TELL ME WHO THAT IS?

A THAT'S MISTER SIMMONS' BLOOD STANDARD. THAT WAS THE BLOOD THAT WAS COLLECTED FROM HIM THAT WAS SENT TO LIFECODES TO TEST.

Q AND THEY DO REPORT CTT RESULTS FOR HIS KNOWN BLOOD?

A ON THIS TABLE, WHICH DOESN'T APPEAR ON A REPORT BUT WAS IN THEIR CASE FILE, THEY REPORT RESULTS FOR HIM THAT ARE INCORRECT.

Q INCORRECT HOW?

A THE CSF1PO, HE'S ACTUALLY A 10,12. IF THIS IS, THIS 10,11 WAS CORRECT, HE WOULD BE EXCLUDED -- WELL, BASED ON THE CTT, NOT ONLY WOULD IT BE INCONCLUSIVE, IT WOULD BE CONCLUSIVE THAT HE WAS EXCLUDED.

Q OKAY. BUT THEY DIDN'T CONCLUDE THAT HE WAS EXCLUDED?

A NO.

Q THEY HAVE ANOTHER REPORT THAT IS REFLECTED AS, WHAT HAS BEEN ADMITTED AS STATE'S EXHIBIT #2 AND THEY ACCURATELY REPORT HIS CTT REPORTS AS 10,12 IN THAT REPORT?

A IN STATE'S EXHIBIT #2, WHICH IS THE FEBRUARY REPORT FROM

LIFECODES, THEY DO REPORT IT CORRECTLY.

Q OKAY. LET'S TALK ABOUT THE NEXT LINE DOWN, FI56384. THAT WOULD BE THE OTHER VAGINAL EVIDENTIARY SAMPLE?

A THAT'S RIGHT. THAT'S THE MALE FRACTION FROM THAT VAGINAL EVIDENTIARY SAMPLE THAT THEY SAID THAT THEY CONSUMED.

Q THEY SAID THEY CONSUMED IT ON JANUARY 15TH.

A THAT'S CORRECT. SO, THEY NEVER GOT A CTT RESULT TO WORK ON IT. HOWEVER, ON THIS CHART THEY LIST THESE NUMBERS ON A SAMPLE THAT WAS NEVER TESTED ON CTT.

Q SO, THAT SAMPLE WAS NEVER TESTED ON ANY GEL -- YOU'VE NEVER SEEN ANY RAW DATA TO REFLECT THE CTT RESULTS FOR THAT SAMPLE?

A THAT'S CORRECT.

Q IT'S NOT ON ANY GEL?

A NO.

Q BUT THEY ARE ON THE CHART ON PAGE, WHAT IS LIFECODE'S FILE, PAGE 15.

A THAT'S CORRECT.

Q SO, EITHER THOSE RESULTS ARE MANUFACTURED OR SOMEBODY WAS SLOPPY.

A THEY WERE -- IN THE PREPARATION OF THIS TABLE, THEY PUT INCORRECT RESULTS DOWN. I DON'T KNOW MOTIVE OR WHATEVER, BUT THERE IS A TABLE THAT HAS INCORRECT RESULTS ON IT THAT WAS NOT IN THEIR CASE FILE.

Q THE NEXT LINE DOWN THAT HAS CTT RESULTS IS FI56386. RIGHT?

A RIGHT. BUT THE NEXT ONE DOWN IS ACTUALLY THE FEMALE FRACTION OF THE PREVIOUS ONE. THEY DIDN'T LIST ANY RESULTS. BUT FOR 386, THIS IS THE VAGINAL SWAB, THE MALE FRACTION, THE SEMEN FRACTION, THAT THEY RAN ON CTT.

Q NOW, ARE THE RESULTS ON THAT FEMALE FRACTION REPORTED ANYWHERE ELSE OTHER THAN ON PAGE 15?

A NO.

Q DO THOSE NUMBERS ACCURATELY REFLECT WHAT THE PROPER RESULTS WOULD BE FOR THAT SAMPLE?

A THOSE RESULTS, FIRST OF ALL, THE CSF1PO, AGAIN, IS WRONG. IF IT MATCHES MISTER SIMMONS, IT SHOULD BE A 10,12. MS. BOYD'S IS ALSO A 10,12 AT THAT LOCATION. I JUST SHOWED YOU ON THAT PREVIOUS CTT SCAN THERE IS NO 10,11 WHICH IS WHAT MATCHES MISTER SIMMONS'. MS. BOYD AT THAT LOCATION IS A 9. THEY DON'T EVEN PUT THE 9 DOWN LIKE THEY DID OVER HERE IN THE POLYMARKER AND DQ ALPHA. THEY PUT EVERY SINGLE RESULT. THIS IS MS. BOYD'S, THIS IS WHAT WAS FOUND UNDER D7S8 IN PARENTHESES INDICATING THAT IT WAS THERE AND IT WAS LIKE, THEY DON'T EVEN DO THAT AT ALL FOR THESE NUMBERS HERE UNDER THE CTT TEST. SO, THOSE CTT RESULTS DON'T REFLECT ANY EVIDENCE WHATSOEVER.

Q AND THEY DON'T REFLECT ANY OF THE RAW DATA.

A THAT'S CORRECT.

Q WHEN YOU TALK ABOUT DNA, IN ORDER TO MAKE ANY SENSE ABOUT DNA, WHAT DO YOU HAVE TO KNOW AS FAR AS ---

THE COURT: BEFORE YOU GO INTO THAT, ON THE ERRORS THAT YOU SAY WERE MADE, THEY WERE LATER CORRECTED, THOUGH, ON THAT SUPPLEMENTAL REPORT, WERE THEY NOT?

MR. LAMBERT: THEY NEVER EVER LISTED THE RESULTS FOR THE CTT TESTS ON ANY REPORT OTHER THAN MISTER SIMMONS. THEY NEVER LISTED THE EVIDENCE. NOW, THEY CORRECTED HIS SAMPLE ON THAT FEBRUARY REPORT BUT THEY NEVER CORRECTED OR NEVER EVEN LISTED THE RESULTS FROM THE EVIDENCE.

THE COURT: GO AHEAD.

Q WHEN WE ARE TALKING ABOUT DNA, WE HAVE TO CONSIDER SOMETHING CALLED RANDOM ACTS OF PROBABILITY. WHAT IS THAT?

A THE QUESTION IS, ONCE YOU GET A MATCH, WE WANT TO KNOW HOW SIGNIFICANT THAT MATCH IS. IF YOU JUST TEST ONE SITE, MAYBE YOU ELIMINATE HALF THE POPULATION AND MAYBE IF YOU TEST ANOTHER SITE, YOU'D ELIMINATE ANOTHER 75% OF THE POPULATION. SO THE QUESTION IS, ONCE YOU DO ALL THE TESTING ON THE EVIDENCE, WHAT PERCENTAGE OF THE POPULATION ARE ELIMINATED FROM BEING POSSIBLE CONTRIBUTORS TO THAT. THAT TELLS YOU HOW SIGNIFICANT YOUR RESULTS FROM THE EVIDENCE ARE. IF YOU JUST DID ONE SITE -- I MEAN, BASICALLY, WITH BLOOD TYPING. 50% OF THE POPULATION IS TYPE "O" BLOOD. THAT WAS A TEST, IT ELIMINATED 50% OF THE POPULATION, BUT IT WASN'T A VERY SIGNIFICANT TEST AS FAR AS HELPING A JURY DETERMINE WHETHER OR NOT THE PERPETRATOR LEFT THE BLOOD THERE OR WHATEVER. SO, THAT'S WHY DNA WAS DEVELOPED. IT'S MUCH MORE DISCRIMINATING WHEN

YOU GET A PERFECT TEST. HOWEVER, WHEN YOU GET A TEST LIKE THIS WHERE YOU'VE GOT A MIXTURE, TO CALCULATE THAT RANDOM MATCH PROBABILITY, YOU HAVE TO GO ABOUT IT A LITTLE DIFFERENTLY.

Q IS THERE A BOOK OR ANYTHING THAT TALKS ABOUT HOW TO CALCULATE THE RANDOM ACTS OF PROBABILITIES FOR MIXTURE SAMPLES?

A THERE IS.

Q AND WHAT'S THAT BOOK?

A THE BOOK THAT WE ARE REQUIRED TO USE AS THE HANDBOOK TO CALCULATE FREQUENCIES OF MIXTURES AND FREQUENCIES OF SINGLE SOURCE SAMPLES, FOR THAT MATTER, IS *THE NATIONAL RESEARCH COUNCIL REPORT OF 1996*, WHICH IS COMMONLY KNOWN AS NRC2 OR THE YELLOW BOOK, *THE YELLOW NRC BOOK.* WE ARE MANDATED AS AN ACCREDITED LABORATORY BY FEDERAL LAW TO USE THE METHODS THAT ARE DESCRIBED IN THAT BOOK FOR CALCULATING RANDOM ACTS OF PROBABILITIES.

(MISTER YOUNG SHOWS MISTER ZELENKA A DOCUMENT)

Q I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED AS AFFIANT'S EXHIBIT #18. DO YOU RECOGNIZE THAT AS A PAGE OUT OF AFFIANT'S #9?

A YES.

Q OKAY. AND CAN YOU EXPLAIN WHAT THAT PAGE IS.

A THIS IS A PAGE MARKED 235 OUT OF AFFIANT'S #9. IT'S A LETTER FROM DOCTOR BAIRD OF LIFECODES, SPECIFICALLY WRITTEN TO SOLICITOR

WALTER BAILEY AND IN THAT HE'S GIVING SOME BACKGROUND INFORMATION ON WHAT THEY USED TO DO FREQUENCY CALCULATIONS. HE SPECIFICALLY REFERS TO THE *NRC REPORT* TAKING INTO ACCOUNT THE POPULATION SUBSTRUCTURE WHICH WAS ONE OF THE EQUATIONS THAT CAME OUT OF THAT REPORT.

MR. YOUNG: AT THIS TIME I WOULD OFFER AFFIANT'S EXHIBIT #18 INTO EVIDENCE.

MR. ZELENKA: NO OBJECTION.

(WHEREUPON, A LETTER, DATED 2/4/99, WRITTEN TO MISTER BAILEY FROM LIFECODES IS ENTERED INTO EVIDENCE AS STATE'S EXHIBIT #18, WITHOUT OBJECTION)

Q DID YOU REVIEW A REPORT PREPARED BY DOCTOR WILLIAM THOMPSON WITH REGARDS TO THIS CASE?

A YES. I DID.

Q I WILL SHOW YOU WHAT HAS BEEN MARKED AS AFFIANT'S EXHIBIT #11. DO YOU RECOGNIZE THAT?

A YES, SIR. THAT'S THE REPORT THAT WAS PREPARED BY DOCTOR THOMPSON.

MR. YOUNG: YOUR HONOR, AT THIS TIME WE WOULD OFFER AFFICANT'S #11 INTO EVIDENCE. (MISTER YOUNG SHOWS DOCUMENT TO MISTER ZELENKA)

MR. ZELENKA: I'D OBJECT TO THAT. THAT'S AN AFFIDAVIT. IT'S NOT AN AFFIDAVIT AND IT'S NOT THIS INDIVIDUAL'S REPORT.

THE COURT: SUSTAINED. IS HE ONE OF THE WITNESSES YOU ARE GOING TO DO *DE BENE ESSE*? THOMPSON? OR IS IT?

MR. YOUNG: (SHAKES HEAD)

THE COURT: SUSTAINED.

Q DID YOU REVIEW A CHART TALKING ABOUT THESE RANDOM ACTS OF PROBABILITIES CONTAINED IN DOCTOR THOMPSON'S REPORT?

MR. ZELENKA: SAME OBJECTION, YOUR HONOR. EVIDENCE ALSO.

MR. YOUNG: I THINK I CAN LAY THE FOUNDATION FOR THE ---

THE COURT: WELL, TRY IT. I SUSTAIN THE OBJECTION.

MR. YOUNG: OKAY.

Q DOCTOR LAMBERT, CAN YOU TELL US WHAT WE ARE LOOKING AT HERE IN ---

THE COURT: WHERE IS THIS COMING FROM?

MR. YOUNG: WELL, THIS IS A CHART.

THE COURT: PREPARED BY WHOM?

MR. YOUNG: PART OF IT PREPARED BY DOCTOR THOMPSON AND VERIFIED BY DOCTOR LAMBERT.

THE COURT: WELL, I JUST RULED OUT DOCTOR THOMPSON'S – DID YOU HELP PREPARE THIS CHART, SIR?

DR. LAMBERT: I REVIEWED THE CHART AND I MADE SOME ADDITIONS TO THE BOTTOM OF IT. I REVIEWED EVERY FREQUENCY THAT WAS CALCULATED ON THIS CHART.

THE COURT: AND WHERE WAS THIS DATA OBTAINED FROM?

DR. LAMBERT: IT'S THE SAME DATA THAT THE LIFECODES LAB RELIED ON TO CALCULATE THE FREQUENCIES OF THE ---

THE COURT: WELL, THAT'S NOT ANY DATA COMPILED BY DOCTOR THOMPSON ON HIS OWN INDIVIDUAL STUDIES? THAT'S SIMPLY RECAPPING

DATA OUT OF THE LIFECODES MANUAL OR LIFECODES MATERIAL?

DR. LAMBERT: IT'S RECAPPING THE DATA THAT LIFECODES RAN ON THIS CASE AND BASICALLY, PUTTING IT IN A FORMAT THAT SHOWS THE CALCULATIONS AND THE ASSUMPTIONS THAT THEY MADE TO ARRIVE AT THEIR FREQUENCY ESTIMATE.

THE COURT: WERE THESE CALCULATIONS MADE BY DR. THOMPSON OR CALCULATIONS MADE BY YOU OR BY LIFECODES?

DR. LAMBERT: ALL THREE OF US. I DID DOCTOR THOMPSON'S CALCULATIONS AND ACTUALLY DID MY OWN TO CONFIRM THAT THEY WERE CORRECT AND MADE ONE NOTE AT ONE OF THE LOCATIONS. BUT I AGREE WITH EVERYTHING THAT IS ON THE CHART. IT JUST REFLECTS THE DATA.

THE COURT: I UNDERSTAND THAT, BUT THAT'S NOT HOW WE PUT IT INTO EVIDENCE. WHAT'S YOUR OBJECTION?

MR. ZELENKA: MY OBJECTION IS STILL THE SAME. THIS IS NOT HIS REPORT.

MR. YOUNG: YOUR HONOR, I'M HAPPY TO DRAW OUT THE CHART AND AS WE GO AND I THINK I CAN FILL IT ALL IN.

THE COURT: I SUSTAIN THE OBJECTION.

MR. YOUNG: OKAY.

THE COURT: TAKE IT DOWN. (THE CHART IS PORTRAYED ON THE SCREEN) MISTER YOUNG COMPLIES.

Q IN REVIEWING PAGE FIFTEEN AND THE LIFECODES FILE, DO YOU KNOW WHAT ALLELES WERE REFLECTED FOR THE VAGINAL SWAB AT THE LDLR SITE?

A THE ALLELES THAT THEY SHOW FOR THAT LOCATION AND

PARTICULARLY THE SWAB THAT THEY GOT RESULTS FOR, WAS NUMBER 386. THE RESULT THAT THEY GOT FOR THAT SAMPLE WAS AN "A,B".

Q DID THEY REPORT RESULTS FOR THE GYPA SITE?

A THEY GOT AN "A,B" AT THAT LOCATION.

Q AND THE HBGG?

A AN "A,C".

Q AT THE D7S8?

A THEY GOT AN "A" WITH A MUCH WEAKER "B" PRESENT.

Q HOW WOULD YOU REFLECT THAT "B" BEING WEAKER?

A IT WOULD BE IN PARENTHESES.

Q HOW ABOUT THE "GC" SITE?

A THE "GC" WAS A "B" AND THEN IN PARENTHESES, AGAIN, A WEAKER "A" AND "C".

Q AND HOW ABOUT THE DQ ALPHA SITE?

A THE DQ ALPHA SITE WAS A 1.1, A 2, AN ASTERISK WHICH REPRESENTS THE POSSIBILITY OF THAT 1.2 ALLELE SHOWING UP AND THEN WHAT'S REFERRED TO AS A 4.2/4.3.

Q WERE, DESPITE THE FACT WE'VE TALKED ABOUT RESULTS BEING REFLECTED ON HERE, ARE THERE RESULTS REFLECTED ON THE OTHER CHARTS?

THE COURT: WE'RE MAKING A RECORD. I HAVE NO IDEA WHAT YOU ARE TALKING ABOUT. I SEE PAPERS IN YOUR HAND, BUT I ASSUME SOMEBODY MAY REVIEW THIS ONE DAY.

MR. YOUNG: YES, SIR. AND I'M JUST TRYING TO ESTABLISH HOW THE

CHART GETS FILLED IN AND SO I'M JUST TRYING TO GO THROUGH AND SHOW WHERE EACH ONE OF THESE NUMBERS COMES FROM.

THE COURT: ALL RIGHT. LET ME JUST CUT TO THE CHASE. ARE ALL THE NUMBERS ON THE CHART YOU ARE TRYING TO PUT IN, ARE THEY REFLECTED IN THE LIFECODES MATERIAL THAT IS ALREADY INTO EVIDENCE OR IS THERE ANYTHING ON THAT CHART THAT DOCTOR THOMPSON INSERTED THAT IS OUTSIDE OF THE LIFECODE FILE? IN OTHER WORDS, CALCULATIONS THAT HE MADE OR ASSUMPTIONS THAT HE MADE OR OPINIONS THAT HE MADE, OR ARE THOSE STRICTLY NUMBERS OUT OF THE LIFECODES FILE? I'M ASKING YOU. (REFERRING TO DOCTOR LAMBERT) ANYBODY CAN HELP. (MS. PAAVOLA CONFERS WITH MISTER YOUNG) SO, WHAT'S THE ANSWER TO MY QUESTION?

DR. LAMBERT: THE ANSWER IS THAT THERE IS -- THE DATA THAT IS ON THAT CHART REPRESENTS ALL THE DATA THAT LIFECODES COLLECTED AND PUT IN THE REPORTS.

THE COURT: OKAY. PUT IT IN CHART FORM.

DR. LAMBERT: IN CHART FORM.

THE COURT: IS THERE ANY ADDITIONAL INFORMATION THAT MISTER THOMPSON HAS PUT IN BY WAY OF OPINIONS OR CALCULATIONS OR ...

DR. LAMBERT: MISTER THOMPSON CORRECTLY SHOWED THAT THERE WAS ADDITIONAL TYPES THAT LIFECODES SHOULD HAVE TAKEN INTO ACCOUNT. I CONCUR WITH ---

THE COURT: WHAT HE DID?

DR. LAMBERT: THAT'S CORRECT.

Q ARE THESE THE SAME ADDITIONAL TYPES THAT YOU'VE SHOWN US IN

YOUR OTHER SLIDES?

A THAT'S CORRECT.

Q IN YOUR SLIDES WHERE YOU SAID IT COULD BE "A,A", "B,B", "A,B".

A THAT'S CORRECT. WITH THOSE DOTS THAT I SHOWED YOU PREVIOUSLY, THAT I PREPARED, THEY ALSO SHOW THOSE ADDITIONAL TYPES IN THAT FORMAT.

Q IN ADDITION, THERE IS A FREQUENCY CALCULATION FOR THE FORGING AT THE DQ ALPHA SITE?

A THAT'S CORRECT.

Q ARE THOSE NUMBERS OUT OF LIFECODES?

A THEY ARE.

Q DID YOU HAVE TO GO TO ANOTHER DATA BASE TO GET POPULATION STATISTICS FOR THE 4.2/4.3?

A THE 4.2/4.3, THE REFERENCE THAT LIFECODES REFERS TO IN THEIR REPORT IN FEBRUARY OF '99, YOU CAN'T GET THE RESULTS FROM THAT REPORT FROM THAT PAPER BECAUSE IT DOESN'T HAVE THE 4.1, 4.2, 4.3 BROKEN DOWN INTO THEIR FREQUENCIES. WITHIN THE MATERIAL THAT THEY PROVIDED, THEY INCLUDED THE PRODUCT MANUAL FROM PERKIN ELMER, WHICH WAS THE COMPANY WHICH MADE THAT DQ ALPHA TEST AND WITHIN THEIR PRODUCT MANUAL, IT HAD THE BREAKDOWN OF THE 4.1, 4.2, 4.3.

Q IS THAT WHERE YOU GOT THOSE FREQUENCIES FROM?

A THAT'S WHERE I GOT THOSE FREQUENCIES TO CALCULATE MY FREQUENCY ESTIMATE FOR THE MIXTURE CALCULATION.

Q DOES THAT COUNT FOR EVERYTHING THAT'S IN AFFIANT'S #13, THE

CHART?

A IT -- YEAH, ADDITIONALLY IT SHOWS THE GENOTYPES THAT WOULD NOT BE EXCLUDED. OTHER DNA TYPES THAT COULD HAVE POSSIBLY CONTRIBUTED TO THE VAGINAL SWAB, THOSE ARE ALSO SUMMARIZED ON THIS CHART.

Q LIKE YOU DID ON THE DQ ALPHA, WHAT OTHER THREE GENE TYPES COULD HAVE CONTRIBUTED, ESSENTIALLY, WITH THE OTHER POLYMARKER SITES.

A THAT'S CORRECT.

Q AND EACH ONE OF THOSE IS BROKEN DOWN ON THE CHARTS?

A THAT'S CORRECT.

Q ALONG WITH ITS RELEVANT FREQUENCY AS IT EXISTED IN THE TABLE PROVIDED BY LIFECODES.

A THAT'S CORRECT.

MR. YOUNG: YOUR HONOR, I'D AGAIN ---

THE COURT: AGAIN TRY IT?

MR. YOUNG: YES, SIR.

THE COURT: ALL RIGHT. MISTER ZELENKA, IT SEEMS LIKE WE'VE ESTABLISHED A FOUNDATION FOR IT. OBVIOUSLY, I WILL LOOK AT IT FROM WEIGHT AS OPPOSED TO ADMISSIBILITY AND YOU ALSO HAVE THE RIGHT TO CROSS EXAMINE HIM ON IT.

MR. ZELENKA: AND I ASSUME WE ARE JUST TALKING ABOUT THIS CHART.

THE COURT: JUST THE CHART. NOT THE REPORT.

MR. ZELENKA: OKAY.

THE COURT: SO MAKE SURE THAT ONLY COMES IN AS THE CHART.

MR. YOUNG: YES, SIR.

(WHEREUPON, A CHART IS ENTERED INTO EVIDENCE AS AFFIANT'S EXHIBIT #13, WITHOUT OBJECTION)

Q DOCTOR LAMBERT, CAN YOU TELL ME WHAT WE ARE LOOKING AT ---

THE COURT: THE CHART NUMBER IS WHAT?

MR. YOUNG: THE CHART IS A PORTION OF AFFIANT'S #13, YOUR HONOR.

THE COURT: OKAY. WHICH IS PAGE 159? IS THAT RIGHT?

MR. YOUNG: NO, SIR. AFFIANT'S #15 WOULD BE THE EXHIBIT PREPARED FOR TODAY.

THE COURT: INCLUDING PAGE 150 AND ET CETERA?

MR. YOUNG: RIGHT. YES, SIR.

THE COURT: ALL RIGHT. GO AHEAD.

Q CAN YOU TELL ME, WHAT ARE WE LOOKING AT HERE ON THIS CHART? WHERE DOES ALL THIS COME FROM?

A YOU'VE SEEN MOST OF IT BEFORE. THESE ARE THE RESULTS OF THE VAGINAL SWAB FROM THE VICTIM FOR THE POLYMARKER HERE AND FOR THE DQ ALPHA AND SO THESE NUMBERS SHOULD LOOK VERY FAMILIAR AND THEY ARE ALSO REFLECTED IN THE ORIGINAL REPORT FROM LIFECODES. THE VICTIM'S GENOTYPE IS MS. BOYD'S GENOTYPE AND YOU CAN SEE THAT, FOR THE MOST PART, THEY LINE UP PERFECTLY WITH THE VAGINAL SWAB EXCEPT FOR THE PRESENCE OF THIS "B", THE PRESENCE OF THIS "A,C" AND THE PRESENCE OF THE 1.1 AND THE -- YEAH, JUST THE 1.1 AND THE POSSIBILITY OF THE 1.2 AT DQ ALPHA. THE NEXT LINE IS MISTER SIMMONS' GENOTYPE AND THIS WAS

ON THE PREVIOUS CHART ALSO.

Q HAVE WE CORRECTED FOR THE 10 AND 11 AND REFLECTED IT CORRECTLY AS 10, 12?

A THAT'S CORRECT. AT THE CSF1PO, LIFECODES, IN THEIR PAGE FIFTEEN THAT WE'VE TALKED ABOUT, HAD HIM AS A 10,11. HE'S ACTUALLY A 10,12 AND THAT'S CORRECTED ON THIS CHART AND THAT REFLECTS WHAT LIFECODES DID TO CALCULATE THEIR FREQUENCY ON THAT FINAL REPORT.

Q THESE SINGLE SOURCE RANDOM ACTS OF PROBABILITIES, WHERE DID THOSE COME FROM?

A THOSE ARE THE EXACT NUMBERS THAT LIFECODES USED THAT ARE PRESENT IN THEIR FINAL REPORT. THIS IS FOR THE CAUCASIAN DATA BASE. THIS IS FOR THE AFRICAN AMERICAN DATA BASE. THESE ARE THE FREQUENCY ESTIMATES FOR THE LDLR, THE GYPA, ON DOWN THE LINE. AND THOSE ARE PRETTY MUCH IN THE TABLE FORM ON THAT FINAL REPORT.

Q AND IS THAT WHERE THEY GOT THEIR 1 OUT OF 8 MILLION AFRICAN AMERICANS THAT THEY TESTIFIED TO AT TRIAL?

A THAT'S CORRECT. THE 1 IN 1.2 BILLION CAUCASIANS AND 1 IN 8 MILLION AFRICAN AMERICANS. AND AGAIN, ON THAT FINAL REPORT, THEY REFERRED TO MISTER SIMMONS' TYPE HAVING THAT FREQUENCY. THAT DOESN'T MAKE ANY DIFFERENCE. YOU REPORT HOW RARE THE EVIDENCE IS. SO, THAT WAS A MISTAKE THAT THEY MADE. THEY MADE A SINGLE SOURCE CALCULATION, WE'VE OBVIOUSLY GOT A MIXTURE BECAUSE WE'VE GOT ALLELES IN PARENTHESES HERE. WE'VE GOT

MORE THAN TWO ALLELES HERE AT DQ ALPHA. WE KNOW WE'VE GOT A MIXTURE, THEY DID A SINGLE SOURCE CALCULATION AND REPORTED THAT.

Q THE NEXT LINE DOWN, CAN YOU TELL ME WHAT THAT IS, THE GENOTYPES NOT EXCLUDED.

A THESE ARE THE GENOTYPES THAT THEY SHOULD HAVE ALSO CONSIDERED WHEN THEY MADE THEIR CALCULATIONS. AT LDLR, THE VICTIM IS AN "A,B". THE VAGINAL SWAB IS AN "A,B". THAT MEANS THAT A PERSON WHO IS AN "A,A", A "B,B" OR AN "A,B' TYPE COULD HAVE CONTRIBUTED TO THAT. THAT INCLUDES EVERYBODY IN THE POPULATION. EVERYBODY IN THIS ROOM IS ONE OF THESE THREE TYPES.

Q AND HOW DO YOU REFLECT THAT AS A FREQUENCY?

A IT TURNS OUT TO BE UNITY, IT'S JUST ONE. AND SO WHEN YOU MULTIPLY IT OUT, ANYTHING MULTIPLIED BY ONE IS ITSELF, SO IT HAS NO EFFECT ON THE FREQUENCY, WHICH IT SHOULDN'T. HOWEVER, UP AT DOCTOR BAIRD'S CALCULATIONS FROM LIFECODES, IT DOES EFFECT THE FREQUENCY BECAUSE HE ELIMINATES 40% OF THE POPULATION HERE FOR THE BLACKS, 70% OF THE POPULATION FOR THE WHITES. SO, HE TOOK IT INTO ACCOUNT. HE SHOULD NOT HAVE CALCULATED A FREQUENCY FOR THAT. AND I WOULD NOTE, A SLED LABORATORY WOULD NEVER HAVE CALCULATED A FREQUENCY FOR THAT LOCATION EITHER. WE WOULD HAVE EXCLUDED THAT BECAUSE IT DIDN'T TELL US ANYTHING ABOUT THE DNA TYPE OF THE PERPETRATOR.

Q AND HOW ABOUT THE NEXT ONE FOR THE GYPA? THE SAME THING?
A GYPA GIVES US THE SAME PROBLEM. THE VICTIM IS "A,B". THE VAGINAL SWAB IS AN "A,B". THERE ARE ONLY TWO TYPES, "A" OR "B". EVERYBODY IN THE ROOM IS AN "A", A "B", OR AN "A,B" PERSON. SO, EVERYONE IS INCLUDED. DOWN AT THE BOTTOM WE'VE GOT THAT "1" SHOWING UP AGAIN. IT DOESN'T EFFECT THE FREQUENCY.
Q OKAY. HOW ABOUT THE NEXT ONE?
A THE NEXT ONE STARTS TO SLIM DOWN THE POPULATION A LITTLE BIT. THE VICTIM IS AN "A,C". THE VAGINAL SWAB SHOWS UP AS AN "A,C". MISTER SIMMONS IS AN "A,C" AND SO HE'S INCLUDED. BUT THERE ARE SOME FOLKS THAT ARE EXCLUDED. ANYBODY WHO'S GOT A "B", THAT IS AN "A,B" PERSON, A "B,C" PERSON, A "B,B" PERSON WOULD BE EXCLUDED. SO, THE FOLKS THAT ARE INCLUDED WOULD BE "A" PEOPLE, "A,C" PEOPLE OR "C,C" PEOPLE. TO COME UP WITH A FREQUENCY OF THIS POPULATION THAT'S INCLUDED, WHAT YOU DO IS YOU ADD THE FREQUENCY OF THESE THREE TOGETHER AND YOU COME UP WITH THIS NUMBER HERE, THAT'S 22% OF THE CAUCASIAN POPULATION WOULD HAVE ONE OF THESE THREE AND 64% OF THE AFRICAN AMERICAN POPULATION WOULD BE ONE OF THOSE THREE. THAT'S A LOT DIFFERENT FROM .6% OF THE POPULATION THAT LIFECODES CALCULATED AND 30% FOR THE AFRICAN AMERICAN. SO, YOU CAN SEE WHY THE NUMBERS ARE GOING TO BE DIFFERENT FROM A SINGLE SOURCE CALCULATION AS OPPOSED TO A MIXTURE CALCULATION.
Q OKAY. AND CAN YOU TELL ME ABOUT THE NEXT SITE?

A THE NEXT SITE IS THE D7S8. IT ALSO SLIMS DOWN A LITTLE BIT OF THE POPULATION. THE VICTIM IS AN "A,A", BUT IF YOU LOOK AT THE EVIDENCE THERE'S AN "A" AND THEN THAT FAINT "B" AND SO WE KNOW THAT THE PERPETRATOR WOULD HAVE HAD TO HAVE HAD A "B" PRESENT AND MISTER SIMMONS IS AN "A,B" AND SO HE WAS INCLUDED AND THEY DID THE CALCULATION JUST LIKE IT WAS AN "A,B" PERSON. THAT'S WHAT THEY CALCULATED IT FOR BUT THEY IGNORED THE FACT THAT A "B,B" PERSON COULD HAVE ALSO CONTRIBUTED TO THAT. AND IF YOU TAKE THE "A,B" AND THE "B,B" AND ADD THEM TOGETHER, YOU GET 62.2% OF THE POPULATION FOR THE WHITES AND 62.3% FOR THE AFRICAN AMERICANS.

Q AND THESE NUMBERS ARE REFLECTED ON THE MEDICAL JOURNAL ARTICLE THAT LIFECODES INCLUDED IN THEIR FILE FOR THE FREQUENCIES?

A THAT'S CORRECT. *THE JOURNAL OF FORENSIC SCIENCES* ARTICLE BY BRUCE BUDOWLE.

Q OKAY. AND FOR THE "GC" SITE?

A FOR THE "GC" SITE, THE VICTIM IS A "B,B". NOW, AT THAT SITE, WE DO SEE AN "A" AND A "C" AND AGAIN, IF WE ASSUME THAT IT'S ONE CONTRIBUTOR, THAT CONTRIBUTOR HAS TO BE AN "A,C". MISTER SIMMONS WAS AN "A,C". HE WAS INCLUDED AND SO THERE'S ONLY ONE POSSIBLE TYPE THAT SAMPLE COULD GIVE IS AN "A,C" IF WE'VE ONLY GOT ONE CONTRIBUTOR, ONE PERSON IN ADDITION TO MS. BOYD DONATING INTO THAT SAMPLE AND SO THE STATISTIC FOR THAT WOULD BE THE SAME AS WHAT LIFECODES CALCULATED.

Q AND FOR THE DQ ALPHA SITE?

A DQ ALPHA IS A LITTLE MORE COMPLICATED BECAUSE WE'VE GOT SIX POSSIBILITIES. MISTER SIMMONS WAS A 1.1, 1.2. HE WAS INCLUDED AS A POSSIBILITY. THEY ONLY CALCULATED THE FREQUENCY FOR JUST THIS ONE POSSIBILITY. HOWEVER, THERE ARE ACTUALLY FOUR POSSIBILITIES THAT WOULD ADD UP TO THAT DATA THAT'S SEEN IN THE VAGINAL SWAB. A 1.1, 1.1 PERSON, A 1.1, 1.2 PERSON, WHICH MISTER SIMMONS IS. A 1.1,2 INDIVIDUAL AND ALSO A 1.1, 4.2/4.3 INDIVIDUAL. YOU TAKE ALL OF THESE AND ADD THEM TOGETHER AND THIS IS MY CALCULATION HERE AT THE BOTTOM. THAT WOULD BE ABOUT 13.9% OF THE POPULATION IN THE CAUCASIANS AND ABOUT 15% IN THE AFRICAN AMERICANS WOULD BE EXPECTED TO HAVE ONE OF THESE FOUR DNA TYPES.

Q CAN YOU TELL ME THE NUMBERS -- THERE ARE TWO SETS OF NUMBERS. CAN YOU EXPLAIN THAT TO ME? ONE THROUGH FIVE, ONE THROUGH NINE, ONE THROUGH, ONE FIVE ONE.

A THE NUMBERS ON TOP REPRESENTED WHAT WERE IN DOCTOR THOMPSON'S REPORT. I'M NOT SURE WHICH DATA BASE THAT HE USED TO CREATE HIS REPORT. I USED THE PRODUCT MANUAL THAT WAS PROVIDED BY LIFECODES WHICH I WOULD ASSUME THAT THEY WOULD HAVE USED TO CALCULATE THOSE FREQUENCIES. I'M NOT SURE IF HE WOULD HAVE USED ANOTHER DATA BASE, BUT OUR NUMBERS DIFFERED JUST A LITTLE BIT. HIS IS .135. MINE IS .139. HIS WAS .125 FOR THE BLACKS AND MINE IS .151. SO, THAT'S WHY I PUT THOSE IN SEPARATE.

Q OKAY. NOW, DID YOU INCLUDE ANY NUMBERS ABOUT THE CTT TEST?
A NO.
Q WHY NOT?
A BECAUSE THE RESULTS THAT WERE PRESENT ON THAT CTT TEST, THE BEST RESULT THAT THEY HAD WAS THE SCAN FROM 1/29/98. THERE WAS NOTHING ON THAT THAT COULD CONCLUSIVELY INCLUDE MISTER SIMMONS.
Q IF YOU USE ALL THE ALLELES THAT WERE REFLECTED ON THAT WITH THE WHITE ONES AND EVERYTHING, MY UNDERSTANDING FROM YOUR TESTIMONY IS THAT MISTER SIMMONS WOULD BE ELIMINATED.
A IF YOU LOOK AT THOSE LIGHT ALLELES THAT MATCH MISTER SIMMONS, YOU'VE GOT TO ALSO INCLUDE THE ALLELES THAT DON'T MATCH MISTER SIMMONS AND THEN AT THAT POINT HE WOULDN'T NECESSARILY BE ELIMINATED, BUT HE WOULD BE INCLUDED AS A MIXTURE OF TWO PERPETRATORS WHICH WE DON'T REALLY HAVE ANY EVIDENCE OF AND I DON'T THINK IT IS STRONG ENOUGH EVIDENCE ON THIS TO CONCLUDE THAT THERE WOULD BE TWO PERPETRATORS.
Q WHAT IS YOUR, IN YOUR STATISTICAL ANALYSIS, WHAT WAS THE RANDOM ACT OF PROBABILITY OF SELECTING AN UNRELATED INDIVIDUAL WHO COULD HAVE CONTRIBUTED TO THE EVIDENTIARY SAMPLE?
A THE FREQUENCY IN THE POPULATION FROM THE CAUCASIAN POPULATION OF SELECTING AN UNRELATED PERSON OFF THE STREET WHO COULD POSSIBLY MATCH THAT EVIDENCE FOUND ON THE VAGINAL SWAB FROM MS. BOYD WAS 1 IN 172 INDIVIDUALS OR FOR THE

AFRICAN AMERICAN POPULATION, IT WAS 1 IN 419 INDIVIDUALS. SO, IT WAS MUCH MORE COMMON IN THE POPULATION THAN WAS PRESENTED AT TRIAL. MUCH MORE COMMON THAN THE 1.28 BILLION OR 1 IN 8 MILLION THAT WAS PRESENTED AT TRIAL BECAUSE THEY ONLY QUOTED MISTER SIMMONS' DNA TYPE. THEY DIDN'T QUOTE THE EVIDENCE.

Q WERE THERE MULTIPLE PEOPLE TESTED WITH REGARD TO THIS CASE?

A YES. THERE WERE.

Q DO YOU KNOW HOW MANY?

A AT LEAST 26 OTHER INDIVIDUALS.

Q BESIDES MISTER SIMMONS.

A THAT'S CORRECT.

Q IF YOU LOOKED AT -- DID YOU LOOK AT THEIR RESULTS?

A I DID.

Q IF YOU LOOK AT THEIR RESULTS IN COMBINATION WITH EACH OTHER OR MISTER SIMMONS, COULD SOME OF THEM HAVE -- DO SOME OF THEM EXPLAIN ENTIRELY THE DNA RESULTS?

A THAT'S CORRECT. WHAT LIFECODES DID WAS THEY TESTED THIS VAGINAL SWAB. OVER A PERIOD OF TIME WHILE THIS CASE WAS BEING INVESTIGATED, THERE WERE INDIVIDUALS THAT WERE SUBMITTED TO LIFECODES FOR COMPARISON TO THAT VAGINAL SWAB. THEY DEVELOPED THEIR POLYMARKER DQ ALPHA TYPE AND THEY LOOKED TO SEE IF THEY WOULD BE INCLUDED OR EXCLUDED. THEY EXCLUDED SEVERAL INDIVIDUALS WHO COULD HAVE BEEN INCLUDED IF YOU DON'T ASSUME THAT THERE WAS A SINGLE PERPETRATOR.

AND THEY SHOULD HAVE REFLECTED THAT IN THEIR REPORTS. THEY COULD HAVE SAID SOMETHING TO THE EFFECT THAT IT'S INCONCLUSIVE AS TO WHETHER OR NOT WHOEVER THE SUSPECT WAS IS INCLUDED IN THIS DATA OR NOT. THAT'S THE WAY WE DO IT AT SLED. SO, THEY EXCLUDED SEVERAL PEOPLE WHO DEFINITELY COULD HAVE CONTRIBUTED TO THAT VAGINAL SWAB FROM MS. BOYD. IF YOU ASSUME TWO CONTRIBUTORS, YOU CAN ADD SOME OF THOSE TWO INDIVIDUALS TOGETHER AND ACTUALLY GENERATE THE DNA TYPE THAT WAS FOUND ON THE VAGINAL SWAB. I DON'T SEE ANY RESULT THAT THERE WERE TWO PERPETRATORS BUT THERE COULD HAVE BEEN AND THEY NEGLECTED TO TAKE THAT INTO ACCOUNT.

Q IS THERE ANY REASON THAT YOU'VE SEEN IN ANY OF THE EVIDENCE THAT YOU'VE SEEN TO ASSUME A SINGLE PERPETRATOR?

A WITH THE LIMITED RESULTS THAT YOU GET ON DQ ALPHA POLYMARKER, IT'S HARD TO CONCLUSIVELY SAY. IF YOU HAD A GOOD CTT TEST, WHICH IS BASICALLY THE SAME TEST WE NOW RUN AT SLED, WE STILL RUN CTT, BUT WE ALSO RUN TWELVE OTHER MARKERS IN ADDITION TO THOSE. THAT'S MUCH MORE INDICATIVE OF WHETHER OR NOT YOU'VE GOT A MIXTURE. IT'S HARD TO TELL WITH DQ ALPHA POLYMARKER.

Q LET ME JUST REVIEW A COUPLE OF THINGS REAL QUICK. *THE NATIONAL RESEARCH COUNCIL REPORT*, THE CHAPTER, SOME OF THE CHAPTERS WHICH WE KNOW WERE SENT BY DOCTOR BAIRD TO SOLICITOR BAILEY, DID THOSE EXPLAIN HOW TO CALCULATE MIXED SAMPLE RESULTS?

A YES. THEY DID.

Q DID YOU FOLLOW THE PROTOCOL FROM *THE NATIONAL COUNCIL REPORT*?

A YES. I DID.

Q DID DOCTOR BAIRD FOLLOW THE PROTOCOL FROM THAT *NATIONAL COUNCIL REPORT*?

A NO.

Q ONE MORE QUESTION, JUST SO I'M CLEAR, SOME OF THESE 26 OTHER SUSPECTS, IN EITHER COMBINATION WITH EACH OTHER AND/OR MISTER SIMMONS COULD ACCOUNT FOR ALL THE DNA RESULTS SEEN IN THE CASE.

A THAT'S CORRECT.

Q EVERY GENOTYPE THAT WAS REFLECTED?

A THAT'S CORRECT.

Q PLEASE ANSWER ANY QUESTIONS THAT MISTER ZELENKA HAS.

CROSS EXAMINATION OF DOCTOR LAMBERT BY MISTER ZELENKA

Q DOCTOR LAMBERT, WHEN YOU INITIALLY BECAME INVOLVED IN THIS CASE, THAT WAS ACTUALLY THE TIME OF THE ORIGINAL PROCEEDINGS. ISN'T THAT CORRECT? WERE YOU A PART OF THE CHAIN OF CUSTODY?

A AS IT TURNS OUT I WAS INVOLVED IN THE CHAIN OF CUSTODY ON A SAMPLE THAT WAS NOT TESTED AT LIFECODES AND I DIDN'T OPEN THAT SAMPLE, I JUST MOVED IT FROM ONE REFRIGERATOR TO ANOTHER AND THAT WAS MY INVOLVEMENT IN THE CHAIN.

Q AND IF I UNDERSTAND YOUR TESTIMONY CORRECTLY, THE FEBRUARY 2, 1998 REPORT BY LIFECODES CORRECTLY REPORTS THEIR

RESULTS ON THE DQ ALPHA. IS THAT CORRECT?

A IT DOES FOR MISTER SIMMONS. IT DOESN'T REFER TO THE EVIDENCE. IT WAS REPORTED ON A PREVIOUS REPORT BACK IN NOVEMBER 18, 1996.

Q OKAY. SO, WHAT YOU'RE SAYING, HAD YOU BEEN AT SLED, YOU WOULD HAVE COMBINED THOSE REPORTS INTO ONE REPORT. IS THAT CORRECT?

A THAT'S CORRECT.

Q BUT THAT WAS ALREADY REPORTED BY LIFECODES. ISN'T THAT CORRECT?

A THAT'S CORRECT.

Q AND BY ALL INDICATIONS THAT YOU REVIEWED, LIFECODES DID NOT RELY UPON THE CTT TESTING TO MAKE ITS DETERMINATIONS TO WHETHER THE PROBABILITY OF A MATCH IN THIS PARTICULAR SITUATION. IS THAT CORRECT?

A NO. THEY DID RELY ON THE CTT AND IT'S LISTED IN THE FEBRUARY 2ND REPORT IN TABLE -- IN THE FREQUENCY OF OCCURRENCE OF THE PHENOTYPE OBTAINED FROM SAMPLE 56855, THAT'S THE THIRD PAGE IN THE REPORT AT THE BOTTOM OF THAT TABLE IT SHOWS CSF1PO, TPOX, THO1. THAT'S CTT. SO, THEY DID INCLUDE IT IN THEIR CALCULATIONS OR STATISTICS.

Q HOW COULD THEY INCLUDE IT IN THEIR CALCULATIONS -- WAS IT YOUR OPINION THAT THE CTT'S WERE INCONCLUSIVE?

A OH, YES. WITH RESPECT TO MISTER SIMMONS' PRESENCE IN THAT CTT, ABSOLUTELY.

Q NOW, YOU ALSO DISAGREE WITH THE FREQUENCY OF OCCURRENCE UTILIZED BY LIFECODES BECAUSE THEY CONSIDERED CERTAIN MATTERS WITH RESPECT TO THE LDLR. IS THAT CORRECT? THAT SLED WOULD NOT HAVE DONE?

A THAT'S CORRECT. AND I DON'T THINK ANY LABORATORY WOULD HAVE INCLUDED THAT, THAT I'M AWARE OF.

Q BUT YOU UNDERSTOOD THAT LIFECODES WAS IN 1998 AND 1999. CORRECT?

A THEY DID INCLUDE IT INCORRECTLY.

Q AND THEY WERE A REPUTABLE LAB IN THAT TIME PERIOD. WEREN'T THEY?

A WE THOUGHT THAT THEY WERE WHEN WE SENT EVIDENCE OFF TO THEM.

Q AND THIS WASN'T THE ONLY EVIDENCE THAT YOU SENT TO LIFECODES AT THAT TIME, IS IT?

A I CAN'T RECALL IF I EVER SENT ANY BUT I DO KNOW THAT OUR LABORATORY HAD SENT EVIDENCE TO THEM ON MORE THAN ONE OCCASION.

THE COURT: WELL, WHY DO YOU SAY THAT LIKE THAT? WAS THERE OTHER PROBLEMS, ALLEGED PROBLEMS WITH LIFECODES OTHER THAN THE ALLEGED PROBLEMS HERE?

DR. LAMBERT: LIFECODES HAD HAD A PRETTY PUBLICIZED PROBLEM IN THE LATE 80s, RUNNING NOT THE DQ ALPHA TEST BUT, RUNNING AN RFLP TEST THAT WAS THE CASTRO CASE AND THEY ACTUALLY GOT THAT EVIDENCE EXCLUDED BACK IN THE LATE 80s. WE ASSUMED THAT THEY HAD

CORRECTED THEIR INTERNAL PROBLEMS, WHICH THEY DID WITH RESPECT TO THE RLFP. WE NEVER SENT THEM ANYTHING TO TEST WITH RFLP. WE ONLY SENT THEM PCR BASED TESTING.

THE COURT: WHAT'S THE CASPER CASE?

DR. LAMBERT: IT WAS A CASE THAT MISTER SHECK AND MISTER NEUFELD GOT INVOLVED IN AND MANAGED TO GET THE -- THE DNA WASN'T ADMITTED AT TRIAL. IT WAS IN THE LATE 80s IN ---

THE COURT: A SOUTH CAROLINA CASE?

DR. LAMBERT: --- NEW YORK CITY.

THE COURT: NEW YORK CITY.

Q NOW, IF THIS HAD BEEN A SINGLE -- EXPLAIN TO ME AGAIN THE DIFFERENCE BETWEEN MIXTURE RFLPs AND SINGLE SOURCE RFLPs.

A RFLPs OR DQ ALPHA? OR CTTs? EXCUSE ME.

Q RMGs. I'M SORRY.

A OH.

Q THE RANDOM MATCH.

A THE RANDOM MATCH PROBABILITY. WHAT THEY CALCULATED WAS HOW RARE MISTER SIMMONS IS IN THE POPULATION. WHAT THEY SHOULD HAVE CALCULATED WAS HOW RARE THE DNA PROFILE THAT SHOWED UP ON THE EVIDENCE WAS. THOSE ARE GOING TO BE TWO VASTLY DIFFERENT NUMBERS, WHICH WE SAW BETWEEN MILLIONS DOWN TO 1 IN 500. THEY CALCULATED HIS FREQUENCY AND REPORTED THAT WHICH IS -- THEY CALCULATED IT CORRECTLY FOR HIM BUT IT DOESN'T MEAN ANYTHING. I MEAN, I HAVE A FREQUENCY ASSOCIATED WITH ME BUT THAT DOESN'T HAVE ANYTHING TO DO WITH

EVIDENCE AT THE CRIME SCENE.

Q AND IN YOUR CALCULATION, YOU CALCULATED THAT THE LIKELIHOOD OF WHAT?

A THE PROBABILITY OF SELECTING AN UNRELATED INDIVIDUAL THAT COULD HAVE CONTRIBUTED TO THAT EVIDENCE FOUND ON THE VAGINAL SWAB OF MS. BOYD AND THEN TAKING SOMEBODY AT RANDOM OUT OF THE ROOM AND TESTING THEM, WHAT IS THE PROBABILITY THAT THEY ARE GOING TO RANDOMLY MATCH THAT EVIDENCE IS APPROXIMATELY 1 OUT OF EVERY 500 INDIVIDUALS.

Q OKAY. AND WHERE DOES MISTER SIMMONS FALL WITHIN THAT 500? IS HE INCLUDED OR EXCLUDED?

A HE'S INCLUDED.

Q AND HOW MUCH IS HE INCLUDED IS WHAT NUMBER OF THE 500?

A THE PROBABILITY AGAIN OF SELECTING SOMEBODY THAT MATCHED THAT IS 1 OUT OF EVERY 500 INDIVIDUALS AND HE IS INCLUDED.

Q OKAY. AND SO, WHAT PERCENTAGE OF THE POPULATION DOES THAT ELIMINATE?

A IT WOULD ELIMINATE OVER 99% OF THE POPULATION, BECAUSE 1 IN A 100 IS 99 AND SO IT'S PROBABLY, YOU KNOW, IT'S LESS THAN 1% OF THE POPULATION.

Q LESS THAN 1% OF THE ---

A LIKE .2% OF THE POPULATION WOULD BE INCLUDED.

Q SO, THERE'S A 99% PROBABILITY THAT MISTER SIMMONS COULD HAVE BEEN THE CONTRIBUTOR?

A THAT'S WHAT'S REFERRED TO AS THE PROSECUTOR'S FALLACY WHEN

YOU'RE TALKING ABOUT --

THE COURT: WELL, IS THAT TRUE OR NOT?

DR. LAMBERT: NO. NOT THE WAY HE STATED IT.

THE COURT: WELL, TELL ME HOW, STATISTICALLY, HE COULD BE.

DR. LAMBERT: THE PROBABILITY OF SELECTING AN UNRELATED INDIVIDUAL AT RANDOM FROM THE POPULATION THAT WOULD MATCH THE EVIDENCE IS 1 OUT OF EVERY 500 INDIVIDUALS AND MISTER SIMMONS IS INCLUDED IN THAT 1 OUT OF EVERY 500 INDIVIDUALS. IT DOESN'T HAVE ANYTHING TO DO WITH THE PROBABILITY THAT HE LEFT IT BUT NOW YOU'RE TALKING ABOUT GUILT AND INNOCENCE WHICH IS COMPLETELY SEPARATE FROM THE RANDOM MATCH PROBABILITY.

Q BUT THE VAGINAL SWAB DOES NOT ELIMINATE MISTER SIMMONS FROM BEING A CONTRIBUTOR. DOES IT?

A THAT'S CORRECT.

Q NOW, WHEN YOU REVIEWED THE -- JUST SO I'M SURE WE'RE TALKING ABOUT THE SAME APPLES AND ORANGES, YOU ENTERED AN AFFIDAVIT SAYING THAT YOU REVIEWED, AT SOME TIME, THE DEFENSE COUNSEL'S FILE?

A YES, SIR.

Q IS THAT CORRECT?

A YES.

Q AND BY DEFENSE COUNSEL, DO YOU MEAN JERRY THEOS' FILE?

A I HAVE SEEN HIS FILE. YES, SIR.

Q OKAY. AND WITHIN HIS FILE HE HAD THE FILMS, CORRECT?

A HE HAD POOR COPIES OF THE FILMS THAT WERE ENTERED INTO

EVIDENCE TODAY THAT WE LATER GOT FROM CELLMARK. WE GOT MUCH BETTER QUALITY COPIES.

Q BUT HE HAD THE FILM, THOUGH, DIDN'T HE? NOT THE ORIGINALS, BUT..

A IF HE HAD FILMS, IT WAS FOR RFLP. IF IT WAS AN ACTUAL PIECE OF FILM, X-RAY FILM, THOSE WERE RFLP RESULTS WHICH WERE NOT REPORTED IN THIS CASE.

Q WHEN YOU REVIEWED HIS FILE, YOU TESTIFIED THAT, I BELIEVE IT WAS, PLAINTIFF'S #16 WAS NOT IN THE FILE. IS THAT CORRECT?

A IT WAS NOT IN THE FILE THAT WAS PROVIDED TO THE DEFENSE.

Q THE DEFENSE BEING MISTER THEOS?

A THAT'S CORRECT.

Q I JUST WANTED TO BE SURE I UNDERSTAND WHO'S THE DEFENSE IN THIS CASE.

Q THAT WOULD BE MISTER THEOS' FILE.

Q AND DO YOU KNOW WHY PLAINTIFF'S #16 – WAS IT A DRAFT? DO WE KNOW WHAT IT WAS PREPARED FOR?

A I SUSPECT THAT IT WAS PREPARED TO BE USED AS AN EXHIBIT IN COURT. THE EXHIBITS FROM WHAT I UNDERSTAND HAVEN'T BEEN LOCATED. I READ THE TESTIMONY OF MS. CRANE AND DOCTOR BAIRD AND THEY REFER TO THAT EXHIBIT IN COURT AND IT APPEARS THAT THEY ARE REFERRING TO THAT PAGE 15.

Q HAVE YOU SEEN THE EXHIBIT THAT WAS INTRODUCED IN COURT?

A NO.

Q IS IT IN THE CLERK'S OFFICE?

A I DON'T THINK THAT IT EXISTS. THAT WAS WHAT I WAS APPRAISED OF.

Q IT WAS INTRODUCED AS AN EXHIBIT, THOUGH. RIGHT?
A YES.
Q WITH RESPECT TO THE LIFECODES MATERIAL THAT YOU REVIEWED THAT CAME FROM ORCHID CELLMARK, IT ALSO INCLUDES A LOT OF DRAFT INFORMATION. DOESN'T IT? WITHIN THAT MATERIAL? DEPOSED QUESTIONS MARKED OUT, SENT TO THE INDIVIDUALS --
A THOSE WERE FROM – SOLICITOR BAILEY SUBMITTED THEM. THAT'S CORRECT. IT CONTAINS INFORMATION OTHER THAN THE CASE FILE.
Q SO, WE REALLY DON'T KNOW WHY THAT DOCUMENT YOU EMPHASIZED WAS INCORRECT, WAS EVEN STILL IN EXISTENCE. DO WE?
A IT DOESN'T MATCH ANYTHING ELSE THAT IS IN THE CASE FILE AND SO I DON'T KNOW WHAT ITS PURPOSE IN PREPARING IT WAS FOR,, BUT IN REVIEWING THE FILE, WE WERE TRYING TO FIND SOMETHING THAT INDICATED WHAT THE CTT RESULTS WERE BECAUSE THEY NEVER REPORTED THEM AND THAT WAS THE CLOSEST THING THAT WE GOT TO ANYTHING IN THE CASE NOTES THAT LISTED WHAT THEIR INTERPRETATION OF CTT WAS.
Q AND THAT ERRONEOUS INFORMATION, AS FAR AS YOU CAN TELL, WAS NEVER GIVEN TO THE DEFENSE COUNSEL THEOS?
A NOT IN MY REVIEW OF HIS FILE.
Q SO, HE DIDN'T MIS-RELY UPON THAT ERRONEOUS INFORMATION AS FAR AS YOU CAN TELL?
A UNLESS IT WAS THAT EXHIBIT THAT WAS PRESENTED IN COURT.
Q NOW, WHEN YOU REVIEWED MISTER THEOS' FILE, DID YOU SEE THINGS FROM LIFECODES AND MISTER THEOS' FILE THAT ARE NOT PART OF

THAT MATERIAL THAT ORCHID CELLMARK REVEALED IN THE PAST FEW MONTHS?

A YES.

Q AND WHAT INFORMATION WAS THAT?

A THERE WAS SOME CONVERSATIONS BETWEEN MISTER THEOS AND DOCTOR OSTROWSKI, WHO WAS THE RETAINED DEFENSE EXPERT, THEIR DNA EXPERT IN THE ORIGINAL TRIAL.

Q LET ME CLARIFY THAT. DID YOU SEE ANY ADDITIONAL REPORTS, LAB REPORTS, DATA, DIRECTLY FROM LIFECODES IN MISTER THEOS' FILE THAT WAS NOT IN THE FILE REVEALED IN THE PAST FEW MONTHS BY ORCHID CELLMARK?

A NO.

Q NOT DOCTOR OSTROWSKI'S CONVERSATION.

A I DIDN'T SEE ANYTHING THAT FROM CELLMARK THAT WAS IN MISTER THEOS' FILE AND VICE VERSA. THE ONLY THING THAT WE OBTAINED SINCE THEN FROM CELLMARK WAS A HIGHER QUALITY OF THOSE SCANS WHICH SHOWED UP IN THE ORIGINAL FILE AS REALLY POOR COPIES OF XEROXED COPIES.

Q NOW, ONE OF THE PROBLEMS WITH THIS VAGINAL SWAB IS THAT THERE WAS SUCH A HIGH LEVEL OF MIXTURE BY THE FEMALE VICTIM IN THE CASE AND A VERY SLIGHT MIXTURE FROM THE OTHER INDIVIDUAL. ISN'T THAT CORRECT?

A THAT'S EXACTLY RIGHT.

Q AND WHEN YOU HAVE A VERY HIGH MIXTURE FROM ONE CONTRIBUTOR AND A VERY SLIGHT FROM ANOTHER, WHAT DOES THAT DO TO THE

TESTIMONY OR WHAT IMPACT WOULD THAT HAVE?

A IT MAKES IT MORE DIFFICULT TO INTERPRET. IT'S ALMOST LIKE YOU'RE LOOKING OUT INTO THE ROOM AND YOU WANT TO IDENTIFY AN INDIVIDUAL BUT IT'S A MIXTURE OF INDIVIDUALS AND SO LET'S SAY THAT PERSON "A" IS STANDING IN FRONT OF PERSON "B" AND YOU WANT TO GET A GOOD LOOK AT PERSON "B" BUT THEY ARE MASKED BY PERSON "A" AND SO I CAN'T QUITE SEE PERSON "B". I CAN SEE A LITTLE OF THEIR CHARACTERISTICS TO TELL A LITTLE BIT ABOUT THEM, BUT PERSON "A" IS STANDING IN FRONT. THAT'S WHAT HAPPENED IN THIS CASE. THERE'S MUCH MORE OF MS. BOYD THAN THERE IS OF THE PERPETRATOR WHO ALSO SHOWS UP IN THAT SAMPLE.

Q OKAY. AND AGAIN, THE FORENSIC DATA IN THIS CASE ONLY SUGGESTS THAT THERE WAS ONE PERPETRATOR INVOLVED. ISN'T THAT CORRECT?

A IT'S CONSISTENT WITH BEING FROM ONE PERPETRATOR BUT IT'S NOT INCONSISTENT WITH BEING FROM MORE THAN ONE INDIVIDUAL. WE CAN'T TELL FROM THE DQ ALPHA POLYMARKER.

Q THAT WOULD HAVE TO BE TWO VERY LIGHT MIXTURES IN ADDITION TO THE VICTIM'S MIXTURE?

A NO. WE JUST SHOWED YOU A TYPE DQ ALPHA. THERE'S FOUR POSSIBILITIES OF PEOPLE WHO COULD HAVE CONTRIBUTED TO THAT. SO, THERE'S A LOT MORE DNA TYPES OUT THERE THAT COULD HAVE CONTRIBUTED TO THIS SAMPLE.

Q OKAY. NOW, YOU'RE AWARE THAT ORCHID CELLMARK NOW HAS TAKEN OVER CUSTODY OF THESE OTHER MATERIALS LIFECODES HAD.

ISN'T THAT CORRECT?

A THAT'S CORRECT.

Q DID YOU CONSULT AT ALL WITH THIS INFORMATION WITH EITHER DOCTOR BAIRD OR LAUREN CRANE WHO DID THE ACTUAL TESTING AT THE TIME OF THE TRIAL?

A NO, SIR.

Q DID YOU CONSULT WITH MISTER OSTROWSKI WHO WAS RETAINED BY THE DEFENSE TEAM, WHO PROVIDED EXPERT ASSISTANCE TO MISTER THEOS AT THE TIME OF THE ORIGINAL TRIAL?

A NO, SIR.

Q DID YOU REVIEW MISTER OSTROWSKI'S WRITTEN REPORT THAT HE DID FOR THE DEFENSE COUNSEL IN THIS CASE?

A I DID.

Q AND WHAT INFORMATION DID MISTER OSTROWSKI PROVIDE DEFENSE COUNSEL CONCERNING WHETHER KENNETH SIMMONS COULD HAVE BEEN A CONTRIBUTOR TO THE VAGINAL SWAB IN THIS CASE?

A HE ACKNOWLEDGED, LIKE I DID, THAT HE WOULD BE INCLUDED AS A POSSIBLE CONTRIBUTOR. FROM RECOLLECTION, HE WAS INTERESTED IN BRINGING OUT THE POINT THAT THAT 1.2 ALLELE ON THE DQ ALPHA CAN'T BE TYPED FOR CERTAINTY. MISTER SIMMONS IS A 1.1, 1.2 AND SO HE ADVISED DEFENSE COUNSEL THAT THAT WAS SOMETHING THAT SHOULD BE EXPLORED.

Q NOW, AT THE TIME IN 1998, 1999, WAS SLED DOING PCR ANALYSIS?

A NO, SIR.

Q WHEN DID SLED START DOING PCR ANALYSIS?

A WE WERE VALIDATING PCR IN '99 AND WE WENT ON-LINE IN 2000, 2001.

Q WHEN YOU'RE DOING STATISTICAL ANALYSIS, WHEN YOU HAVE A FEMALE VICTIM AND POSSIBLY A MALE PERPETRATOR, IS IT THE STANDARD TO ALSO ALWAYS THROW IN THE FACT THAT THERE MAY BE A MIXED OR MULTIPLE CONTRIBUTORS IN DOING YOUR ASSESSMENT?

A IN DOING THE FREQUENCY CALCULATION, THE RMP? DEPENDANT ON THE MIXTURE. IF THERE IS A WHOLE LOT MORE OF HER THAN THERE IS OF HIM, THEN YOU NEED TO INTERPRET IT THE WAY THAT I PRESENTED. IF THERE IS A WHOLE LOT MORE OF HIM THAN HER THEN YOU CAN TREAT IT AS A SINGLE SOURCE SAMPLE AND THE STATISTIC THAT WAS CALCULATED AT TRIAL WOULD BE MORE APPROPRIATE, BUT THAT WASN'T THE CASE. THERE WAS A WHOLE LOT MORE OF HER THAN THERE IS OF HIM.

Q OKAY. AND SO IT'S NOT THE CASE BECAUSE THERE WASN'T ENOUGH OF HIM WITHIN THAT SAMPLE. IS THAT CORRECT?

A THAT'S CORRECT. AND ADDITIONALLY, THEY INTERPRETED THE CTT, WHICH IS INCONCLUSIVE AT BEST.

Q BUT AGAIN, MISTER SIMMONS IS NOT ELIMINATED FROM THE SAMPLE ---

A ON THE DQ POLYMARKER RESULTS HE IS INCLUDED AS A POSSIBLE CONTRIBUTOR.

MR. ZELENKA: NO FURTHER QUESTIONS.

MR. YOUNG: JUST TWO QUESTIONS.

RE-DIRECT EXAMINATION OF DOCTOR LAMBERT BY MISTER YOUNG

Q PAGE FIFTEEN THAT YOU WERE TALKING ABOUT, DID YOU SEE THIS ANYWHERE ELSE OTHER THAN IN THE LIFECODES FILE?

A YES. I DID.
Q WHERE WAS THAT?
A WE TRAVELED TO SUMMERVILLE BACK IN THE SUMMER TO LOOK AT THE EVIDENCE IN THIS CASE. THAT WAS WHERE IT WAS KEPT. IT WAS RETURNED BACK TO THEM, EITHER THE STUFF LEFT OVER FROM TESTING AT SLED AND ALSO THE EVIDENCE THAT CAME BACK FROM LIFECODES. WHEN WE OPENED THAT EVIDENCE BOX UP, THE FIRST THING WE SAW PAPER CLIPPED TO ONE OF THE EVIDENCE BAGS WAS THAT PAGE FIFTEEN AND THAT WAS THE FIRST TIME I HAD SEEN IT EVEN AFTER REVIEWING ALL THE OTHER FILES. THAT WAS THE FIRST TIME THAT WE SAW IT.
Q WERE THE CTT RESULTS REFLECTED ANYWHERE ELSE?
A NOT IN THE CASE NOTES, NOT IN THE REPORTS.
Q WITH REGARD TO THE STATISTICS, YOU ARE TALKING ABOUT 1 OUT OF 500 PEOPLE, ROUGHLY. I'M SIMPLIFYING THE NUMBERS. DO YOU KNOW HOW MANY PEOPLE THERE ARE IN SOUTH CAROLINA?
A WE'RE UP TO FOUR MILLION INDIVIDUALS NOW.
Q ROUGHLY HALF OF THOSE MALE?
A HALF OF THEM, ROUGHLY, WOULD BE MALE.
Q DO YOU KNOW WHAT YOU WOULD GET WHEN YOU DIVIDE 500 INTO 2 MILLION?
A IT'S A -- DON'T MAKE ME DO MATH ON THE STAND IN MY HEAD.
Q SOMEWHERE BETWEEN THIRTEEN THOUSAND PEOPLE?
A THERE WOULD BE SEVERAL PEOPLE IN THIS STATE THAT POTENTIALLY COULD MATCH UP. THOUSANDS.

Q THANK YOU.

THE COURT: YOU MAY STEP DOWN.

DR. LAMBERT: THANK YOU, YOUR HONOR.

THE COURT: NEXT WITNESS. DO Y'ALL HAVE ANY WITNESSES LEFT?

MR. MORTON: NO, SIR, YOUR HONOR.

THE COURT: I UNDERSTAND, MISTER ZELENKA, YOU HAVE MISTER THEOS?

MR. ZELENKA: YES.

THE COURT: ANYBODY ELSE?

MR. ZELENKA: NO. THAT WOULD BE IT.

THE COURT: LET'S TAKE A QUICK BATHROOM BREAK AND WE WILL TRY TO GET GOING AS QUICKLY AS WE CAN GET BACK SO WE CAN CONCLUDE THIS TODAY.

(BRIEF BREAK)

(AFTER BEING DULY SWORN BY THE CLERK OF COURT, JERRY THEOS TESTIFIED AS FOLLOWS:)

CLERK OF COURT: PLEASE HAVE A SEAT AND STATE YOUR NAME.

MR. THEOS: JERRY THEOS, T-H-E-O-S.

DIRECT EXAMINATION OF JERRY THEOS BY MISTER ZELENKA

Q MISTER THEOS, WHAT IS YOUR PRESENT EMPLOYMENT?

A I AM A PARTNER IN THE LAW FIRM OF URICCHIO, HOWE & KRELL, IN CHARLESTON.

Q AND HOW LONG HAVE YOU BEEN PRACTICING LAW?

A SINCE 1982 AND I'VE BEEN WITH THIS FIRM -- I WAS A PUBLIC DEFENDER IN CHARLESTON, ASSISTANT PUBLIC DEFENDER, DEPUTY

PUBLIC DEFENDER AND THEN WITH THIS FIRM FOR ABOUT 25 YEARS.

Q APPROXIMATELY, WHAT FOCUS OF YOUR PRACTICE IS CRIMINAL DEFENSE?

A I DO PROBABLY 90% OF OUR CRIMINAL DEFENSE WORK AND IT RANGES FROM MAGISTRATE/MUNICIPAL COURT, GENERAL SESSIONS COURT AND FEDERAL COURT AS WELL AND I WOULD SAY PROBABLY 30%-40% OF OUR PRACTICE IS A GENERAL DRAW PRACTICE. WE DO CIVIL, CRIMINAL AND DOMESTIC TRIAL WORK.

Q OKAY. AND AS PART OF YOUR CRIMINAL DEFENSE WORK, HAVE YOU REPRESENTED INDIVIDUALS WHO WERE CHARGED WITH MURDER?

A YES.

Q GUESSTIMATE HOW MANY OF THOSE INDIVIDUALS HAVE YOU BEEN INVOLVED WITH?

A I DON'T KNOW. IN THE NEIGHBORHOOD OF PROBABLY 50 OR 60, MAYBE MORE.

Q AND HAVE SOME OF THOSE BEEN CHARGED WITH CAPITAL CRIMES?

A YES.

Q HAVE YOU BEEN RETAINED AND APPOINTED OR RETAINED OR APPOINTED?

A BOTH RETAINED AND APPOINTED IN MURDER CASES AND IN THE DEATH PENALTY CASES WHETHER IT BE AT THE TRIAL STAGE OR THE POST CONVICTION RELIEF STAGE OR THE APPELLATE STAGE, GENERALLY I CAN'T THINK OF ANY THAT I'VE BEEN RETAINED IN. THEY'VE ALL BEEN APPOINTED.

Q IN JANUARY OF 1998, DID YOU BECOME INVOLVED IN THE

REPRESENTATION OF KENNETH SIMMONS?

A I DON'T REMEMBER THE DATE, BUT I DID REPRESENT KENNETH.

Q WAS THIS YOUR FIRST DEATH PENALTY CASE?

A NO.

Q APPROXIMATELY HOW MANY BEFORE MISTER SIMMONS HAVE YOU BEEN INVOLVED IN?

A I'VE BEEN INVOLVED IN A FEW. THE ONLY ONE THAT ACTUALLY HAS GONE TO TRIAL WAS ABOUT TWO YEARS BEFORE THIS I BELIEVE IT WAS SPENCER MCCONEY AND HE RECEIVED A LIFE SENTENCE. BUT THERE HAVE BEEN POST CONVICTION RELIEF CASES AND SOME OTHERS THAT DIDN'T MAKE IT TO TRIAL.

Q POST CONVICTION RELIEF CASES MEANING YOU REPRESENTED INDIVIDUALS ALREADY SENTENCED TO DEATH?

A RIGHT.

Q IN A POST CONVICTION RELIEF PROCEEDING WHERE THE COMPETENCY OF COUNSEL WAS BEING CHALLENGED?

A YES.

Q AND AS PART OF THOSE RESPONSIBILITIES, DID YOU BECOME AWARE OF A STANDARD OF PRACTICE THAT SHOULD OCCUR IN DEATH PENALTY CASES BY EITHER APPOINTED OR RETAINED LAWYERS?

A I ASSUME I DID. THAT'S KIND OF AN ODD QUESTION, IF I BECAME AWARE OF A STANDARD OF CARE. I THINK THERE IS A STANDARD OF CARE IN EVERY ASPECT AND FACET OF CRIMINAL LAW.

Q OKAY.

A I BELIEVE AT THE TIME I WAS CERTIFIED BY THE SUPREME COURT TO

SIT AS LEAD COUNSEL IN DEATH PENALTY CASES SO WHATEVER THAT STANDARD WAS, I ASSUME I MET IT.

Q OKAY. WHO WAS INITIALLY APPOINTED WITH YOU ON THIS CASE?

A A LAWYER BY THE NAME OF GENE DUKE OR DUKES.

Q AND SUBSEQUENT TO OCCUR AT THE TIME, DID JIM BELL BECOME INVOLVED?

A HE DID. I MOVED FOR MISTER DUKES TO BE RELIEVED AND ASKED FOR OTHER COUNSEL TO BE APPOINTED.

Q LET ME SHOW YOU A DOCUMENT AND ASK IF YOU CAN IDENTIFY THIS DOCUMENT.

A IT LOOKS LIKE AN ITEMIZATION OF MY TIME, A TIME SHEET.

Q IS THAT YOUR TIME SHEET?

A IT IS AND THIS WOULD HAVE BEEN PREPARED, I DIDN'T PREPARE IT BUT IT WAS PREPARED BY MY OFFICE.

Q OKAY.

MR. ZELENKA: YOUR HONOR, WE WOULD MOVE TO INTRODUCE THIS AS RESPONDENT'S #6.

THE COURT: ANY OBJECTION?

MR. MORTON: NO, SIR.

(WHEREUPON, A TIME SHEET IS ENTERED INTO EVIDENCE AS RESPONDENT'S EXHIBIT #6, WITHOUT OBJECTION)

Q LET ME PROVIDE YOU EXHIBIT #6 AGAIN, MISTER THEOS.

(MR. ZELENKA HANDS DOCUMENT TO WITNESS)

Q APPROXIMATELY, HOW MUCH TIME DID YOU BILL ON THIS CASE? IS IT REFLECTED? ON THE LAST PAGE, PAGE 51?

A IT LOOKS LIKE THERE WAS 626.25 HOURS SPENT, APPARENTLY OUT OF COURT. 144.25 HOURS IN COURT, BECAUSE WE HAD TO DIFFERENTIATE THE TWO FOR PAYMENT PURPOSES.

Q IN THE WORK YOU DID ON THIS CASE, HOW WAS THE RESPONSIBILITY FOR CASE PREPERATION DISTRIBUTED BETWEEN YOURSELF AND MISTER BELL?

A WELL, I WAS PRIMARILY RESPONSIBLE AND I ASSUMED MOST OF THE TASKS ASSOCIATED WITH REPRESENTING KENNETH, WITH ONE EXCEPTION, AND THAT IS THE MITIGATION EVIDENCE WITNESSES AND THOSE MATTERS RELATED TO THE PENALTY PHASE.

Q DID YOU HAVE REGULAR MEETINGS WITH MISTER BELL?

A WE SPOKE REGULARLY ON THE PHONE. WE MET, I CAN'T SAY REGULARLY, BUT WHATEVER THE TIME SHEET REFLECTS, THAT'S WHEN WE MET. BUT WE HAD SEVERAL MEETINGS AND HE WAS PRESENT DURING AT LEAST A FEW OF MY MEETINGS AND OUR MEETINGS WITH EXPERTS INCLUDING DNA AND THE MENTAL HEALTH EXPERTS.

Q OKAY. THERE WERE A SERIES OF EXPERTS THAT YOU RETAINED IN THIS PARTICULAR CASE. ISN'T THAT CORRECT?

A YES.

Q THAT INCLUDED JOHN FOXWORTH, A PSYCHIATRIST.

A YES.

Q HE TESTIFIED ABOUT ALCOHOL RELATED DEMENTIA. DO YOU RECALL?

A DO I RECALL SPECIFICALLY WHAT HE TESTIFIED ABOUT? NO.

Q CHARLES BART SAYLOR, A CLINICAL PSYCHOLOGIST.

A YES.
Q LEWIS RANDOLPH WAID, RANDY WAID?
A RANDY WAID. YES.
Q A PSYCHIATRIST.
A PSYCHOLOGIST.
Q PSYCHOLOGIST, EXCUSE ME. JEFF YUNGMAN, A SOCIAL WORKER?
A YES.
Q CORRECT? AND DON GERT A FORENSIC ANALYST?
A RIGHT.
Q AND RON OSTROWSKI, THE DNA EXPERT OUT OF CHARLOTTE?
A YES.
Q AND ALSO DENNIS KEYES, MENTAL RETARDATION SPECIALIST FROM THE MEDICAL COLLEGE, WELL, I GUESS THE ---
A A COLLEGE OF CHARLESTON PROFESSOR.
Q --- PROFESSOR AT THE COLLEGE OF CHARLESTON. WHEN YOU BEGAN PREPARING FOR MITIGATION ON THIS CASE, DID YOU TRY TO GET A SENSE AS TO WHAT YOUR THEME WAS GOING TO BE IN THIS CASE?
A WELL, WHAT REALLY DID FLOW FOR OUR THEME FOR THE ENTIRE CASE AND THAT WAS THAT KENNETH WAS FUNCTIONING AT A VERY LOW LEVEL FROM A MENTAL HEALTH STANDPOINT AND THERE WAS SOME DISPUTE AMONG THE EXPERTS WHETHER OR NOT HE WAS MENTALLY RETARDED OR WHETHER HE JUST FUNCTIONED AT A MUCH LOWER LEVEL AND AT THAT POINT, AT THAT TIME THE LAW IS NOT AS IT WAS TODAY REGARDING MENTAL RETARDATION SO, OUR THEME THROUGHOUT WAS TO MAKE IT CLEAR TO THE JURY THAT HE WAS

SOMEBODY WHO DID FUNCTION AT THAT LOWER LEVEL, THAT HE SHOULDN'T BE HELD AS ACCOUNTABLE AS SOMEBODY THAT FUNCTIONED AT A MUCH HIGHER LEVEL AND THAT HE SHOULD BE SENTENCED DIFFERENTLY IN THE END, SO THAT IF THEY DID BELIEVE IN THE GUILT PHASE THAT HE WAS GUILTY, IF THEY DETERMINED THAT, THAT THAT COMMON THREAD OF HIS LOW FUNCTIONING LEVEL WOULD CARRY THROUGH TO THE PENALTY PHASE IN HOPES THAT THEY WOULD NOT SENTENCE HIM TO DEATH AND I THINK THAT WAS -- APPARENTLY IT DIDN'T WORK, BUT THAT'S WHERE OUR EFFORT WAS.

Q DID YOU ALSO HAVE A THEME FOR THE GUILT PHASE AS TO WHETHER THE STATE HAD MET ITS BURDEN OF PROOF IN THIS CASE?

A WELL, I DIDN'T THINK THEY DID BUT THE JURY THOUGHT OTHERWISE.

Q DID THAT THEME ARISE FROM WHETHER THE STATEMENTS THAT HE GAVE ACKNOWLEDGING GUILT SHOULD BE ADMISSIBLE AND --

A WELL, I THINK OUR APPROACH WAS AT LEAST TWOFOLD: ONE, THAT THE CONFESSION WAS COERCED, THAT HE DIDN'T UNDERSTAND AT HIS LEVEL OF FUNCTIONING MENTALLY, THAT THE CONFESSION EITHER SHOULD HAVE BEEN INADMISSIBLE, AND IF ADMISSIBLE SHOULD NOT HAVE BEEN RELIED UPON, BELIEVED, AND SHOULD HAVE BEEN DETERMINED TO BE NOT CREDIBLE BY A JURY BASED ON ALL THOSE FACTORS AND IN ADDITION BASED UPON THE FACT THAT HE HAD GIVEN A COUPLE OF DIFFERENT STATEMENTS -- I DON'T RECALL EXACTLY WHAT THOSE STATEMENTS WERE AT THIS POINT -- BUT THAT HE HAD GIVEN STATEMENTS THAT WERE INCONSISTENT WITH EACH OTHER AND THAT ULTIMATELY THE STATEMENT THAT WAS RELIED UPON BY

THE STATE HAD INCONSISTENCIES WITHIN IT AS WHEN COMPARED TO THE ACTUAL EVIDENCE FOUND AT THE SCENE. AS I RECALL THERE WEREN'T ANY FINGERPRINTS, THERE WEREN'T ANY HAIR STRANDS, THERE WASN'T ANYTHING PHYSICALLY TO CONNECT KENNETH TO THE SCENE.

Q AT SOME POINT, DID YOU BECOME AWARE OF THE EXISTENCE OF DNA EVIDENCE ALLEGEDLY CONNECTING YOUR CLIENT TO THIS CRIME?

A I DID.

Q AND DID YOU TAKE STEPS TO INVESTIGATE THE QUALITY OF THAT ANALYSIS AND SEEK TO DEVELOP LINES OF UNDERSTANDING AND IMPEACHMENT IN THAT AREA?

A YES.

Q AND HOW DID YOU DO THAT?

A I ENGAGED DOCTOR OSTROWSKI, RON OSTROWSKI. I CAN'T REMEMBER WHERE HE WAS AT THE TIME. I THINK HE WAS IN CHARLOTTE, BUT HE MAY HAVE BEEN IN ANOTHER CITY. HE MAY HAVE BEEN IN RALEIGH, NORTH CAROLINA. I HAD USED HIM IN THE MCCONEY CASE AND I'VE USED HIM FOR SEVERAL YEARS SINCE AND ACTUALLY JUST USED HIM IN A CRIMINAL SEXUAL CONDUCT CASE A FEW MONTHS AGO.

Q OKAY.

A AND I RELIED ON HIS ANALYSIS AND I RELIED ON HIS REVIEW OF THE RECORDS OF THE TESTING, TEST RESULTS, THE REPORTS, NOTES, ET CETERA AND BASED UPON HIS OPINION AND ADVICE, PROCEEDED.

Q DID YOU TAKE STEPS TO ACQUIRE THE DNA CASE FILE IN THIS CASE?

A YOU SHOWED ME A LETTER EARLIER FOR MAYBE A MOTION EARLIER. I DON'T SPECIFICALLY RECALL. IF I DID IT WOULD BE IN THE FILE.

Q LET ME ASK YOU IF YOU CAN IDENTIFY THIS DOCUMENT. (HANDS WITNESS DOCUMENT)

A IT'S TITLED *SUPPLEMENTAL MOTION FOR INSPECTION OR IN THE ALTERNATIVE MOTION TO PRODUCE* AND APPARENTLY AMONG OTHER THINGS I ASKED FOR ALL NOTES, MEMORANDA, RECORDINGS, ET CETERA, RELATED TO DNA EXPERIMENTS CONDUCTED BY SLED AND A NUMBER OF OTHER THINGS RELATED TO SLED, ACTUALLY, A LIST OF THIRTEEN THINGS SPECIFICALLY RELATED TO THIS TESTING AND I ASSUME AGAIN BECAUSE I DON'T REMEMBER SPECIFICALLY, BUT I ASSUME DOCTOR OSTROWSKI ASSISTED ME IN PREPARING THAT LIST.

Q OKAY. AND THAT WAS DATED AUGUST 28, 1998?

A WHATEVER IT SAYS. (LOOKS AT DOCUMENT) AUGUST 28, '98.

MR. ZELENKA: YOUR HONOR, WE WOULD MOVE TO INTRODUCE THIS AS EVIDENCE.

MR. MORTON: NO OBJECTION.

MR. ZELENKA: I BELIEVE THAT'S STATE'S EXHIBIT #7.

(WHEREUPON, MISTER THEOS' MOTION DATED AUGUST 28, 1998 IS ENTERED INTO EVIDENCE AS STATE'S EXHIBIT #7, WITHOUT OBJECTION)

Q ON NOVEMBER 9, 1998, DID YOU TRY TO FOLLOW UP WITH SOLICITOR BAILEY CONCERNING THOSE FILES? (HANDS DOCUMENT TO WITNESS)

A THERE'S A LETTER THAT I SIGNED THAT WENT TO WALTER BAILEY DATED NOVEMBER 9TH. APPARENTLY I DID.

MR. ZELENKA: OKAY. WE'D MOVE TO INTRODUCE THAT AS STATE'S EXHIBIT #8.

MR. MORTON: NO OBJECTION, YOUR HONOR.

(WHEREUPON, A LETTER FROM MR. THEOS TO MISTER BAILEY, DATED 11/09/98 IS ENTERED AS STATE'S EXHIBIT #8, WITHOUT OBJECTION)

Q AND ON NOVEMBER 16, 1998, DID SOLICITOR BAILEY WRITE YOU A LETTER? (HANDS DOCUMENT TO WITNESS)

A HE DID.

Q AND DID THAT LETTER PROVIDE YOU WITH WHAT YOU WOULD CALL THE ENTIRE CASE FILE?

A IT PURPORTS TO. I DON'T KNOW IF I GOT THAT ENTIRE CASE FILE OR NOT BUT THAT'S WHAT THE LETTER INDICATES AND IT WAS PICKED UP ON NOVEMBER 17 OF '98 BY ONE OF OUR IN-HOUSE INVESTIGATORS.

Q AND THAT'S DERVER SIMPSON?

A DENVA SIMPSON.

Q DENVER SIMPSON?

A D-E-N-V-A. DENVA SIMPSON.

Q OKAY.

MR. ZELENKA: THAT'S STATE'S EXHIBIT #9.

MR. MORTON: NO OBJECTION.

(WHEREUPON, A LETTER DATED NOVEMBER 17, 1998 FROM MISTER BAILEY TO MISTER THEOS IS ENTERED INTO EVIDENCE AS STATE'S EXHIBIT #9, WITHOUT OBJECTION)

Q ON JANUARY 13, 1999, DID YOU RECEIVE A LETTER FROM SOLICITOR BAILEY ADVISING YOU ABOUT POTENTIAL TESTIMONY BY LAUREN

CRANE?

A I DON'T SPECIFICALLY REMEMBER RECEIVING IT, BUT THIS IS A LETTER FROM WALTER BAILEY THAT INDICATES THAT.

Q AND DOES IT INDICATE THAT LAUREN CRANE WILL TESTIFY IN THE CASE, IN THE SECOND PARAGRAPH?

A YES.

Q AND WILL TESTIFY ABOUT WHAT?

A WILL TESTIFY THAT SHE IDENTIFIED SPERM FROM THE ORAL SWABS.

MR. ZELENKA: WE'D MOVE TO HAVE THAT INTRODUCED AS STATE'S EXHIBIT #10.

THE COURT: ANY OBJECTION?

MR. MORTON: NO OBJECTION, YOUR HONOR.

(WHEREUPON, A JANUARY 13, 1999 LETTER FROM SOLICITOR BAILEY TO MISTER THEOS IS ENTERED INTO EVIDENCE AS STATE'S EXHIBIT #10, WITHOUT OBJECTION)

Q ON NOVEMBER 23RD, DID YOU RECEIVE ANOTHER LETTER ALONG WITH MISTER BELL FROM SOLICITOR BAILEY CONCERNING THE FACT THAT MATERIAL HAD BEEN PROVIDED TO YOU FROM THE LIFECODES TESTING?

A THIS IS A LETTER FROM WALTER BAILEY DATED NOVEMBER 23RD AND INCLUDED IS A PARAGRAPH THAT ACKNOWLEDGES THAT OUR INVESTIGATOR PICKED UP A PACKAGE RELATED TO OUR DNA DISCOVERY MOTION.

Q AND HE ASSERTS THAT PACKAGE HAD HOW MANY PAGES IN IT?

A HE ASSERTS IN THIS LETTER THAT IT HAD 365 PAGES AND ELEVEN –

365 PAGES.

Q AND ELEVEN AUTORADIOGRAMS WITH IT?

A YES.

MR. ZELENKA: I'D MOVE THAT TO BE STATE'S EXHIBIT #11.

MR. MORTON: NO OBJECTION.

(WHEREUPON, LETTER FROM WALTER BAILEY DATED NOVEMBER 23RD IS ENTERED INTO EVIDENCE AS STATE'S EXHIBIT #11, WITHOUT OBJECTION)

Q NOW, IN YOUR DISCUSSIONS WITH MISTER OSTROWSKI, DID YOU REQUEST THAT HE CONTACT LIFECODES AND DISCUSS MATTERS WITH THEM?

A I NORMALLY DO WHEN HE IS FUNCTIONING AS MY DNA EXPERT. I DO NOT SPECIFICALLY RECALL MAKING THAT REQUEST BUT WHEN YOU SHOWED ME EARLIER SOME OF MY NOTES AND IN THOSE NOTES I WROTE THAT I MADE THAT SPECIFIC REQUEST AND SO I WOULD RELY ON THOSE NOTES AND NOT MY RECOLLECTION.

Q OKAY. AND DID MISTER OSTROWSKI MAKE A WRITTEN REPORT TO YOU ON FEBRUARY 10, 1999 CONCERNING HIS REPORT AND ANALYSIS IN THIS CASE?

A APPARENTLY HE DID. AGAIN, I DON'T RECALL THIS BUT IT'S HERE, SO HE DID.

Q OKAY. AND THIS WAS A REPORT THAT YOU RECEIVED?

A APPARENTLY SO. IF IT WAS IN MY FILE, I DID.

MR ZELENKA: WE WOULD MOVE TO INTRODUCE THIS AS STATE'S EXHIBIT #12.

MR. MORTON: NO OBJECTION, YOUR HONOR.

(WHEREUPON, A 1999 WRITTEN REPORT FROM MISTER OSTROWSKI TO MISTER THEOS IS ENTERED INTO EVIDENC0E AS STATE'S EXHIBIT #12, WITHOUT OBJECTION)

Q MISTER THEOS, IN STATE'S EXHIBIT #12, HE STATES, THE VAGINAL SWABS SAMPLE, MALE FRACTION, INDICATES A MIXED SAMPLE. THERE ARE TWO POSSIBLE EXPLANATIONS: THE SAMPLE CONTAINS DNA FROM SIMMONS AND BOYD OR THE SAMPLE CONTAINS DNA FROM MORE THAN ONE SPERM DONOR AND POSSIBLY BOYD. IS THAT CORRECT?

A IF YOU READ FROM THIS, THEN IT IS CORRECT.

Q AND WAS THAT INFORMATION YOU RELIED UPON IN YOUR DEFENSE AND YOUR PREPARATION ON HOW TO HANDLE THE DNA EVIDENCE IN THIS CASE?

A I RELIED ON DOCTOR OSTROWSKI AND SO WHATEVER CONCLUSIONS OR OPINIONS HE HAD, ADVICE HE GAVE, I WOULD SAY I RELIED UPON IT.

Q AND DO YOU RECALL IF DOCTOR OSTROWSKI PREPARED THIS CHART FOR YOU CONCERNING THE DNA TEST RESULTS?

A I DON'T RECALL IT, BUT AGAIN, IT WAS IN MY FILE AND IT LOOKED ON THE FIRST PAGE, I DON'T RECOGNIZE ANY OF THE HANDWRITING AND SO I WOULD SAY IT'S NOT MINE. THE SECOND PAGE, HOWEVER, IS MY HANDWRITING. APPARENTLY, HE DID. AND WE HAD MEETINGS, WE HAD SEVERAL TELEPHONE CONFERENCES AND WE HAD AT LEAST A COUPLE OF FACE TO FACE MEETINGS IN MY OFFICE TO REVIEW THE DNA EVIDENCE OF THE STATE.

Q OKAY.

MR. ZELENKA: YOUR HONOR, WE'D MOVE TO INTRODUCE THIS AS STATE'S EXHIBIT #4, A HANDWRITTEN CHART.

THE COURT: FOUR?

MR. ZELENKA: THIRTEEN.

THE COURT: OKAY.

(WHEREUPON, A HANDWRITTEN CHART CONCERNING DNA TEST RESULTS IS ENTERED INTO EVIDENCE AS STATE'S EXHIBIT #13, WITHOUT OBJECTION)

Q AS A RESULT OF THAT INFORMATION FROM MISTER OSTROWSKI, DID YOU CONSIDER USING HIM AT THE TRIAL AS AN EXPERT WITNESS TO CHALLENGE THE STATE'S PRESENTATION FOR DNA?

A AGAIN, WE DID CONSIDER THAT. WE ALSO CONSIDERED WHETHER IT WOULD BE MORE BENEFICIAL TO OUR CASE TO SIMPLY USE HIM TO ASSIST ME IN PREPARING CROSS EXAMINATION OF THE STATE'S WITNESS OR WITNESSES. ULTIMATELY, WE MADE THE DECISION THAT HE SHOULD NOT BE CALLED AND HE SIMPLY SAT IN, NOT ONLY DID HE HELP PREPARE ME AHEAD OF TIME, BUT HE ALSO, I BELIEVE HE WAS PRESENT AND ASSISTED ME IN FINE TUNING CROSS EXAMINATION BASED ON THE STATE WITNESSES' TESTIMONY.

Q DID HE EVER INDICATE TO YOU IN REVIEWING THE MATERIAL THAT HE PERCEIVED A PROBLEM IN THE PROBABILITY CALCULATIONS THAT WERE DONE BY DOCTOR BAIRD OF LIFECODES?

A I DON'T RECALL THAT. AGAIN, IF SOMEWHERE IN MY FILE A NOTE REFLECTS THAT OR A REPORT THAT REFLECTS IT, I WOULD SAY HE BROUGHT IT. IF IT DOESN'T, I WOULD SAY THAT THAT WAS NOT HIS

OPINION.

Q OKAY.

A AND I WILL SAY, IF HE HAD OPINED THAT, THEN WE WOULD HAVE GONE INTO IT AT LEAST IN CROSS EXAMINATION.

Q DID DOCTOR OSTROWSKI ASSIST YOU IN PREPARING QUESTIONS TO ASK THE STATE'S WITNESSES ON DNA IN THIS CASE?

A HE DID AND I THINK I HAVE NOTES THAT REFLECT THAT.

Q AND WAS HE PRESENT DURING THE TESTIMONY DURING THE TESTIMONY OF DOCTOR BAIRD AND MS. CRANE?

A AS I STATED A COUPLE OF MINUTES AGO, I THINK HE WAS PRESENT. THAT'S OUR NORMAL PRACTICE.

Q WITH RESPECT TO OTHER AREAS CONCERNING GUILT, YOU'VE ALREADY TESTIFIED THAT ONE OF THE CONCERNS WAS THE MENTAL HEALTH ISSUES. DID YOU APPLY THAT AS IT RELATED TO THE ADMISSIBILITY OF THE CONFESSIONS IN THIS CASE IN LOOKING AT YOUR CASE?

A I BELIEVE I DID.

Q DID YOU ATTEMPT TO GET THE STATEMENTS THAT HE GAVE DISMISSED BASED UPON THE DEFENDANT'S MENTAL CAPABILITIES?

A YES.

Q WHO ELSE -- WHAT OTHER EXPERTS IN THE AREA DID YOU CONSULT WITH DURING OR IN PREPARATION OF THE TRIAL, IF YOU RECALL?

A I DON'T RECALL THIS BUT I THINK MY NOTES REFLECT THAT THERE WERE A NUMBER OF MENTAL HEALTH EXPERTS THAT I MAY HAVE SPOKEN WITH ON THE PHONE BUT DID NOT USE OR ENGAGE AS

EXPERTS ON THE CASE, BOTH MENTAL RETARDATION EXPERTS AS WELL AS GENERAL MENTAL HEALTH EXPERTS.

Q AND ALTHOUGH YOU CALLED DOCTOR FOXWORTH AND RANDY WAID IN THIS PARTICULAR CASE, WHAT CAUSED YOU NOT TO PRESENT WHAT IS GENERALLY CONSIDERED A MENTAL RETARDATION SPECIALIST IN YOUR CASE? FOR EXAMPLE, DOCTOR KEYES?

A WELL, THERE WERE A COUPLE OF REASONS AS I SAID. WE HAD AT LEAST A COUPLE OF CONFERENCES THAT ALL THE EXPERTS WERE PRESENT FOR IN MY OFFICE AND WE DISCUSSED MISTER SIMMONS' MENTAL HEALTH GENERALLY AND SPECIFICALLY THE ISSUE OF MENTAL RETARDATION AND SO THERE WAS SOME DISAGREEMENT AS TO WHETHER OR NOT HE DID SUFFER FROM MENTAL RETARDATION. SOME DISPUTE AMONG THE EXPERTS AND DOCTOR KEYES FELT STRONGLY THAT HE DID. SOME OF THE OTHER DOCTORS, ALTHOUGH THEY MAY NOT HAVE NECESSARILY RULED IT OUT, THEIR TESTIMONY MAY HAVE BEEN IN CONFLICT AND I WANTED TO AVOID CALLING EXPERTS WITH CONFLICTING TESTIMONY. SECONDLY, I THOUGHT DOCTOR KEYES WOULD HAVE BEEN UNAPPEALING TO THE JURY JUST BASED UPON HIS, THE WAY THAT HE PRESENTED HIMSELF AND HOW HE MAY HAVE COME ACROSS TO A DORCHESTER COUNTY JURY.

Q AND THAT WOULD HAVE BEEN BASED ON HIS DEMEANOR AND ATTITUDE IN YOUR DEALING WITH HIM AS A WITNESS, A POTENTIAL WITNESS?

A HIS DEMEANOR, HIS PERSONALITY TRAITS, HIS CHARACTERISTICS.

Q OKAY. BUT YOU DID RECEIVE REPORTS FROM DOCTOR KEYES UP TO

AND THROUGHOUT THE TRIAL. DID YOU NOT?

A I DON'T RECALL THAT, BUT AGAIN, IF IT IS IN MY FILE THEN I WOULD HAVE. I CONTINUED TO CONSULT WITH HIM AND ALSO I BELIEVE I SUBPOENAED HIM, BUT IN THE END WE OPTED NOT TO USE HIM. WE OPTED NOT TO USE DOCTOR ALEX MORTON WHO WAS BOTH A PHARMACOLOGIST AND PSYCHOLOGIST FROM THE MEDICAL UNIVERSITY RELATED TO THE ISSUE OF CRACK ADDICTION. WE CHOSE NOT TO USE HIM.

Q DID YOU ALSO HIRE A SOCIAL WORKER, JEFF YUNGMAN?

A WE DID.

Q AND DID MISTER YUNGMAN PREPARE YOU A REPORT DATED FEBRUARY 8, 1998? (HAND WITNESS A DOCUMENT)

A YES.

Q IS THAT THE REPORT?

A IT APPEARS TO BE.

MR. ZELENKA: WE WOULD MOVE TO HAVE THIS INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT #14.

MR. MORTON: NO OBJECTION.

THE COURT: WITH NO OBJECTION.

(WHEREUPON, MISTER YUNGMAN'S REPORT DATED 02-08-1998 IS ENTERED INTO EVIDENCE AS STATE'S EXHIBIT #14, WITHOUT OBJECTION)

Q MISTER THEOS, WHAT DID YOU ASK MISTER YUNGMAN TO DO FOR YOU?

A TO CONDUCT A SOCIAL HISTORY INVESTIGATION, IDENTIFY POTENTIAL MITIGATION WITNESSES, DO A SOCIAL HISTORY WORKUP ESSENTIALLY,

AGAIN, FOR PENALTY PHASE PURPOSES, MITIGATION PURPOSES.

Q AND WHY WOULD THAT BE IMPORTANT?

A I THINK THAT'S OBVIOUS. IT'S IMPORTANT TO DO IN THE EVENT THAT THE DEFENDANT IS FOUND GUILTY IN THE GUILT PHASE.

Q WOULD HE ALSO UTILIZE THE SOCIAL HISTORY TO EDUCATE YOUR OTHER EXPERTS, YOUR PSYCHOLOGISTS OF INFORMATION WHICH MAY BE USEFUL AND NECESSARY FOR THEIR OPINIONS?

A CERTAINLY THIS WOULD HAVE BEEN MADE AVAILABLE TO, AND I CAN'T IMAGINE WE DIDN'T SEND IT ON TO OUR EXPERTS FOR THEIR CONSIDERATION. WHETHER THEY NEEDED IT, WHETHER THEY RELIED ON IT IN ANY WAY, I CAN'T ANSWER THAT.

Q WAS MISTER YUNGMAN INVOLVED IN SOME OF THOSE DISCUSSIONS WITH THE INDIVIDUALS, IF YOU RECALL?

A I CAN'T REMEMBER. HE MAY HAVE BEEN, BUT HE ALSO MAY NOT HAVE BEEN.

Q MISTER YUNGMAN ULTIMATELY WAS NOT USED AS A WITNESS EITHER. IS THAT CORRECT?

A RIGHT. I CAN'T RECALL WHETHER I SUBPOENAED HIM. I ASSUME WE DID, BUT WE MAY NOT HAVE.

Q DID YOU GIVE ANY ADVICE, INSTRUCTIONS, TO MISTER YUNGMAN ON INDIVIDUALS TO LOOK AT, TO SEEK OUT AS MITIGATION WITNESSES OR DID HE SEEK THEM OUT ON HIS OWN AND PROVIDE THEM TO YOU?

A I DON'T KNOW THE ANSWER TO THAT QUESTION. I KNOW THAT I'VE GOT IN A COUPLE OF PLACES IN MY FILE, NOTES RELATED TO WITNESSES, DIFFERENT TYPES OF WITNESSES; FACT WITNESSES,

MITIGATION WITNESSES, JAIL PERSONNEL, INVESTIGATORS, FAMILY MEMBERS, TEACHERS, COACHES, ET CETERA. I CAN'T TELL YOU WHETHER MISTER YUNGMAN IDENTIFIED THOSE PEOPLE AS POTENTIAL WITNESSES OR IF I GAVE HIM THE LIST FOR HIM TO FOLLOW UP ON. I JUST DON'T KNOW THE ANSWER TO THAT.

Q OKAY.

A I CAN TELL YOU WE DIDN'T CALL MISTER YUNGMAN BECAUSE I THOUGHT HE DID A POOR JOB. I WASN'T SATISFIED WITH HIS WORK. I WASN'T SATISFIED WITH ANYTHING ABOUT HIS WORK AND I THOUGHT IT WOULD, I DIDN'T THINK IT WOULD BE IN MISTER SIMMONS' BEST INTEREST TO CONTINUE ON WITH HIM AND CALL HIM AS A WITNESS. WE WERE REAL DISAPPOINTED WITH HIM.

Q ALL RIGHT. AND THIS, AS FAR AS YOU AN RECALL, IS THE BULK PRODUCT OF THE WORK THAT HE PROVIDED?

A I DON'T -- QUITE FRANKLY, I DIDN'T RECALL THAT BUT IF HE DID THAT, THEN SO BE IT, BUT I DON'T RECALL ANYTHING BEYOND THAT.

Q BUT YOU REVIEWED THE REPORT, YOU READ IT, YOU RELIED UPON IT IN PREPARATION FOR YOUR DEFENSE. ISN'T THAT CORRECT?

A I DON'T THINK THAT'S CORRECT. I CAN'T TELL YOU WE RELIED ON IT BECAUSE I DIDN'T THINK MUCH OF IT.

Q OKAY.

THE COURT: LET ME SEE IT. (MR. ZELENKA HANDS DOCUMENT TO THE JUDGE) WHAT PROBLEMS DID YOU HAVE WITH IT?

MR. THEOS: HE WASN'T RESPONSIVE, JUDGE. HE DIDN'T FOLLOW UP ON THE THINGS I ASKED HIM TO DO. HE -- YOU KNOW, I LEFT IT PRIMARILY TO

CO-COUNSEL TO DEAL WITH MISTER YUNGMAN AND THESE POTENTIAL WITNESSES AND I JUST DIDN'T GET THE FEEDBACK THAT I THOUGHT WE SHOULD HAVE, SO WE MADE A DECISION NOT TO USE HIM AND NOT TO CALL HIM AS A WITNESS. I JUST CAN'T TELL YOU AGAIN, WHETHER HE IDENTIFIED CERTAIN WITNESSES OR WE DID AND HE DIDN'T FOLLOW UP ON IT, BUT I DIDN'T THINK THAT HE FOLLOWED UP SUFFICIENTLY. AGAIN, MISTER BELL WAS THE -- THAT LIST, AS I RECALL, WAS REALLY PREPARED FOR MISTER BELL SO THAT HE COULD FOLLOW UP AND INTERVIEW WITH OUR INVESTIGATOR, THOSE WITNESSES. YOU'D HAVE TO ASK MISTER BELL EXACTLY WHAT HE DID BECAUSE THAT WOULD HAVE BEEN DONE WITHOUT ME.

Q OKAY. LET ME SHOW YOU A DOCUMENT AND ON THE TOP IT'S GOT A DATE 02-28-99 AND SEE, IS THAT ONE OF THE LISTS THAT YOU ARE TALKING ABOUT?

A IT APPEARS TO BE. THAT'S MY HANDWRITING AND THERE ARE SOME JAIL WITNESSES AND SOME FAMILY WITNESSES, A COUPLE OF COACHES, GUIDANCE COUNSELOR, MINISTER, I'VE GOT MISTER YUNGMAN'S THAT'S BEEN STRICKEN OFF OF THIS AS DOCTOR MORTON, BUT THAT MAY BE BECAUSE I DIDN'T FEEL THAT MISTER BELL NEEDED TO SPEAK WITH THOSE, TOO. I CAN'T ANSWER THAT.

Q LET ME SHOW YOU ANOTHER DOCUMENT THAT WAS IN THE CLERK'S FILE, A THREE-PAGE DOCUMENT, DEFENSE WITNESS LIST, AND SEE IF THAT REFRESHES YOUR RECOLLECTION.

A I THINK THESE WERE, AGAIN, POTENTIAL WITNESSES. I CAN'T TELL YOU WHETHER WE SUBPOENAED ALL THESE PEOPLE OR NOT.

OBVIOUSLY WE DECIDED NOT TO CALL A NUMBER OF THEM. AND ACTUALLY, SOME OF THEM WERE THE STATE'S WITNESSES.

Q AND SOME OF THOSE WITNESSES INCLUDE DORCHESTER COUNTY DETENTION OFFICERS, SYDNEY JACKSON, PRISCILLA JOHNSON, EMMETT MCKINNEY?

A YES.

Q DO YOU KNOW IF THOSE WITNESSES WERE WITNESSES THAT YOU WERE CONSIDERING CALLING CONCERNING THE DEFENDANT'S PRISON ADAPTABILITY OR HOW HE RELATED WITHIN THE JAIL?

A I ASSUME THEY WERE. AND AGAIN, I LEFT THAT UP TO MISTER BELL AND I RELIED ON MISTER BELL TO INTERVIEW ALL THOSE WITNESSES THAT ARE IDENTIFIED AND I'D HAVE TO COMPARE THIS TO THE OTHER NOTES, BUT ASSUMING THEY ARE ON THAT LIST, I LEFT THAT UP TO MISTER BELL TO INTERVIEW, REGARDING ADAPTABILITY, INTERVIEW THOSE JAIL PERSONNEL. I CAN'T TELL YOU WHETHER WE GOT THOSE NAMES FROM KENNETH, WHETHER I MAY HAVE SEEN THEM THERE MYSELF WHEN VISITING KENNETH, WHETHER THEY CAME WITH MISTER YUNGMAN OR -- WE HAD THREE DIFFERENT INVESTIGATORS INVOLVED IN THE CASE -- WHETHER THEY CAME FROM THEM, BUT I CAN'T TELL YOU WHETHER MISTER BELL MET WITH THEM OR SPOKE WITH THEM OR NOT. MY OPINION IS HE NEVER DID FOLLOW UP WITH THEM BECAUSE AS I RECALL DURING THE TRIAL, HE INDICATED THAT I ASKED HIM BEFORE ABOUT THESE JAIL WITNESSES THAT THEY DIDN'T HAVE ANYTHING THAT WOULD HAVE BEEN HELPFUL TO OUR CASE OR FAVORABLE TO MISTER SIMMONS. I DON'T, QUITE FRANKLY, I

DON'T NECESSARILY BELIEVE THAT AND THAT SORT OF CAME TO LIGHT DURING THE TRIAL ITSELF, BUT I DON'T NECESSARILY BELIEVE THAT HE INTERVIEWED THEM.

Q OKAY.

THE COURT: THAT WHO INTERVIEWED THEM?

MR. THEOS: CO-COUNSEL.

MR. ZELENKA: YOUR HONOR, I WOULD MOVE TO INTRODUCE THIS THREE-PAGE DOCUMENT, DEFENSE WITNESS LIST.

MR. THEOS: AND JUDGE, I DO WANT TOO MAKE IT CLEAR THAT I'M NOT JUST PASSING THE BUCK. I THINK AS LEAD COUNSEL I THINK THAT WOULD HAVE BEEN MY RESPONSIBILITY TO INSURE THAT THAT WAS DONE, BUT THAT WAS SOMETHING I DELEGATED TO HIM AND I DON'T BELIEVE IT HAPPENED.

THE COURT: WHEN DID YOU LEARN IT DIDN'T HAPPEN?

MR. THEOS: WELL, DURING THE TRIAL ITSELF AS WE WERE ABOUT TO BEGIN THE PENALTY PHASE AND ACTUALLY WHEN WITNESSES WERE CALLED, IT BECAME APPARENT TO ME THAT HE HAD EITHER NOT MET WITH THE WITNESSES THAT HE DID CALL OR HADN'T PREPARED THEM PROPERLY BASED ON OUR THEME AND SOME OF THEIR RESPONSES. ADDITIONALLY, WITH RESPECT TO HIS -- AND I HAD GONE OVER WITH HIM NOT ONLY WHO THE WITNESSES WERE, REITERATED WHAT OUR THEME WAS, BUT ALSO PREPARED QUESTIONS FOR HIM TO PREPARE THEM FOR TESTIMONY SO THAT HE COULD -- THEY WOULD BE PROPERLY PREPARED AND THAT LINE OF QUESTIONING WASN'T FOLLOWED AND THE WITNESSES OFFERED THINGS THAT I THOUGHT WAS DAMAGING TO THE CASE.

THE COURT: HOW LONG HAD MISTER BELL BEEN ON THE CASE? I

KNOW YOU TOLD ME OR YOU TESTIFIED THAT DEAN DUKES WAS RELIEVED AS COUNSEL OR YOU MOVED TO HAVE HIM RELIEVED. DO YOU KNOW HOW LONG BELL WAS ON THE CASE?

MR. THEOS: WELL, HE WAS RELIEVED PRETTY EARLY ON AND MISTER BELL WOULD HAVE BEEN APPOINTED SOME TIME, I WOULD SAY WITHIN SEVERAL WEEKS OR A COUPLE OF MONTHS. HE WAS INVOLVED ---

THE COURT: INVOLVED LONG ENOUGH TO COMPLETE THE WORK YOU ASKED HIM TO DO?

MR. THEOS: OH. ABSOLUTELY.

THE COURT: AND CAN YOU TELL ME WHY MISTER DUKES WAS RELIEVED?

MR. THEOS: BECAUSE I FELT THAT HE WAS INEPT AND HE HAD A---

THE COURT: SUBSTANCE ABUSE PROBLEM?

MR. THEOS: A SUBSTANCE ABUSE PROBLEM OR IT CAME TO LIGHT PRETTY CLEARLY, ACTUALLY EARLY ON IN OUR FIRST MEETING WITH KENNETH, HE APPEARED TO BE INTOXICATED. HE DIDN'T APPEAR TO BE, HE WAS.

MR. ZELENKA: DEFENSE' WITNESS LIST. I WOULD MOVE TO ENTER THAT AS STATE'S #15.

MR. MORTON: NO OBJECTION.

(WHEREUPON, A LIST OF DEFENSE WITNESSES FROM THE ORIGINAL TRIAL IS ENTERED INTO EVIDENCE AS STATE'S EXHIBIT #15, WITHOUT OBJECTION)

Q AND MISTER THEOS, LET ME GO BACK TO IT. THE PIECE OF PAPER THAT I SHOWED YOU INITIALLY AND COPIED OFF OF WHAT YOU HAD IN

YOUR FILE AS MISTER YUNGMAN'S FOLDER, AND YOU SAID THAT WAS YOUR HANDWRITING ON THERE?

A YES.

Q AND DOES THAT REFLECT JAILORS OR PEOPLE WITHIN THE JAIL AS POTENTIAL WITNESSES?

A IT DOES.

Q AND WHO ARE THOSE WITNESSES? CAN YOU READ YOUR WRITING?

A MS. ROBINSON, MS. (IT APPEARS TO BE) SEEGAR, MS. JOHNSON AND MS. CARMICHAEL.

Q OKAY.

A AND IT LOOKS LIKE I HAVE AN ARROW DRAWN TO THE WORD TRUSTEE/KENNETH SIMMONS. I CAN'T RECALL WHAT THAT MEANS, BUT MY ASSUMPTION IS THAT HE WAS A TRUSTEE PERHAPS, AT THE JAIL. I JUST DON'T KNOW.

(MISTER ZELENKA SHOWS DOCUMENT TO MISTER MORTON)

MR. MORTON: NO OBJECTION.

MR. ZELENKA: WE WOULD MOVE TO INTRODUCE THAT AS STATE'S EXHIBIT #16.

(WHEREUPON, MISTER YUNGMAN'S LIST IS ENTERED INTO EVIDENCE AS STATE'S EXHIBIT #16, WITHOUT OBJECTION)

Q NOW, MISTER THEOS, IN SEPTEMBER OF 1998, DID YOU RECEIVE A LETTER FROM THE SHERIFF'S DEPARTMENT CONCERNING YOUR CLIENT AND HIS SITUATION WITHIN THE JAIL?

A APPARENTLY WE DID AND IT'S A LETTER TO ME. I BELIEVE IT WAS FOUND IN MY FILE AS WELL. I DIDN'T RECALL IT UNTIL YOU SHOWED IT

TO ME.

Q AND DOES THAT REFLECT THAT YOUR CLIENT HAD NOT BEEN A DISCIPLINARY PROBLEM IN THE LAST PARAGRAPH? (HANDS DOCUMENT TO MISTER THEOS)

A YES. I'LL READ IT. "I BELIEVE THAT ON BALANCE I'M PROVIDING YOUR CLIENT WITH MUCH MORE THAN THE MINIMUM REQUIREMENTS. SHOULD HE CONTINUE HIS GOOD BEHAVIOR, MISTER SIMMONS WILL CONTINUE TO ENJOY THE ABOVE STATED PRIVILEGES." AND APPARENTLY I SENT HIM A LETTER ON AUGUST 28TH CONCERNING CERTAIN ISSUES RELATED TO KENNETH. I DON'T KNOW WHETHER IT WAS FOOD RELATED OR NUTRITION RELATED, RELATED TO MEDICAL CONCERNS OR RELATED TO RECREATIONAL TIME AND EXERCISE. I DON'T RECALL. AND THAT'S HIS RESPONSE TO MY LETTER.

THE COURT: WHAT NUMBER?

COURT REPORTER: #17.

THE COURT: ANY OBJECTION?

MR. MORTON: NO SIR, YOUR HONOR.

(WHEREUPON, A LETTER FROM THE SHERIFF'S DEPARTMENT TO MISTER THEOS DATED SEPTEMBER, 1998, IS ENTERED INTO EVIDENCE AS STATE'S EXHIBIT #17, WITHOUT OBJECTION)

Q MISTER THEOS, JUST SO I'M CLEAR, IT WAS YOUR UNDERSTANDING DURING YOUR REPRESENTATION THAT MISTER SIMMONS WAS NOT A PROBLEM INMATE WITHIN THE DETENTION CENTER. IS THAT CORRECT?

A APPARENTLY THAT WAS MY UNDERSTANDING AND AS I SIT HERE, I

DON'T RECALL EVER RECEIVING ANY NEGATIVE INFORMATION ABOUT KENNETH.

Q OKAY. NOW, IN ADDITION TO YOUR MENTAL HEALTH EXPERTS WHO YOU CONSULTED, DID YOU CONSULT WITH OTHER LAWYERS CONCERNING POTENTIAL WITNESSES, POTENTIAL EXPERTS THAT COULD BE UTILIZED IN YOUR CASE?

A WELL, I ALWAYS CONSULT WITH OTHER LAWYERS IF IT'S A CASE OF ANY SIGNIFICANCE. ARTHUR HOWE WAS ONE OF MY LAW PARTNERS WHO WAS A FORMER SOLICITOR IN CHARLESTON, BERKELEY COUNTY AND FEDERAL PROSECUTOR. HE WAS SORT OF MY MENTOR AND SO I CONSULTED WITH HIM PROBABLY SEVERAL TIMES A DAY, CERTAINLY, AS THE TRIAL APPROACHED. EARLY ON I KNOW THAT I SPOKE WITH JOHN BLUME. I MAY HAVE SPOKEN WITH SOMEBODY ELSE IN HIS OFFICE AS WELL. I DON'T RECALL. JUST GENERALLY TO GATHER INFORMATION RELATED TO THE MENTAL RETARDATION ISSUE. I DON'T --

THE COURT: MISTER THEOS, WHY WAS THE MENTAL RETARDATION ISSUE SUCH A PRIMARY THEME OR CONCERN? WHAT WERE THE FACTS OUT THERE THAT WERE MANIFESTING THEMSELVES THAT MADE YOU SO CONCERNED ABOUT THAT PARTICULAR ISSUE? BECAUSE QUITE FRANKLY, THAT'S WHAT THIS PCR MAY BOIL DOWN TO IN LIGHT OF ATKINS.

MR. THEOS: AGAIN, THAT WAS NOT THE LAW AT THE TIME.

THE COURT: I'M NOT SUGGESTING IT WAS. I MEAN, IT IS NOW.

MR. THEOS: KENNETH'S STATE OF MIND, KENNETH'S LEVEL OF FUNCTIONING WERE ALWAYS -- HIS MENTAL HEALTH HISTORY, HIS

SUBSTANCE ABUSE, HIS CRACK ADDICTION AT THE TIME OF THE ALLEGED, THE TIME THE INCIDENT TOOK PLACE. THOSE WERE ALL CONCERNS OF MINE AND WE WERE EXPLORING THE ISSUES OF HIS MENTAL HEALTH, GENERALLY, AS WELL AS MENTAL RETARDATION. ALTHOUGH THE LAW HAD NOT CHANGED, MENTAL RETARDATION, I THINK, WAS SORT OF A PROMINENT ISSUE THAT WAS BEING DISCUSSED MORE AND MORE AND IN SPEAKING WITH JOHN BLUME I BELIEVE THAT THAT REALLY WAS -- ALTHOUGH MAYBE SPEAKING WITH HIM GENERALLY ABOUT DEATH PENALTY CASES, I BELIEVE THAT THAT WAS REALLY THE ISSUE THAT I QUESTIONED HIM ABOUT OR MAYBE HE BROUGHT THAT TO MY ATTENTION AS WELL AND I, FROM JOHN BLUEME AND/OR HIS OFFICE, I RECEIVED SOME REFERRALS TO SPEAK WITH EXPERTS IN THE AREA. ACTUALLY, I BELIEVE ONE OF THEM WAS HIS SISTER.

Q PAMELA BLUME LEONARD? A MITIGATION INVESTIGATOR?

A I DON'T HAVE ANY IDEA AT THIS POINT WHAT HER NAME IS OR WAS OR HER AREA OF EXPERTISE, BUT IT WAS RELATED TO MENTAL RETARDATION. I BELIEVE THE LAW IN GEORGIA AT THE TIME MAY HAVE ALREADY CHANGED OR MAYBE ON THE BRINK OF CHANGING, BUT SHE HAD BEEN INVOLVED IN SOME DEATH PENALTY CASES THERE RELATED TO MENTAL RETARDATION. I CAN'T TELL YOU – I REMEMBER SPEAKING WITH HER ONCE ON THE PHONE. I CAN'T RECALL ANY MORE THAN THAT.

Q DID YOU CONSIDER OR DID ANYONE SUGGEST TO YOU THE POSSIBILITY OF FINDING A SO-CALLED FALSE CONFESSION EXPERT?

A NO. NOT A FALSE CONFESSION EXPERT *PER SE*. WE -- OBVIOUSLY WE DIDN'T CALL ONE. WE CALLED OUR MENTAL HEALTH EXPERTS TO CALL

INTO QUESTION WHETHER IT WAS COERCED, WHETHER IT WAS UNDER DURESS, WHETHER HE HAD THE CAPACITY TO UNDERSTAND, TO ARTICULATE AND ALSO WHETHER, YOU KNOW, JUST GENERALLY WHETHER IT WAS RELIED UPON AND DEEMED CREDIBLE FOR CONVICTION PURPOSES.

Q IN HAVING THE PSYCHOLOGIST THAT YOU RETAINED IN THIS CASE, DID YOU CONSIDER USING THE PSYCHOLOGIST TO RENDER AN OPINION AS TO WHETHER, BASED UPON THE MENTAL MAKEUP OF YOUR CLIENT, HE WAS ADAPTABLE TO PRISON LIFE AS A MITIGATING FACTOR IN LIGHT OF SKIPPER VERSUS SOUTH CAROLINA?

A APPARENTLY I DIDN'T OR WE DIDN'T BECAUSE WE DIDN'T CALL ANY FOR THAT PURPOSE.

Q ALL RIGHT.

A I CAN'T SAY WE DIDN'T CONSIDER IT BUT I DON'T SPECIFICALLY RECALL THAT AND WE DIDN'T CALL ANY WITNESSES FOR THAT PURPOSE, EXPERT WITNESSES FOR THAT PURPOSE.

Q DID YOU CONSIDER RETAINING SOMEONE LIKE A FORMER CORRECTIONAL WARDEN, JIM AIKEN, OR SOMEONE LIKE HIM, TO TESTIFY ABOUT THE ABILITY OF THE PRISON SYSTEM TO KEEP AN INDIVIDUAL LIKE KENNETH SIMMONS SAFE FROM HIMSELF AND FROM OTHERS?

A I CAN'T SAY THAT WE DID.

Q DURING THE PENALTY PHASE OF THE TRIAL, SOLICITOR BAILEY MADE A CLOSING ARGUMENT AND YOU OBJECTED AT ONE POINT TO A STATEMENT THAT MISTER BAILEY WAS MAKING DURING HIS ARGUMENT

-- COURT'S INDULGENCE ONE MOMENT. (LOOKS THROUGH DOCUMENTS) I WANT TO REFER YOU TO PAGE 2311 THROUGH 2312 AND ASK IF THAT REFRESHES YOUR RECOLLECTION.

(WITNESS LOOKS AT DOCUMENT)

A I DON'T RECALL MAKING THE OBJECTION BUT APPARENTLY I DID.

Q AND THAT WAS THE ONLY OBJECTION MADE ON THE RECORD IN THIS CASE. DO YOU RECALL THAT?

A NO.

Q OKAY.

THE COURT: DO YOU MEAN IN THE ENTIRE CASE OR IN THE CLOSING ARGUMENT?

MR. ZELENKA: IN THE CLOSING ARGUMENT.

Q DO YOU RECALL THE ARGUMENT GENERALLY IN THIS CASE? I KNOW IT'S BEEN TWELVE YEARS OR ELEVEN YEARS.

A I COULD BE SORT OF FACTIOUS AND TELL YOU THAT IT WAS THAT KENNETH WAS GUILTY AND THAT HE SHOULD BE SENTENCED TO DEATH, BUT NO, I DON'T RECALL THAT. MY ARGUMENT OR THE SOLICITOR'S?

Q THIS SOLICITOR'S ARGUMENT.

A TO BE HONEST WITH YOU, I DON'T RECALL EITHER HIS ARGUMENT OR MINE. I READ BRIEFLY MY OPENING ARGUMENT IN THE PENALTY PHASE JUST SITTING BACK THERE WAITING, BUT OTHER THAN THAT, I DON'T RECALL.

Q WHAT IS YOUR THEORY OF OBJECTION TO END YOUR DEATH PENALTY ARGUMENTS YOU'VE BEEN INVOLVED IN, IF YOU HAVE ONE, WHEN THE

SOLICITOR MAKES VARIOUS COMMENTS FROM THE ---

A MY THEORY OF OBJECTIONS, MAKING OBJECTIONS?

Q UH-HUH.

A IS THAT IF I FEEL THAT SOMETHING OBJECTIONABLE HAS BEEN STATED OR ASKED, I OBJECT.

Q OKAY. AND THE RECORD REFLECTS YOU DID HAVE ONE OBJECTION IN THIS CASE.

A NOW, THAT SAID, THERE ARE TIMES WHEN I DON'T MAKE OBJECTIONS. THAT'S MY GENERAL THEORY. THERE ARE TIMES WHEN I DON'T MAKE OBJECTIONS BECAUSE I DON'T THINK THERE IS ANY PURPOSE TO BE SERVED, I THINK THAT IT MAY ALIENATE THE JURY, I THINK IT MAY SEND THE WRONG MESSAGE TO THE JURY, I THINK IT'S INSIGNIFICANT AND I CAN'T TELL YOU WHETHER, AT THIS POINT, WHETHER I SHOULD HAVE OBJECTED OR NOT TO OTHER THINGS THAT MISTER BAILEY SAID. IF YOU HAD ASKED ME AT THE TIME OF THE CLOSING ARGUMENT, I COULD PROBABLY GIVE YOU AN ANSWER EVEN THOUGH IT MAY NOT HAVE BEEN A VERY GOOD ONE.

Q BUT IN THIS CASE, SINCE YOU DID OBJECT, THAT RESPONSIBILITY WAS NOT PLACED SOLELY ON MISTER BELL. CORRECT?

A I DON'T BELIEVE MISTER BELL VOICED AN OBJECTION OR REALLY PARTICIPATED EXCEPT IN THE CALLING OF THE MITIGATION WITNESSES. I THINK HE DID MAKE A CLOSING STATEMENT OF SOME SORT.

Q OKAY. SO, AS MISTER BAILEY WAS DOING HIS ARGUMENT, YOU WOULD HAVE UNDERSTOOD IT WAS YOUR ROLE TO INTERJECT AN OBJECTION

WHEN YOU FOUND SOMETHING TO BE PREJUDICIAL. ISN'T THAT CORRECT?

A THE CASE MAY HAVE BEEN THAT I JUST COULDN'T TAKE IT ANYMORE, THAT OBJECTIONS WEREN'T BEING MADE BY MISTER BELL, AND I JUST THOUGHT I HAD TO AT LEAST JUMP UP AND OBJECT TO THAT. IF YOU WANT ME TO SPECULATE, WHICH IT SOUNDS LIKE YOU ARE ASKING ME TO DO, I WOULD SAY THAT IF OBJECTIONS SHOULD HAVE BEEN MADE, THEY SHOULD HAVE BEEN MADE BY MISTER BELL. THAT WAS HIS RESPONSIBILITY AND I WAS PRETTY FRUSTRATED WITH MISTER BELL AT THAT POINT AND I MAY HAVE JUST JUMPED UP BECAUSE I HAD HAD ENOUGH.

Q OKAY. COURT'S INDULGENCE ONE MOMENT. (LOOKS THROUGH DOCUMENTS)

Q LET ME SHOW YOU AFFIANT'S EXHIBIT #1, THE ORDER RELATED TO DOCTOR LESLIE SANDLER. HE WAS THE CHIEF PSYCHOLOGIST AT THE DEPARTMENT OF DISABILITIES AND SPECIAL NEEDS IN THIS MATTER. WERE YOU EVER AWARE THAT DOCTOR SANDLER HAD HAD SOME DISCIPLINARY ACTION TAKEN THAT PLACED HIM ON A PROBATION FOR A YEAR BACK IN PENNSYLVANIA IN THE LATE 1980s?

A NO.

Q NOW, IN THIS PARTICULAR CASE, DID YOU PERSONALLY GO TO THE EVALUATION THAT WAS DONE BY DOCTOR SANDLER AND DOCTOR MACABEE IN COLUMBIA ON THE DETERMINATION OF MENTAL RETARDATION COMPETENCY TO STAND TRIAL?

A I DON'T REMEMBER WHERE IT TOOK PLACE, BUT I WAS THERE. AND

ACTUALLY, I WAS PRESENT DURING THE EVALUATION ITSELF. SOMETIMES I DON'T SIT IN ON THE EVALUATION. IN THIS CASE, I THOUGHT IT IMPORTANT THAT I SIT IN.

Q WHY DID YOU THINK THAT?

A BECAUSE OF KENNETH'S MENTAL INCAPACITIES, I WANTED TO BE PRESENT AND OBSERVE TO SATISFY MYSELF THAT HE EITHER UNDERSTOOD OR DIDN'T UNDERSTAND AND ALSO FOR CROSS EXAMINATION PURPOSES ULTIMATELY BECAUSE I KNEW QUITE FRANKLY, THAT THEY WERE GOING TO FIND THAT HE WAS COMPETENT, ET CETERA, AS THEY NORMALLY DO.

MR. ZELENKA: I HAVE NO FURTHER QUESTIONS. THANK YOU, MISTER THEOS.

THE COURT: EVERYBODY OKAY? MISTER MORTON?

MR. MORTON: THANK YOU VERY MUCH, YOUR HONOR.

CROSS EXAMINATION OF MISTER JERRY THEOS BY MISTER MORTON

Q MISTER THEOS, I WON'T BE LONG. LET ME FIRST ASK YOU ABOUT THE ADAPTABILITY SITUATION. YOU HAD RECEIVED A LETTER THAT MISTER ZELENKA HAS INTRODUCED AS STATE'S EXHIBIT #17, WHICH IS THE SEPTEMBER 14TH LETTER FROM THE DORCHESTER COUNTY JAIL, WHICH YOU KNOW WHAT THAT SAYS.

A RIGHT.

Q WHICH INDICATES THAT MISTER SIMMONS WAS NOT A DISCIPLINARY PROBLEM AND WAS, IN FACT, GOOD BEHAVIOR.

A YES.

Q AND YOU DID NOT PUT UP AN ADAPTABILITY EXPERT TO REINFORCE

THAT WITH THE JURY. CORRECT?

A THAT'S CORRECT. AGAIN, I'M CAPTAIN OF THE SHIP SO TO SPEAK, BUT I DID LEAVE THAT UP TO MISTER BELL TO INTERVIEW THE JAILORS BUT JUST BECAUSE THE SHERIFF SAID IT WAS SO DIDN'T NECESSARILY MEAN IT WAS SO. I LEFT IT UP TO HIM TO INTERVIEW JAILERS TO FIND OUT EXACTLY WHAT THEY WOULD TESTIFY TO AND THEN WE WOULD PROCEED FROM THERE, BUT I WILL SAY WE DIDN'T CONSIDER OR I DON'T REMEMBER DISCUSSING OR CONSIDERING AN ADAPTABILITY EXPERT *PER SE*, BUT WE CERTAINLY DISCUSSED JAILORS AS POTENTIAL WITNESSES. I ALLOWED HIM TO MAKE THAT CALL BASED ON HIS INVESTIGATION.

Q WITH THIS LETTER IN AND OF ITSELF INDICATING THAT HE WAS NOT A DISCIPLINARY PROBLEM AND ON GOOD BEHAVIOR, THERE WOULD NOT HAVE BEEN A STRATEGIC REASON NOT TO CALL A DEATH PENALTY EXPERT.

A NOT THAT I CAN THINK OF, BUT AGAIN, UNLESS MISTER BELL DID INTERVIEW JAILERS AND THEY GAVE HIM UNFAVORABLE INFORMATION, I DON'T HAVE ANY WAY OF KNOWING THAT.

Q MISTER YUNGMAN, THE SOCIAL WORKER. YOU INDICATED YOU THOUGHT HE DID A LOUSY JOB, JUST TO PARAPHRASE. COULD YOU HAVE GOTTEN SOMEONE ELSE?

A I IMAGINE WE COULD HAVE. THAT'S A POSSIBILITY. I DON'T KNOW THAT JUDGE PEEPLES WOULD HAVE APPROVED IT SINCE HE WAS AWFULLY TIGHT WITH THE PURSE STRINGS AS IT WAS.

Q HE WAS WHAT?

A TIGHT WITH THE PURSE STRINGS.
Q OKAY.
A AND HE HAD ALREADY APPROVED MISTER YUNGMAN. I DON'T KNOW THAT HE WOULD HAVE APPROVED IT, BUT NO, WE DIDN'T CONSIDER GETTING ANOTHER ONE.
Q BUT THAT WAS A POSSIBILITY, IF YOU DIDN'T THINK HE WAS DOING A GOOD JOB, YOU COULD HAVE GONE BACK AND SAID, "WE NEED ANOTHER SOCIAL WORKER." COULDN'T YOU?
A YEAH, IT'S A POSSIBILITY. IT JUST DEPENDS ON WHEN I DETERMINED THAT HE WAS NOT DOING WHAT WAS NEEDED AND I CAN'T TELL YOU WHEN THAT WAS, HOW CLOSE TO TRIAL IT WAS.
Q OKAY. YOU DIDN'T CALL A FALSE CONFESSION EXPERT.
A NO.
Q EVEN THOUGH YOU THOUGHT THERE WERE PROBLEMS WITH THE RELIABILITY OF THE CONFESSION?
A YES. I THOUGHT THERE WERE PROBLEMS.
Q AND THE REASON YOU DIDN'T CALL A FALSE CONFESSION EXPERT WAS, THAT JUST WAS NOT ON YOUR RADAR SCREEN. IS THAT FAIR TO SAY?
A THAT'S PROBABLY FAIR TO SAY, BUT IT WOULD ALSO BE UNFAIR TO SAY THAT WOULD BE THE ONLY REASON. THE SECOND REASON WOULD HAVE BEEN I THOUGHT WE COULD ADEQUATELY COVER THAT TERRITORY, THAT ISSUE, WITH THE EXPERTS WE HAD. WE HAD DONE THE SAME THING, I DON'T REMEMBER IF THEY WERE ALL THE SAME EXPERTS, BUT WE'D DONE THE SAME THING WITH MCCONEY AND I

BELIEVE THAT'S WHY HE ULTIMATELY WAS NOT SENTENCED TO DEATH. BUT THE JURY DIDN'T FIND HIM -- THEY HAD SOME, AT LEAST SOME RESIDUAL DATA ABOUT THIS GUILT, SO IF THAT WAS AN ERROR, IT WAS AN ERROR.

Q OKAY. YOU DIDN'T CONSULT WITH A FALSE CONFESSION EXPERT ABOUT WHAT THEY POSSIBLY COULD HAVE SAID IN THIS CASE?

A DIDN'T CONSULT WITH A FALSE CONFESSION EXPERT AT ALL.

Q AS FAR AS THE DISCOVERY, AS FAR AS THE DNA REPORTS, LAB NOTES, LETTERS, THE -- IF IT WAS NOT IN YOUR -- YOU PRESERVED YOUR FILE AFTER THIS CASE? IS THAT FAIR TO SAY?

A WE DID AND I THINK YOU SAW IT, I THINK YOUR OFFICE HAS COPIED IT AND I HAD IT AVAILABLE TO YOU LAST WEEK OR SO WHEN Y'ALL CAME IN TO SPEAK WITH ME SO WHATEVER WAS IN THERE, ASSUMING YOU COPIED IT PROPERLY, THAT'S ALL THAT WAS IN THERE.

Q THAT'S ALL THAT WAS IN THERE.

A THAT'S IT.

Q AND YOU CONSIDERED IT IMPORTANT, THIS BEING A DEATH PENALTY CASE, TO PRESERVE ALL THE DISCOVERY THAT WAS PROVIDED TO YOU.

A YES. WELL, WE CONSIDER EVERY CASE IMPORTANT.

Q YES. I UNDERSTAND THAT, BUT ---

A WE HAVE, OUR FILES ARE PRESERVED FOR PROBABLY -- THEY ARE IN A WAREHOUSE AND HAVE BEEN PRESERVED FOR PROBABLY THIRTY, FORTY YEARS.

Q BUT BEING A DEATH PENALTY CASE, YOU MIGHT HAVE TAKEN A LITTLE

EXTRA PRECAUTION. YOU TRY TO MAKE SURE, ESPECIALLY IN A DEATH PENALTY CASE THAT YOUR FILE IS PRESERVED.

A WE DON'T DO ANYTHING DIFFERENTLY.

Q BUT IF IT WASN'T IN YOUR FILE, IT WASN'T SENT TO YOU. IS THAT FAIR TO SAY?

A OUR FILES ARE PERFECTLY PRESERVED. WHATEVER WAS IN THERE WHEN THE CASE WAS ONGOING, WE PRESERVE DURING THE COURSE OF THE CASE. AT THE END, IT IS SEALED AND IT'S STORED.

Q AND AS FAR AS DOCTOR OSTROWSKI IS CONCERNED, IF DOCTOR OSTROWSKI DIDN'T TELL YOU STUFF, IT WAS BECAUSE HE MAY HAVE BEEN AT FAULT. IF THERE WERE THINGS ABOUT HIS DNA TESTIMONY THAT WAS IN ERROR OR UNRELIABLE, THEN DOCTOR OSTROWSKI JUST DIDN'T PICK THEM UP.

Q NO. I KNOW YOU DON'T WANT ME TO SPECULATE AS TO WHY DOCTOR OSTROWSKI MAY NOT HAVE TOLD ME SOMETHING, BUT WHATEVER DOCTOR OSTROWSKI DID TELL ME, I RELIED UPON.

Q AND AS FAR AS DOCTOR SANDLER, YOU DIDN'T HAVE A STRATEGIC FOR NOT EXPLORING HIS DISCIPLINARY PROBLEM.

A NO. IN FACT, WE EXPLORED HIS BACKGROUND AS WE DO WITH ANY EXPERT IN ANY CASE AND I'LL SAY THAT SINCE I LEARNED OF THIS, THAT IS SOMETHING THAT WE WERE DERELICT IN, MISSED IT. IT CERTAINLY WOULDN'T HAVE BEEN A STRATEGIC REASON FOR IT. I WOULD PROBABLY WOULD HAVE DELEGATED THAT TO ONE OF OUR INVESTIGATORS OR PARALEGAL AND WE JUST DIDN'T FIND IT.

MR. MORTON: YOUR HONOR, THAT'S ALL I HAVE.

MR. ZELENKA: NOTHING ON RE-DIRECT.

THE COURT: MAY HE BE EXCUSED?

MR. MORTON: NO OBJECTION.

MR. ZELENKA: NO OBJECTION.

MR. THEOS: THANK YOU, JUDGE.

THE COURT: ANY FURTHER WITNESSES THIS AFTERNOON?

MR. ZELENKA: NO FURTHER WITNESSES.

THE COURT: ALL RIGHT, GENTLEMEN, WHAT IS LEFT ON BEHALF OF THE STATE?

MR. ZELENKA: WE WOULD BE TAKING THE DEPOSITION OF JIM BELL.

THE COURT: IN LIGHT OF TODAY'S TESTIMONY, I MAY WANT MISTER BELL TO TESTIFY LIVE SO I CAN ---

MR. ZELENKA: THAT'S FINE.

THE COURT: WE CAN DEEM THAT -- I'LL JUST PICK AN AFTERNOON WHEN I'M IN CHAMBERS OR SOMETHING AND WE'LL JUST SET IT UP FOUR OR FIVE WEEKS OUT SO EVERYBODY'S SCHEDULE WILL BE OKAY WITH IT. I JUST THINK IN LIGHT OF WHAT WAS SAID TODAY, I NEED TO EVALUATE CREDIBILITY AND ALL THAT AND FIND THE FACTOR IN THIS.

MR. ZELENKA: DOCTOR BAIRD, WE INTEND TO TAKE HIS DEPOSITION. LAUREN CRANE, THE DNA ANALYST AND THEN DOCTOR LEO, WHO IS THE FALSE CONFESSION EXPERT.

THE COURT: I THINK DEPOSITIONS WILL BE FINE WITH THOSE. WHEN I GET BACK TOMORROW, LET ME GET MY LAW CLERK TO SEND Y'ALL AN EMAIL ON THE BELL TESTIMONY AND WE'LL RECONVENE PROBABLY ONE WEEK WHEN I'M IN CHAMBERS AND JUST MEET IN BAMBERG AND KNOCK IT OUT.

MR. ZELENKA: OKAY.

THE COURT: HOW LONG WILL IT TAKE FOR Y'ALL TO GET THE REST OF THESE DEPOSITIONS LINED UP?

MR. MORTON: YOUR HONOR, I THINK I MENTIONED TO YOU THAT DOCTOR BAIRD IS GOING TO BE IN HILTON HEAD MARCH 12TH. SO, WE WERE TALKING TO MISTER ZELENKA ABOUT POSSIBLY TAKING HIS DEPOSITION WHILE HE'S HERE.

MR. ZELENKA: DOCTOR BAIRD EMAILED ME AND I EMAILED HIM THAT INFORMATION AND HE IS AVAILABLE ALSO TO DO IT SOMETIME DURING THE WEEK OF FEBRUARY 15TH.

THE COURT: WELL, DO Y'ALL NEED A MONTH TO DO IT? I'M JUST TRYING – I DON'T WANT TO PUSH YOU, Y'ALL ARE BUSY. I'LL WORK WITH YOUR SCHEDULE.

MS. PAAVOLA: HE'S AVAILABLE TO DO A LIVE DEPOSITION OR A TELEPHONIC?

MR. ZELENKA: TELEPHONE.

MS. PAAVOLA: WE'D PREFER TO DO THE DEPOSITION OF DOCTOR BAIRD IN HIS PRESENCE IN MARCH. I THINK WE SHOULD BE ABLE TO GET THE OTHER DEPOSITIONS FINISHED BY THEN.

THE COURT: Y'ALL WORK TOGETHER. IF IT GETS TO BE A PROBLEM, CALL ME.

MR. ZELENKA: I DON'T THINK THERE WILL BE A PROBLEM.

THE COURT: THAT WILL BE GREAT. OKAY. I'LL SEND YOU AN EMAIL ABOUT THIS AND ABOUT FINAL ARGUMENTS AND ALL THAT. DO YOU WANT TO DO IT BY WAY OF PROPOSED ORDERS AFTER I SORT OF TELL YOU WHAT

I'M LOOKING AT OR WOULD YOU RATHER COME BACK AND DO A FINAL LIVE ARGUMENT? IT MAKES NO DIFFERENCE TO ME.

MS. PAAVOLA: WE WOULD LIKE THE OPPORTUNITY TO PROPOSE A TRIAL BRIEFING OF SOME KIND OR DO YOU WANT PROPOSED ORDERS?

THE COURT: DOES THAT MEAN YOU DO NOT WANT TO ARGUE IT LIVE? IT DOESN'T MAKE ANY DIFFERENCE TO ME. WELL, LET'S DO THIS. LET'S COMPLETE ALL THE TESTIMONY AND LOOK AT IT AND I'LL TELL YOU WHAT I'M LOOKING FOR IN A PROPOSED ORDER AND I THINK Y'ALL CAN READ IT PRETTY MUCH SO FAR WHAT I'M LOOKING AT AND WE'LL DO IT THAT WAY. IF YOU WANT TO GET BACK WITH ME AND SAY SOMETHING VERBALLY, WE'LL ALLOW THAT. MISTER SIMMONS, ANYTHING YOU WANT TO COMMENT ON?

MR. SIMMONS: (SHAKES HEAD)

THE COURT: HIS ANSWER IS NO, FOR THE RECORD. OKAY. ANYTHING ELSE? OKAY.

(ADJOURNED AT 5:15 P.M.)

C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED JO RICE, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING THREE HUNDRED SIXTY PAGE TRANSCRIPT IS A TRUE AND ACCURATE TRANSCRIPT OF RECORD OF THE HEARING GIVEN IN THE CAPTIONED CASE, HEARD OVER THE PERIOD OF FEBRUARY 1 - 4, 2010, IN THE COURT OF COMMON PLEAS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, TO THE BEST OF MY SKILL AND ABILITIES.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

MARCH 23, 2010

Jo Rice

JO RICE

RECEIPT FOR EXHIBITS

CASE NUMBER 05 CP-18-1368
PLAINTIFF: KENNETH SIMMONS
DEFENDANT: STATE OF SC
~~TRIAL~~ BEGAN: 2-1-10 — 2.4.10

JUDGE JACK EARLY
ATTORNEY: MORTON, PAPPOLA, YOUNG
ATTORNEY: ZALINKA, MABRY
~~TRIAL ENDED~~

~~STATE/PLAINTIFF~~ APPLICANT EXHIBITS

1 PSY EVALUATION
2 14 DOC. PACKET
3 CV - HAMMLOCK
4 SIMMONS FAMILY HISTORY
5 TASSÉ - CV
6 SIMMONS IQ TEST RESULTS
7 JAMES AIKEN
8 CV - LAMBERT
9 LIFECODES FILE
10 AFFIDAVIT - GULLIKSEN
~~11 DNA EV - SIMMONS~~
~~12 VITA - THOMPSON~~
13 POWERPOINT - 5pg
~~14 CHARTS~~
15 DQA1 RESULTS - 3pg
16 SWAB RESULTS
~~17 SCANS~~
18 LIFECODES LTR 2/4/99
~~19 LAB PAGES~~
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~~DEFENSE~~ STATE EXHIBITS

1 LTR REPORT - 1/23/98
2 LTR 2/98 WHITEHEAD
3 LTR 10/22/98 BAILEY - BEARD
4 SANDLER - CV
5 2/10/99 PSY EVAL
6 TIMESHEET
7 SUPPLEMENTAL MOTION
8 LTR - 11-9-98 THEOS
9 LTR 11-16-98 BAILEY
10 LTR 1-13-99 BAILEY
11 LTR 11-23-98 BAILEY
12 LTR 2-10-99 OSTROWSKI
13 LTR - 2pg OSTROWSKI
14 REPORT - YUNGMAN
15 DEFENSE LIST
16 LIST
17 LTR SIMMONS
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FILED / RECORDED
2010 FEB -8 AM 11:49
CHERYL CRAWFORD
CLERK OF COURT
DORCHESTER COUNTY

COURT REPORTER
JO RICE

CLERK OF COURT
Cathy Wilson

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

Commonwealth of Pennsylvania, State Board of Psychology	:	
vs.	:	
Leslie N. Sandler	:	Docket #8463016466

CERTIFIED FROM THE RECORD
30th DAY OF December 2009
Ronald D. Walker
PROTHONOTARY

STIPULATION AND ORDER

IT IS HEREBY STIPULATED by the parties to the above-entitled matter that the following is true:

1. The State Board of Psychologist Examiners (Board) is a departmental administrative commission of the Department of State, organized under the provisions of the Administrative Code of 1929, Act of April 9, 1929, P.L. 177, as amended, 71 P.S. §51 et seq.

2. Respondent, Leslie N. Sandler, is a licensed psychologist in the Commonwealth of Pennsylvania, holding License Number PS-002303-L, issued March 26, 1976.

3. Respondent has been duly advised of his right to an administrative hearing, to be represented by Counsel, to present witnesses and testimony and to cross-examine witnesses and to challenge evidence presented by the Commonwealth, and to present legal arguments by means of a brief before the Board and to take an appeal from any decision adverse to his right to continue to be licensed as a psychologist in the Commonwealth of Pennsylvania.

4. On November 4, 1986, an Administrative Complaint and Order to Show Cause was filed with the Board against Respondent,

AFFIANT (1)
05-CP-18-1368

File Number 84-PS-1646. The Administrative Complaint was based on complaints filed in 1984 by two psychologists employed by State Farm Insurance Company in a fee dispute in 1982 between State Farm and its insured, Respondent's patient. For a year prior to that, the Commonwealth's former prosecuting attorney and Respondent's former attorney negotiated to resolve this matter.

5. On January 29, 1987, an Amended Administrative Complaint was filed against Respondent, File Number 84-PS-1646.

6. These Administrative Complaints alleged and the Respondent admits that the following facts are true:

a. On or about September 9, 1981, Respondent undertook treatment of a patient (Patient) pursuant to which he assessed the need for, and then initiated, neuropsychological testing.

b. Respondent, in the course of his treatment of Patient, administered various standardized tests, including the Wechler Adult Intelligence Scale, the Rorshach Test, the Bender-Gestalt Test and the Halsted-Reitan Battery of Tests.

c. However, Respondent did not administer these tests fully, nor did he record all of the results of these tests, and he purported to make conclusive diagnoses based on these tests, without indicating any limitations on the reliability and validity of his conclusions.

d. On November 22, 1982, Respondent testified at deposition in the case of Danzig v. State Farm Mutual Insurance Co., filed to No. 486 of 1982 in the Court of Common Pleas of Philadelphia County.

e. On April 13, 1983, Respondent testified at an arbitration hearing in the above-named case.

f. At deposition, Respondent made the following statements with regard to his credentials and training in the field of psychology, which statements were inaccurate as shown, respectively, as follows:

(1) Respondent stated that he was "Board eligible" for membership under the American Board of Forensic Psychology (ABFP).

(2) There is no category defined by the ABFP as "Board eligible."

(3) Respondent stated that he "absolutely (had) done everything that anybody could do to be a diplomate in the field of forensic psychology."

(4) Respondent, at the time of deposition, had not yet submitted an acceptable work sample to the ABFP, which is a prerequisite to oral examination before the ABFP to obtain status.

(5) Respondent stated that he had obtained his doctorate in an APA - approved program.

(6) Respondent's doctoral program was not APA approved at the time he completed it.

7. Based on the facts admitted at Paragraphs 6a - f(1)-(6) above, Respondent neither admits nor denies that his license to practice as a psychologist is subject to disciplinary action under the Pennsylvania Psychologists Practice Act, Act of March 23, 1972, P.L. 136, No. 52, 63 P.S. § 1208(4)

by and through a violation of that Act, but agrees to the PROBATION of his license for a period of one year according to the following terms and conditions:

a. Respondent shall undergo supervision in professional ethics and monitoring in psychological assessment according to the following terms and conditions:

(1) Max L. Fogel shall act as supervisor and monitor.

(2) All supervisory sessions shall take place in the offices of Supervisor, or at a location mutually agreed upon by Supervisor and Respondent.

(3) Supervisory sessions shall last for a one hour period and shall take place on a twice monthly basis. The required frequency of supervisory sessions may be reassessed after two (2) months of supervision, and may thereupon be altered, subject to the Board's approval, upon good cause shown in writing by the Supervisor. However, in no case shall supervisory sessions be reduced to less than once per month.

(4) Respondent shall assume all costs related to supervision, including Supervisor's hourly fee, which shall be set at $140.00.

(5) Supervisor shall report quarterly to the Board, in writing, detailing Respondent's progress.

(6) Supervisor shall also submit a final report to the Board, at the end of the Probationary period, as to

whether supervision of Respondent is no longer necessary. If such report does not conclude that Respondent may practice psychology without supervision, such report shall automatically provide cause for the further Probation of Respondent's license, according to the terms set forth above, for an additional one-year period.

b. Respondent shall not perform neuropsychological assessments, beyond those routine psychological tests administered by all licensed psychologists which may be construed to be part of a neuropsychological assessment as well.

c. Respondent shall not perform neuropsychological services as a non-specialist until such time as he should appear before the Board for an informal conference to determine whether he is competent to practice neuropsychology at a level commensurate with licensed psychologists who do not specialize or restrict their practice to neuropsychology.

d. Respondent shall not advertise himself to the public as a neuropsychologist, until such time as he should appear before the Board for an informal conference to determine whether he is competent to practice neuropsychology as a specialty.

e. Respondent shall allow the Board through the Supervisor to have access to his billing and patient records, with names eradicated, to ensure Respondent's compliance with Paragraphs 7b, c and d above. The patient records to be examined shall be those of patients treated by Respondent from the date of approval of this Stipulation to the date of

termination of this Order. Should Respondent provide, pursuant to this paragraph, records indicating that Respondent may be practicing neuropsychology, such records will be evaluated, prior to any formal prosecution based thereon, to determine whether such records reveal a case methodology conducted in a comprehensively neuropsychological framework. Respondent shall provide to the Board copies of these records, patient identification eradicated as appropriate, should Supervisor indicate his belief that Respondent is practicing in violation of this paragraph.

8. The parties understand that this agreement is between the Commonwealth and Respondent only, and is to have no legal effect unless and until the Board issues an Order adopting the aforementioned sanction, and the Office of General Counsel approves the contents of this agreement and the Board's Order as to legality.

John D. Kelly
John D. Kelly
Attorney for the Commonwealth

Leslie N. Sandler
Respondent

Donald N. Bersoff
Donald N. Bersoff
Respondent's Attorney

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

Commonwealth of Pennsylvania, State Board of Psychology	:	
vs.	:	Docket #846301646
Leslie N. Sandler	:	

ORDER

AND NOW, this 11th day of April, 1989, upon consideration of the within Stipulation, and more specifically, upon the admissions made by Respondent of acts which may constitute violations of the Psychologists Practice Act (Act), Act of March 23, 1972, P.L. 136, No. 52, 63 P.S. §1208(4), the State Board of Psychology hereby ORDERS that the license issued to Respondent, Leslie N. Sandler, be placed on PROBATION for a period of one year according to the following terms and conditions:

1. Respondent shall undergo supervision in professional ethics and monitoring in psychological assessment according to the following terms and conditions:

a. Max L. Fogel shall act as supervisor and monitor.

b. All supervisory sessions shall take place in the offices of Supervisor, or at a location mutually agreed upon by Supervisor and Respondent.

c. Supervisory sessions shall last for a one hour period and shall take place on a twice monthly basis. The required frequency of supervisory sessions may be reassessed after two (2) months of supervision, and may thereupon be

altered, subject to the Board's approval, upon good cause shown in writing by the Supervisor. However, in no case shall supervisory session be reduced to less than once per month.

d. Respondent shall assume all costs related to supervision, including Supervisor's hourly fee, which shall be set at $140.00.

e. Supervisor shall report quarterly to the Board, in writing, detailing Respondent's progress.

f. Supervisor shall also submit a final report to the Board, at the end of the Probationary period, as to whether supervision of Respondent is no longer necessary. If such report does not conclude that Respondent may practice psychology without supervision, such report shall automatically provide cause for the further Probation of Respondent's license, according to the terms set forth above, for an additional one-year period.

2. Respondent shall not perform neuropsychological assessments, beyond those routine psychological tests administered by all licensed psychologists which may be construed to be part of a neuropsychological assessment as well.

3. Respondent shall not perform neuropsychological services as a non-specialist until such time as he should appear before the Board for an informal conference to determine whether he is competent to practice neuropsychology at a level commensurate with licensed psychologists who do not specialize or restrict their practice to neuropsychology.

4. Respondent shall not hold himself out to the public as a

neuropsychologist, until such time as he should appear before the Board for an informal conference to determine whether he is competent to practice neuropsychology.

5. Respondent shall allow the Board through the Supervisor to have access to his billing and patient records, for confidential inspection, to ensure Respondent's compliance with Paragraphs 2, 3 and 4 above. Should Respondent provide, pursuant to this paragraph, records indicating that Respondent may be practicing neuropsychology, such records will be evaluated, prior to any formal prosecution based thereon, to determine whether such records reveal a case methodology conducted in a comprehensively neuropsychological framework. Respondent shall provide to the Board copies of these records, patient identification eradicated as appropriate, should Supervisor indicate his belief that Respondent is practicing in violation of this paragraph.

This ORDER shall take effect thirty (30) days from the above-noted date.

BY ORDER

BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

George L. Shevlin
Commissioner

STATE BOARD OF PSYCHOLOGY

Patricia M. Bricklin, Ph.D.
Chairperson

WAIVER

Please read each statement carefully and then put your initials in the space indicated.

LNS. I understand that I have the right to an administrative hearing in which to answer the charges brought against me.

LNS I understand that I have the right to be represented by an attorney at the hearing.

LNS I understand that I have the right to testify on my behalf at the hearing.

LNS I understand that I have the right to present witnesses and testimony on my behalf at the hearing.

LNS I understand that I have the right to cross-examine the prosecution's witnesses, and to appeal any adverse decision by the Board to an appellate court.

LNS I understand that this Stipulation and Order is to have no legal effect unless and until the Board issues an Order adopting the recommended action and the Office of General Counsel approves the contents as to its legality.

With full understanding of the consequences, I hereby waive and relinquish my rights described above, in order to enter into this Stipulation and Order, Docket No. 84 63 01646.

Leslie N. Sandler
Respondent

DATE:

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS

Commonwealth of Pennsylvania, State Board of Psychology	:	
vs.	:	Docket #846301646
Leslie N. Sandler	:	

AFFIDAVIT

Leslie N. Sandler, being duly sworn according to law, now deposes and says that the facts set forth in the foregoing Stipulation and Order are true and correct to the best of his knowledge, information and belief.

Leslie N. Sandler
Respondent

Sworn to and subscribed
before me this 5 day
of December, 1988.

(Notary)

NOTARIAL SEAL
STEVEN F. CLARK, Notary Public
City of Philadelphia, Phila. County
My Commission Expires April 9, 1991

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF)

Betty Profit, who appeared personally before me, affirms and states the following:

1. I was a Sixth Grade Middle School Teacher at Summerville High School.

2. I have no personal recollection of Kenneth Simmons.

3. Reviewing Kenneth's school records and report card, I notice that Kenneth tested at a fourth grade level when he was in the sixth grade.

4. The term "placed" on Kenneth's elementary school report cards is not synonymous with "passed." "Placed" was a form of social promotion.

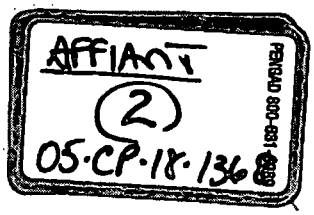
5. Based on Kenneth's report card, he did not "pass" any grade in middle school. He was instead "placed" forward in each grade level.

Further affiant sayeth naught.

Betty Profit
BETTY PROFIT

Sworn to and subscribed before me
This 13th day of April, 2007.

Darcy A Glass
Notary Public for the State of South Carolina
My commission expires: 2-10-2010



STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	)	IN THE COURT OF COMMON PLEAS
Kenneth Simmons, Applicant, v.	)	C/A No.: 2005-CP-18-1368
John Ozmint, Commissioner, S.C. Department of Corrections, Respondent.	)	

AFFIDAVIT OF WILLIAM LONG

Comes now the undersigned who makes the following statement, under oath, and before the undersigned Notary Public who is authorized by law to hear and accept oaths, and based upon his own personal knowledge of the facts averred herein states as follows:

1. My name is William Long. I was formerly a football coach at Summerville High School. Kenneth Simmons was a football player on my team. My current office address and telephone number are: 2801 W. 5th North Street, Summerville, S.C., 842-873-0371.

2. Kenneth Simmons was extremely slow.

3. He was an average football player. He played a defensive position that did not require significant intellectual abilities. It was more repetition than anything else.

4. Kenneth was never a disciplinary problem on the football team.

William Long, Affiant

Sworn to and subscribed before
me this 20th day of March 2008.

Notary Public
My commission expires: 10/26/16

STATE OF SOUTH CAROLINA)) COUNTY OF DORCHESTER)	IN THE COURT OF COMMON PLEAS
Kenneth Simmons,)) Applicant,)	C/A No.: 2005-CP-18-1368
v.)	
John Ozmint, Commissioner,) S.C. Department of Corrections,)) Respondent.)	

AFFIDAVIT OF LINDA SHWEC

Comes now the undersigned who makes the following statement, under oath, and before the undersigned Notary Public who is authorized by law to hear and accept oaths, and based upon her own personal knowledge of the facts averred herein states as follows:

1. My name is Linda Shwec. I am employed by Dorchester County Adult Education. My office telephone number is 843-873-7372.

2. I have been a special education teacher for over thirty years. I have a degree in special education from Baptist College. I earned a masters degree at the Citadel in learning disabilities. I have also completed some post-graduate training related to my field.

3. From 1978 to 1980, I taught eleventh and twelfth grade Remedial English to Kenneth Simmons at Summerville High School. Kenneth was also in my Resource Period class those years as part of the Resource Program ("Resource"). Resource was a special education program.

4. At the time that Kenneth Simmons was in school at Summerville High School, the school had two types of special education programs. There was a self-contained special

education program for severely disabled students – for example, those who needed assistance with feeding themselves or those with Downs Syndrome. The Resource Program was another type of special education program. Students who were placed in Resource were "mainstreamed," meaning that they were in certain remedial level classes, and then came to the Resource Class to work on basic skills and to get extra help with their coursework.

5. In order to be placed in the Resource Program, a student had to be individually tested by a psychologist who determined whether or not the student qualified for Resource. Students were usually tested if either a teacher or a parent requested the testing.

6. At the beginning of the 1978 school year, Kenneth Simmons was failing remedial English with Jan Hilton. Ms. Hilton was a teacher that would recognize learning disabled students and do something about it, whereas other teachers would just try to help out kids like Kenneth by passing them along. Teachers would often try to help kids who were struggling by allowing them to do extra work or come in for extra help, rather than give them a bad grade or refer them to special education.

7. Sometimes, in the case of special education students who were not performing well in class, teachers would allow the student to take a test over or do extra work to meet minimum requirements. Occasionally this was because the athletic coach requested it.

8. Kenneth was sweet and did not have any behavioral problems, so many teachers may have overlooked his academic deficiencies, but Ms. Hilton was particularly diligent about recognizing students with difficulties and getting help for them. Her teaching style was conducive to anyone succeeding if they were capable, but Kenneth was nonetheless failing her class. After the first quarter of the 1978/1979 school year, Kenneth was placed in the Resource Program and moved to my English class.

9. The results of psychological testing for special education are stored at Special Services. I have checked with Special Services to see if they retained any records about Kenneth Simmons, but those records have been destroyed.

10. Kenneth was able to carry out basic skills like feeding and clothing himself without assistance and complete simple academic tasks. He was not a candidate for the self-contained special education program, but he definitely belonged in Resource.

11. I did not see Kenneth have any close friends in Resource, but he was somewhat able to adapt socially. He was on the football team. He was a good follower, but he could never be a team leader. He was very shy. He seemed to try hard at his school work.

12. At the time that Kenneth Simmons was in high school, there were approximately thirty students a year in the Resource Program.

13. Kenneth earned an "A" in my class because I set individual goals that allowed my students to succeed. I did not set them up for failure, and anyone who tried could earn an "A." I individualized the curriculum for each student. The goal was to make sure that they graduated and improved basic academic skills.

14. I helped Kenneth with all of his subjects, but his greatest weaknesses were with reading and reading comprehension. Kenneth would bring his homework or class work to me, and I would help him read it or read it to him. He especially needed help reading assignments in Science and History. Some of Kenneth's teachers would allow him to bring his tests to me, and I would read and explain the test to him. I had to paraphrase and re-word questions for him so that he could comprehend. Kenneth could read more than he could comprehend.

15. With Kenneth, I used books at a reading level C. Level C materials contained short paragraphs and sentences composed of simple words. There was a lot of repetition. The

level C materials were written at a fourth or fifth grade level. I had to go over and over the material in these books with Kenneth.

16. It is somewhat unusual for a student not to be identified for special education until the eleventh grade. However, in Kenneth's case, I think he was not identified earlier because, as I have described above, he was easy to get along with, and he did try in school. I think a lot of teachers would have wanted to help him by passing him. It is also possible that some teachers would have ignored Kenneth. Some teachers did not want to work with handicapped students.

17. I have reviewed and am familiar with Kenneth Simmons's school records. A copy of those records is attached to this affidavit as Exhibit A.

18. The terms "Basic" and "General" used on Kenneth's transcript both indicate remedial courses. At that time, Summerville High School had three categories of courses: college prep, general studies, and remedial. In certain subjects, the general course was the lowest level. For example, "general" was the lowest level for science and math. "Remedial" was the lowest level for English. There were also some courses called "Basic," which were the same as a remedial level. For example, Kenneth had U.S. History Basic with Betsy McAmis. That course was created for students who could not grasp the material in the General U.S. History course. I specifically remember that Ms. McAmis took the General course book and rewrote it for her Basic level students because they could not comprehend the material in the General textbook, and there was no textbook available at a lower level.

19. Other courses did not have different levels. For example, classes like Social Studies, Physical Education, Home Economics, Civics, and Driver's Education had only one basic level for everyone who took those subjects.

20. Summerville schools also sometimes categorized classes as Level 1, 2 or 3. Level 3 was the remedial level.

21. Starting in the seventh grade when different levels of classes were available, Kenneth was in the lowest level available in every class he had.

22. Kenneth's school records purport to contain "IQ scores" in some of the elementary school years. For example, his records state that in the first grade his IQ was 94, in the third grade his IQ was 104, and in the forth grade his IQ was 69. These scores are transferred to the individual years' records from a separate page of Kenneth's school records, which is marked "Primary Mental Abilities." This record shows that the actual tests from which these scores are derived were the SRA Primary Mental Abilities Test ("SRA PMA") and the Short Form Test of Academic Aptitude ("SFTAA"). These tests are not true IQ tests. They were not individually administered by a psychologist. Rather, these were group standardized tests given to all elementary school students.

23. Kenneth Simmons' performance in school is consistent with the abilities of a person with mental retardation. For example, in the eleventh grade, Kenneth's school records show that he was testing at a fifth grade reading level and at the 4.7 level in math. Kenneth also performed poorly in a number of very simple courses. He failed Driver's Education and had to retake the class. He also failed Consumer Education and got an "F" in the first semester of Personal Health. These were very easy courses for most students. Consumer Education was basically about how to function in the world – how to make change, shop for groceries, and be a good consumer. Personal Health covered basic health, safety, and nutrition. The topics were pretty much just common sense kinds of things.

24. Kenneth ultimately earned his high school diploma, but at that time, anyone could get a diploma as long as they attended and passed the required number of classes. Summerville did not give different types of diplomas for Resource students at that time. There is no doubt in my mind that Kenneth would be unable to earn his high school diploma by today's standards.

25. When Kenneth graduated from high school, he did not have sufficient job skills or adequate academic skills. He was a follower, and he desperately needed structure. Without structure, I can see how Kenneth might end up into drugs or other trouble. I wish that Kenneth could have benefited from some of the adult special education resources we have today such as Goodwill Industries, Vocational Rehabilitation, or Department of Disabilities and Special Needs, but they were not available at that time.

Linda Shwec

Linda Shwec, Affiant

Sworn to and subscribed before
me this 26th day of March, 2008.

Notary Public
My commission expires: 10-26-10

Attachment A

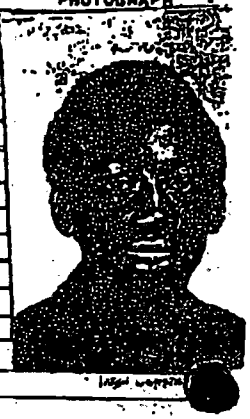
NAME Moore, Kenneth (FIRST / MIDDLE) MALE ☒ FEMALE ☐ DATE OF BIRTH [redacted] PLACE OF BIRTH Summerville, S.C. NATIONALITY American

DATE | LOCAL ADDRESS | PHONE | DATE OF ATTENDANCE | NAME OF SCHOOL

DROP OUT AND RE-ENTRY RECORD

DATE	SCHOOL AND GRADE LEFT	REASON	DATE RE-ENTERED	SCHOOL AND GRADE RE-ENTERED

PHOTOGRAPH



FAMILY DATA	MOTHER	FATHER
NAME OF PARENTS	Mrs. Lenora Simmons	Mr. Eugene Simmons
HOME ADDRESS		
NATIONAL DESCENT	American	American
DATE NEUTRALIZED		
LANGUAGE IN HOME	English	English
OCCUPATION	Housewife	Laborer
EDUCATION		
MARITAL STATUS	Married	Married
DECEASED		
WITH WHOM DOES CHILD RESIDE	Parents	

CODE FOR REASONS FOR LEAVING SCHOOL

T.R. - TRANSFERRED E.P. - EMPLOYMENT PERMIT D - DEAD

P.I. - PERMANENT ILLNESS G.A. - OVER LEGAL AGE M - MARRIED

DATE AND GRADE RECORD STARTED 1-67 1A

NUMBER CHILDREN IN FAMILY 9

BOYS 4 GIRLS 5

GRADUATION FROM SENIOR HIGH SCHOOL

GRADUATION DATE 5-30-80 NAME OF SIGNATURE OF HIGH SCHOOL PRINCIPAL R.D. Russell

NO. IN CLASS 1015 RANK IN CLASS 591 NO. OF RANKS 1015 COURSE COMPLETED

AWARDS AND HONORS C.P.E. 0.8022

ELEMENTARY SCHOOL RECORD

YEAR	K	1966	1967	1968	1969	1970	1971	1972	1973	1974
GRADE		1B	2A	2B	3A	3B	4A	4B	5A	5B
SUBJECTS										
READING		S	M	74	60	72	85			
READING LEVEL			C	3	2	low	5			
ENGLISH GRAMMAR			S	76	57	84	54	62		
WRITING		S	S	98	C	-				
SPELLING			S	68	79		50			
ARITHMETIC		S	S	74	74	89	74	78		
ARITH. LEVEL			B	2	2	low	4			
SCIENCE		S	S	67	60	83	57	72		
PHYS. ED. HEALTH				85	60	S	S	S		
SOC. STUDIES		S	S	71	60	77	44	65		
Chorus								S-		
DAYS PRESENT		170	174	175	171	174	172	170		
DAYS ABSENT		10	6	5	1	1	4	10		
TIMES TARDY					0					

SECONDARY SCHOOL RECORD

GRADE 8 YEAR 1974 to 1975

SUBJECTS	MARKS 1ST	MARKS 2ND	YR.	CR.
English 3	74	87	81	
Math 3	96	84	90	
Science 3	69	63	66	
Soc. Stu. 3	79	77	78	
P.E.	S-	-	S-	
Home Ec.	-	S-	S-	
DAYS PRESENT			176	TOTALS
DAYS ABSENT			4	TOTAL TO DATE
TIMES TARDY				

GRADE 9 YEAR 1975 to 1976

SUBJECTS	MARKS 1ST	MARKS 2ND	YR.	CR.
English (Gen)	B	B	B	1
Math I 110	B	C	B	1
Science 150	D	F	F	0
W Geog I	F	-	-	D
W Geog II	-	E	-	½
PE I	D	C	D	1
DAYS PRESENT				TOTALS 134½
DAYS ABSENT	1	6		TOTAL TO DATE
TIMES TARDY				

GRADE 10 YEAR 1976 to 1977

SUBJECTS	MARKS 1ST	MARKS 2ND	YR.	CR.
Gen Eng	B	C	C	1
Math I H1	B	D	C	1
Science B	F	F	F	0
Oct I 410	D	C	C	1
Dri. Ed	F	-	-	0
Dr. Ed. 65-77			A	½
DAYS PRESENT				TOTALS 133
DAYS ABSENT				TOTAL TO DATE
TIMES TARDY				11½

GRADE 11 YEAR 1977 to 1978

SUBJECTS	MARKS 1ST	MARKS 2ND	YR.	CR.
Rem Eng	B	C	B-	1
USH B	E	C	D+	1
Hum Sex		F	F	0
Sm Eng	C	C	C	2
PE		B	B	½
DAYS PRESENT	90	86		TOTALS
DAYS ABSENT	0	4		TOTAL TO DATE
TIMES TARDY				11½

GRADE 11 YEAR 1978 to 1979

SUBJECTS	MARKS 1ST	MARKS 2ND	YR.	CR.
Eng IV-1-5	D	A	C	1
Gr Physics-S	E	E	E	0
Comm Ed I II	W	D	D	0
Sm Eng II	C+	C	C	2
Civics II		E		½
DAYS PRESENT	83	83		TOTALS 134½
DAYS ABSENT	7	7		TOTAL TO DATE
TIMES TARDY				115

GRADE 12 YEAR 1979 to 1980

SUBJECTS	MARKS 1ST	MARKS 2ND	YR.	CR.
Sem Eng	A	A	A	1
Am Sch	D	B	C	1
Bio Health	F	C	C	1
DAYS PRESENT				TOTALS 18
DAYS ABSENT		3		TOTAL TO DATE
TIMES TARDY				

GRADE YEAR 19 to 19

SUBJECTS	MARKS 1ST	MARKS 2ND	YR.	CR.
DAYS PRESENT				TOTALS
DAYS ABSENT				TOTAL TO DATE

GRADE YEAR 19 to 19

SUBJECTS	MARKS 1ST	MARKS 2ND	YR.	CR.
DAYS PRESENT				TOTALS
DAYS ABSENT				TOTAL

4199

5(In Reward Assemb Primary Member Ab. Idea -

NAME

DATE	GRADE	INTELLIGENCE TEST RECORD	FORM	SCORE	GRADE MED.	GRADE NORM.	CHRON. AGE	MENTAL AGE	I.Q.	% TILE RANK
27-68	1B	S.R.A. P.M.A	1B	93		1-7	7-2		94	
7-70	3A	SRA PMA	2-4	130		3.6	9-1		104	45
1/70	4I	SFTAA					9-8		69	

SIMMONS K
RE= 115372

		READING VOC	READING COM	READING TOT	LANGUAGE SPE	LANGUAGE MEC	LANGUAGE EXP	LANGUAGE TOT	ARITHMETIC/MATH CMP	ARITHMETIC/MATH CNC	ARITHMETIC/MATH APP	ARITHMETIC/MATH TOT	BAT	REF	SCI	SS
FORM/LEV S4	GE >	3.3	4.5	5.0	4.7	3.0	5.4	4.7	4.2	4.1	4.2	4.1	4.3	4.3	3.7	4.2
GRADE 11.7	SS >	442	495	492	473	390	524	497	421	414	428	396	398	434	374	428
DATE 04/78	NS >	1	1	1	2	1	3	2	2	3	2	1	2	3	1	2
	NP >	4	4	3	8	1	18	5	6	3	5	2	2	5	2	6

DATE	GRADE	ACHIEVEMENT TEST RECORD	FORM	SCORE	GRADE MED.	GRADE NORM.	CHRON. AGE	G.E.	% TILE RANK
20-68	1B	Metropolitan Ach. Test.	A			1.6	7-1		19
17-69	2B	SRA	C	94		1.7	9-1		11
16-70	3A	SRA Achievement	C	103		3.6	9-10	1.9	8
1/71	4I	SRA	C				10-2	3.2	7%
1-72	5G	SRA	C	58		5.8	10-7	3.9	02

EXTRA CURRICULAR ACTIVITIES

ACTIVITY	GRADE IN SCHOOL 7	8	9	10	11	12
BAND						
DRAMATICS					C 10?	
					AAI	
ANNUAL						
SCHOOL PAPER						
TRACK						X X
BASEBALL						
BASKETBALL						
FOOTBALL			X	X	X	X

OTHER DATE

SIMMONS KENNETH

| | | | | | |

4201

SUMMERVI[illegible] JUNIOR HIGH SCHOOL [illegible]CORD

JMMERVILLE, SOUTH CAROLINA

Name Simmons Kenneth Middle Date of Birth [redacted]

Residence [redacted] Summerville Place of Birth Summerville, S.C.

Phone No. [redacted] Date Entered 8/73 School Last Attended Alston Elementary

Parent or Guardian Mr. Eugene Simmons

SEVENTH GRADE 73-74

Subject	1st Qtr	2nd Qtr	Mid term avrg.	3rd Qtr	4th Qtr	Term Avrg	Yr. Av.	Units	Subject Teacher
3 English	50	52	51	69	75	71	62		Stewart
3 Math	82	88	85	70	70	70	78		Massa
3 Science	75	60	68	78	72	75	72		Kuehnwild/Burns
Soc. St.	50	50	50	50	30	40	45		Taylor
P.E.	S	U	S-	S	S	S	S		Mokehead
Chorus	U	60	F	S	S	S-	S-		McFaddin
Days Absent	3	5		-1	1		10		Year's Average
Days Tardy									Cumulative Average
Home-Room Teacher	Offerman								Cum. Units to Date

Remarks: Promoted

EIGHTH GRADE 74-75

Subject	1st Qtr	2nd Qtr	Mid term avrg.	3rd Qtr	4th Qtr	Term Avrg	Yr. Av.	Units	Subject Teacher
3 Eng	72	82	77	93	80	87	81		Lasiuse
3 Math	96	95	96	87	80	84	90		Wolf
3 Sci	70	68	69	52	73	63	66		Gordon
Soc St.	80	78	79	77	77	77	78		Grant
P.E.	Ur	S-	S-				S-		Cuda
Chorus				2/5	S-	S-	S-		Mazyck
Days Absent	2	2							Year's Average
Days Tardy									Cumulative Average
Home-Room Teacher	C.C. Keels								Cum. Units to Date

Remarks: PROMOTED

[illegible] 79-80 GRADE

Subject	1st Qtr	2nd Qtr	Mid term avrg.	3rd Qtr	4th Qtr	Term Avrg	Yr. Av.	Units	Subject Teacher
Rem. Eng.	A[1]	B[1]	A[2]	B[1]	A[0]	A[1]	A[3]	1	YARBOROUGH
Gen Sci	F[2]	B[1]	D[3]	C[3]	B[1]	B[4]	C[7]	1	KINARD
Per. Health	F[0]	F[3]	F[3]	C[1]	C[4]	C	C[4]	1	DRAWDY
Days Absent	1	1	2	1	0	1	3		Year's Average
Days Tardy							27		Cumulative Average
Home-Room Teacher	M. Tallon				12-0		78		Cum. Units to Date

Remarks: V 0.8222

_____ GRADE

Subject	1st Qtr	2nd Qtr	Mid term avrg.	3rd Qtr	4th Qtr	Term Avrg	Yr. Av.	Units	Subject Teacher
Days Absent									Year's Average
Days Tardy									Cumulative Average
Home-Room Teacher									Cum. Units to Date

Remarks:

A 93-100
B 85-92
C 77-84
D 70-76
F 0-69 FAILING
(EFFECTIVE 1970-71)

4202

SUMMERVILLE HIGH SCHOOL RECORD

SUMMERVILLE, SOUTH CAROLINA

Name Simmons Kenneth Date of Birth [redacted]
Last First Middle

Residence [redacted] Summerville, S.C. Place of Birth Summerville

Phone No. [redacted] Date Entered 8/73 School Last Attended Alston Ele.

Parent or Guardian Mr. Eugene Simmons

NINTH GRADE 75-76

Subject	1st Qtr	2nd Qtr	Mid term avrg.	3rd Qtr	4th Qtr	Term Avrg	Yr. Av.	Units	Subject Teacher	Remarks:
Basic English	B^{6}	C^{3}	B	B^{9}	B^{3}	B	B^{10}	1	Johnson	
Gen. Math I-10	B^{3}	B^{0}	B	D^{3}	B^{6}	C	B	1	Greene	
Gen. Science 9	D^{3}	F^{3}	D	F^{5}	F^{4}	F	F^{12}	0	Rose	
W. Geo. I	F^{3}	F^{3}	F	—				0	Lindsay	
W. Geo. II	—	—	—	F^{3}	E^{1}	F		Yr.	Lindsay	
Boys PFT	B^{0}	E^{2}	D	B^{5}	C^{4}	C	D^{9}	1	Manjdin	
Days Absent	0	1	1	3	3	6	7		Year's Average	
Days Tardy	0	0	0	0	0				Cumulative Average	
Home-Room Teacher	Mr Tracy								Cum. Units to Date 3½	

TENTH GRADE

Subject	1st Qtr	2nd Qtr	Mid term avrg.	3rd Qtr	4th Qtr	Term Avrg	Yr. Av.	Units	Subject Teacher	Remarks:
Basic Eng	A^{1}	B^{3}	B	B^{10}	D^{10}	C	C^{24}	1	Levine	
Math II-110	A^{1}	B^{1}	B	C^{3}	D^{4}	D	C^{9}	1	Kelly	
Phy. Sci. 15	F^{3}	E^{4}	F	F	E^{5}	F	F^{17}	0	McMillan	
Art I 410	C^{0}	E^{2}	D	D^{4}	B^{2}	C	C^{4}	1	Spruill	
Home Ec	F	F	F	—	—	—	—	0	Travis	
10th Ele	55	77	—	—	—	B	—	Yr.		
								3½		
Days Absent	1	2		5	8				Year's Average	
Days Tardy									Cumulative Average	
Home-Room Teacher	D. Daniels								Cum. Units to Date 7½	

ELEVENTH GRADE 77-78

Subject	1st Qtr	2nd Qtr	Mid term avrg.	3rd Qtr	4th Qtr	Term Avrg	Yr. Av.	Units	Subject Teacher	Remarks:
Rem. Eng	A^{0}	C^{1}	B^{1}	B^{5}	C^{8}	C	B^{12}	1	Yarbrough	
USH B	C^{0}	F^{0}	E^{0}	B^{2}	F^{13}	C	D^{15}	½	McAmis	
Hum. Ser.	~	—	—	F^{5}	F^{14}	F^{6}	—	0	Rice	
Sm. Eng	C^{1}	B^{1}	C^{2}	C^{7}	C^{8}	C	C^{17}	2	Powell's DVC	
P. E	—	—	—	B^{1}	B^{3}	B^{4}	—	½	Draudy	
Days Absent	0	0	0	2	2			1½	Year's Average	
Days Tardy									Cumulative Average	
Home-Room Teacher	M. Smalls								Cum. Units to Date 11½	

~~TWELFTH GRADE~~ 11th 78-79

Subject	1st Qtr	2nd Qtr	Mid term avrg.	3rd Qtr	4th Qtr	Term Avrg	Yr. Av.	Units	Subject Teacher	Remarks:
English 15	F	A	D	A^{0}	A^{0}	A	C	1	Hilton + Shuler	
Geo. Sci 15	D^{1}	F^{1}	F^{1}	F	F^{1}	F	F	Withdrew	Bennett -30	
Consid. I, II	F^{0}	Withdrew	—	—	—				Waring	
Spelling II	C^{0}	C^{0}	C^{0}	C^{3}	C^{1}	C	C	0	Powell DVC	
Civics II				D^{2}	F^{3}	E^{0}	—	½	Edwards	
Days Absent	0	7	—	4	3			3½	Year's Average	
Days Tardy									Cumulative Average	
Home-Room Teacher	L Spruill							15	Cum. Units to Date	

needs sw

0.6923

4203

Alsted ELEMENTARY SCHOOL RECORD

SUMMERVILLE, SOUTH CAROLINA

Name Simmons Kenneth Middle Date of Birth [redacted]

Residence [redacted] Place of Birth Summerville

Phone No. [redacted] Date Entered School Last Attended

Parent or Guardian Mr. & Mrs. Eugenee Simmons

GRADE YEAR

Subject	1	2	3	Ex.	Sem. Av.	4	5	6	Ex.	Sem. Av.	Yr. Av.	Grp.	Subject Teacher
Arithmetic													
Reading													
													Basic Rdg. Bks. & Test Rtgs.
Days Absent													Reading Av. Ach.
Days Tardy													Arith. Av. Ach.
Home-Room Teacher													Overall Ach.

Promoted to ____ Placed in ____ Retained in ____

1st GRADE 1968-69 YEAR Age: 7 yrs. 1 mos. I.Q. 94

Subject	1	2	3	Ex.	Sem. Av.	4	5	6	Ex.	Sem. Av.	Yr. Av.	Grp.	Subject Teacher
Arithmetic		U	S		S	S	S	S		S	S	1	
Reading		U	S		S	S	S	S		S	S	1	
Writing		S	S		S	S	S	S		S	S		Basic Rdg. Bks. & Test Rtgs.
Social Studies		S	S		S	S	S	S		S	S		
Science						S	S	S		S	S		
Effort		U											
Conduct		S											
Days Absent	0	0	0		0	2	2	6		10	10		Reading Av. Ach. 1.6
Days Present	30	30	30		90	28	28	24		80	170		Arith. Av. Ach. 1.3
Home-Room Teacher Miss Delores Sindleton													Overall Ach. 1.4

Promoted to 2nd Placed in ____ Retained in ____

2B GRADE 1969-70 YEAR Age: 8

Subject	1	2	3	Ex.	Sem. Av.	4	5	6	Ex.	Sem. Av.	Yr. Av.	Grp.	Subject Teacher
Arithmetic	S	G	G	G	S	S	S	S	G	S	S	B	
Reading	U	U	S	S	S	U	U	U	U	U	U	C	
Science	G	S	S	S	S	S	S	S	S	S	S	C	Basic Rdg. Bks. & Test Rtgs.
English	S	S	S	S	S	S	U	S	S	S	S	C	
Spelling	U	U	S	S	S	U	S	S	U	U	S	C	
So. Studies	U	U	S	S	S	S	U	S	S	S	S	C	
Days Absent	1	0	1		2	0	1	2		3	6		Reading Av. Ach. 1-8
Days Present Tardy	29	30	28		88	30	29	28		87	174		Arith. Av. Ach. 1-7
Home-Room Teacher Miss R. Frosier													Overall Ach. 1-7

Promoted to 3rd Placed in ____ Retained in ____

3A GRADE 69-70 YEAR Age. 9-1 I.Q. 104

Subject	1	2	3	Ex.	Sem. Av.	4	5	6	Ex.	Sem. Av.	Yr. Av.	Grp.	Subject Teacher
Arithmetic	75	80			77	80	85			82	74	2L	
Reading	75	67			71	80	85			77	74	3L	
Language	70	75			73	75	85			80	76		Basic Rdg. Bks. & Test Rtgs.
Spelling	68	60			64	70	75			72	68		
So. Studies	65	72			70	72	75			73	71		
Science	65	60			63	70	75			72	68		
Days Absent	1	2			3	1	1			2	5		Reading Av. Ach. 1-1
Days Present Tardy	44	43			87	44	44			88	175		Arith. Av. Ach. 2-4
Home-Room Teacher Miss N.L. Curry													Overall Ach. 1-9

Promoted to 4 Placed in ____ Retained in ____

4204

Hixton ELEMENTARY SCHOOL RECORD

SUMMERVILLE, SOUTH CAROLINA

Name Simmons Kenneth (Middle) Date of Birth [redacted]

Residence [redacted] Place of Birth

Phone No. [redacted] Date Entered School Last Attended

Parent or Guardian

4-1 GRADE 1971-72 YEAR Age: 9-8 I.Q. 69

Subject	1	2	3	Ex	Sem. Av.	4	5	6	Ex	Sem. Av.	Yr. Av.	Grp.	Subject Teacher
Arithmetic	72	80	76			85		79		82	79	Low	Long
Reading	52	60	55			65		65		65	60	Low	Causey
Spelling	50	70	60			78		78		78	29		Basic Rdg. Bks. & Test Rtgs.
English	50	50	50			65		60		63	57		Readers' Digest 2
Social St.	50	60	55			65		65		65	60		
Health	55	65	60										
Science						60		60		60	60		
Deportment	C	B	C			C		C		C	C		Reading Av. Ach. 3.1
Days Absent	0	0	0			0		1		1	1		Arith. Av. Ach. 3.7
Days Tardy													Overall Ach 3.2

Home-Room Teacher Ann Long

5-6 GRADE 71-72 YEAR I.Q. 104

Subject	1	2	3	Ex.	Sem. Av.	4	5	6	Ex.	Sem. Av.	Yr. Av.	Grp.	Subject Teacher
Arithmetic	86	91			88		91	80		86	87	Low	Hartnett
Reading	75	70			73		74	65		70	72	Low	Stevens
Lang. Arts	82	78			80		87	89		88	84		Basic Rdg. Bks. & Test Rtgs.
Science	89	89			89		72	79		76	83		
Soc. Studies	70	74			73		78	84		81	77		
HAPE	S	S			S		S	S		S	S		
Citizenship	B	B					C	C			C		
Days Absent	1	0			1		0	0		0	1		Reading Av. Ach 3.1
Days Tardy	44	45			89		45	45		90	179		Arith. Av. Ach. 3.9
Home-Room Teacher													Overall Ach. 3.3

Wright & Kistler

6 GRADE 72-73 YEAR Age 11-8 I.Q. 109

Subject	1	2	3	Ex.	Sem. Av.	4	5	6	Ex.	Sem. Av.	Yr. Av.	Grp.	Subject Teacher
Arithmetic 4	87	71			66	81	88	Mrs.		85	85		Powers/Childers
Reading 5	61	81			84	82	80	P. and		81	74		Wright
Eng.	60	50			55	50	50			50	50		Basic Rdg. Bks. & Test Rtgs.
Spell	50	50			50	50	50			50	50		Triple
Science	70	60			65	60	50			55	57		Read
Health	3/5	4/5			4/5	4/5	4/5			4/5	4/5		Macmillan
Days Absent	1	0			1	3	0			3	4		Reading Av. Ach. 4.6
Days Tardy													Arith. Av. Ach. 4.2
Home-Room Teacher													Overall Ach. 4.1

____ GRADE ____ YEAR

Subject	1	2	3	Ex.	Sem. Av.	4	5	6	Ex.	Sem Av.	Yr. Av.	Grp.	Subject Teacher
Arithmetic													
Reading													
													Basic Rdg. Bks. & Test Rtgs.
Days Absent													Reading Av. Ach
Days Tardy													Arith. Av. Ach.

Promoted to ____ Placed in ____ Retained in ____

CTB® INDIVIDUAL TEST RECORD

J2

COMPREHENSIVE TE IF BASIC SKILL

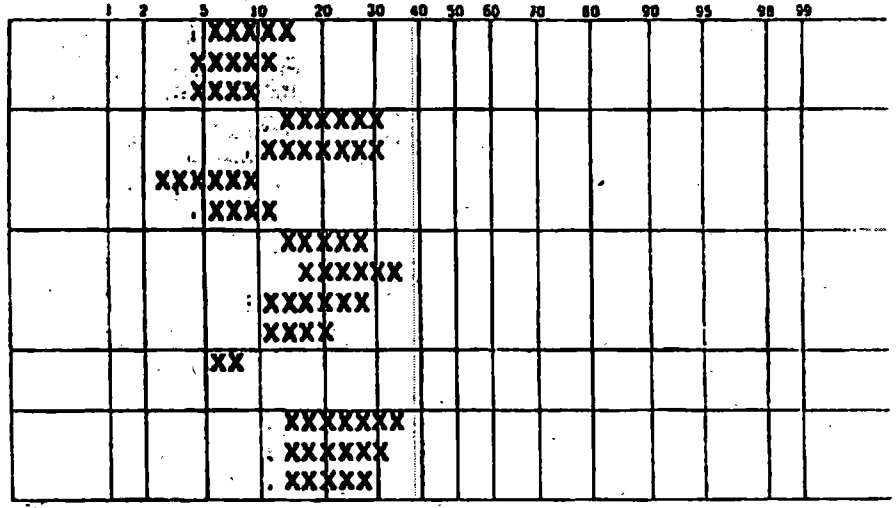
CTB

SIMMONS KENNE	◀ NAME	TEACHER ▶	LONG	DATE OF TESTING ▶	10 70
SPANN	◀ SCHOOL	GRADE ▶	4.1	1821-213	
SUMMERVILLE	◀ CITY	LEVEL ▶	Q2		

AREA Test	RS	GE	AAGE	DIFFERENCE	NATIONAL %ILE
READING Vocabulary	8	2.0	2.1		9
READING Comprehension	9	2.0	2.1		7
TOTAL Reading	17	1.9	2.0		6
LANGUAGE Mechanics	6	2.1	2.1		21
LANGUAGE Expression	8	2.0	2.0		17
LANGUAGE Spelling	4	1.9	2.0		5
TOTAL Language	18	2.0	2.0		8
ARITHMETIC Computation	15	3.0	3.0		18
ARITHMETIC Concepts	9	3.0	2.3		22
ARITHMETIC Applications	4	2.6	2.8		16
TOTAL Arithmetic	28	3.0	2.7		14
TOTAL BATTERY	63	2.6	2.4		6
STUDY SKILLS Reference Materials	5	3.0	2.2		23
STUDY SKILLS Graphic Materials	8	2.6	2.3		19
TOTAL Study Skills	13	2.8	2.3		18

NATIONAL PERCENTILE

1 2 5 10 20 30 40 50 60 70 80 90 95 98 99



READING Vocabulary

A. RECOGNITION AND / OR APPLICATION OF TECHNIQUES

Vocabulary

READING Comprehension

A. RECOGNITION | B. TRANSLATION | C. INTERPRETATION | D. ANALYSIS

Literal Meaning | Simple Rewording | Para-phrasing | Extended Meaning

LANGUAGE Mechanics

A. RECOGNITION AND/OR APPLICATION OF TECHNIQUES

Punctuation | Capitalization

LANGUAGE Expression

A. RECOGNITION/APPLICATION | C. INTERPRETATION

Correct Usage | Economy / Clarity | Word Choice

LANGUAGE Spelling

A. RECOGNITION AND / OR APPLICATION OF TECHNIQUES

Spelling

ARITHMETIC Computation

A. RECOGNITION AND/OR APPLICATION OF TECHNIQUES

Addition | Subtraction | Multiplication | Division

ARITHMETIC Concepts

A. RECOGNITION/APPLICATION | B. TRANSLATION | C. INTERPRETATION | D. ANALYSIS

Recognition of Concept | Equations | Comparisons | Other Relationships | Organization

ARITHMETIC Applications

C. INTERPRETATION | D. ANALYSIS

Selecting Method | Solving Problem | Organization

STUDY SKILLS Reference Materials

A. RECOGNITION / APPLICATION OF TECHNIQUES

Parts of Books | Dictionary / Use | Library Use

STUDY SKILLS Graphic Materials

C. INTERPRETATION | D. ANALYSIS

Relationships | Conclusions | Extended Meaning

LEGEND

RS Raw Score
GE Grade Equivalent
SS Scale Score

AAGE Anticipated Achievement GE
AASS Anticipated Achievement SS
DIFFERENCE between obtained and anticipated when it is significant

4205

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PLEASE FILL IN THIS INFORMATION FOR MY CLASS RECORDS

1. Child's Name Kenneth Simmons

2. Child's Age: Month [redacted] Day [redacted] Year [redacted]

3. Child's Address [redacted]

4. Telephone Number [redacted]

5. Father's Name Mr Eugene Simmons

Grade Completed in School 5 grade

6. Mother's Name Mrs Anna Simmons

Grade Completed in School 7 grade

7. Number of Children in Family 8 Boys 3 Girls 5

8. Your Family Doctor Dr James

9. Please give your employer, the place and name of person, company or Contractor you work for. Father George Miller Country Club

Mother None

10. If you or your husband are not employed, please check whether you are on:

Social Security _____ Veteran _____ Welfare _____

Navy Yard _____ Shop No. _____ Serial No. _____

Charleston Air Force Base _____ Serial No. _____

Branch _____, or Government Job ____

THANK YOU KINDLY FOR THE ABOVE INFORMATION

TEACHER M. L. Curry

GRADE 3A

STATE OF SOUTH CAROLINA)) COUNTY OF DORCHESTER)	IN THE COURT OF COMMON PLEAS
Kenneth Simmons,)) Applicant,)	C/A No.: 2005-CP-18-1368
v.)	
John Ozmint, Commissioner,) S.C. Department of Corrections,)	
Respondent.)	

AFFIDAVIT OF ROBERT POLK

Comes now the undersigned who makes the following statement, under oath, and before the undersigned Notary Public who is authorized by law to hear and accept oaths, and based upon his own personal knowledge of the facts averred herein states as follows:

1. My name is Robert Polk. My office address and telephone number are: Summerville High School Guidance Office, 500 Greenwave Blvd., Summerville, S.C., 843-873-6460.

2. I have worked for the Summerville school district since 1976. I worked in the Guidance Office at Summerville High School when Kenneth Simmons was a student there.

3. Any student who was placed in a special education program would have been individually tested prior to the placement. Students were not placed in special education based on the standardized tests given to all students before entering high school. Even if a student scored very low on standardized tests, these tests were not used for special education placement.

4. A student would be tested for special education under one of the following three circumstances: (1) a parent requested the testing; (2) a teacher requested the testing; or (3) the student requested the testing. After a request for special education was made, the student was tested for vision and hearing difficulties to make sure that the student had no difficulties in these

areas, and then individually tested by a psychologist to see if the student qualified for placement in special education. The tests used at that time were the WISC-R, the WAIS, and the PIATT or "Bender."

5. Summerville High School does not retain records on psychological testing for special education. Those records are kept by Psych Services. I personally contacted Psych Services to see if they had retained any records about Kenneth Simmons and discovered that all of the records from that period of time have been destroyed.

6. I have reviewed and am familiar with Kenneth Simmons's school records. Kenneth's transcript indicates that his courses in high school were either "remedial," "basic," or "general" courses. These terms were all used to designate remedial level courses; the terms simply varied by subject. Kenneth was also placed in Linda Schwec's class. Ms. Schwec was the Resource Program teacher. The Resource Program was a special education program. Based upon my review of his transcript and my knowledge of the programs at that time, Kenneth's records indicate that he was clearly impaired because he was failing some of his remedial courses even with Resource Program help.

7. Most teachers at Summerville High School at that time were willing to pass students, especially athletes, as long as they were quiet and cooperative and putting forth their best efforts. Although it was not an official policy in those days, it was common practice to give athletes with special needs some priority in terms of helping them get through school.

Robert Polk

Robert Polk, Affiant

Sworn to and subscribed before
me this 20th day of March, 2008.

Della M. Davis

Notary Public
My commission expires: 10/26/10

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF)

Ms. Margaret Halstead, who appeared personally before me, affirms and states the following:

1. My name is Margaret Halstead. My address is [redacted] MH Summerville, South Carolina.

2. I ~~previously~~ MH worked for the Palmetto House in Summerville.

3. During my course of employment, I encountered Kenneth Simmons when he visited the Palmetto House. The original site of Palmetto House was on Palmetto Street in an area called the Hill, where drugs predominated and gunshots were heard.

4. Kenneth had stomach, teeth and eye problems while visiting the Palmetto House.

5. He helped others and often helped with heavy lifting and other manual tasks. He was skilled at painting, but could not perform undirected tasks. He could complete tasks if very simple instructions were given to him, for example, being told to stack the blue tiles against the red wall.

6. I never felt uncomfortable around Kenneth. He would often tell others not to speak disrespectfully or swear in front of me.

7. Kenneth had Felix Ross and Angie B as friends, who were mean and violent.

8. I have received letters from Kenneth from prison. His writing was very poor and childlike.

Further affiant sayeth naught.

Margaret A Halstead
MARGARET HALSTEAD

Sworn to and subscribed before me
This 2nd day of June, 2009.

Jill A. Reider
Notary Public for the State of South Carolina
My commission expires: 6-19-16

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF DORCHESTER)

Mr. Gene Simmons, who appeared personally before me, affirms and states the following:

1. I am an older brother of Kenneth Simmons.

2. Before I left Summerville to join the military, I helped Kenneth get a job with Charlie Wilson doing general construction and contract work.

3. No application or formal training was necessary to work for Charlie. Jobs were obtained through word of mouth. Generally kids in the neighborhood would just jump on Charlie's truck when they needed to work and would do whatever small jobs were necessary on the construction site. I asked Charlie to hire Kenneth.

4. Kenneth helped work to build an addition on my house. His duties consisted of nailing boards and other very simple tasks.

5. To my knowledge, Kenneth has never done any complex carpentry or brick masonry work. All of his jobs have been working as a laborer.

6. Kenneth lived in a small building on my property for a little while, but I asked him to move out as Kenneth could not take care of the place. For example, he would leave the doors and windows open in winter time when he was not at home.

Further affiant sayeth naught.

Dane Simmons
GENE SIMMONS

Sworn to and subscribed before me
This 2nd day of June, ~~2007~~ 2009

Jill A. Rider
Notary Public for the State of South Carolina
My commission expires: 10-19-16

4211

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF DORCHESTER)

Mrs. Doris Russell, who appeared personally before me, affirms and states the following:

1. My name is Doris Russell. My address is [redacted].

2. I was ~~a volunteer~~ at the Palmetto House, which provides shelter and food for Summerville's homeless, during the time that Kenneth Simmons came to the shelter beginning in 1990.

3. I knew Kenneth from before he came to the Palmetto House because he used to date a girl that lived across the street from me. Kenneth often did work inside of my house, such as painting, or yard work. I often left Kenneth alone to work inside of my house and when I returned nothing would be out of place.

4. Kenneth also used to help out at Palmetto House, such as mopping floors, putting out garbage, and doing other simple tasks.

5. Kenneth could not do tasks without getting careful directions. For example, I could not tell him to measure a wall, but I could tell him where to place things on the wall.

6. Kenneth was passed along in school because he was a football player.

7. Kenneth has always been helpful and caring of others. When he was younger he helped to take care of his mother when she was sick. The only thing Kenneth has of his father is his father's coat. When Kenneth was sentenced to death he asked me to keep his father's coat for him, which I still have in my closet.

8. Kenneth has written me from jail. His spelling and writing is very poor. He generally seems to write the same phrases over and over again.

9. I allow Kenneth to call me once a week. When he calls he talks to me about his health problems and his Bible Study class. Kenneth goes to Bible Study to listen to other people read from the Bible.

Further affiant sayeth naught.

Doris Russell
DORIS RUSSELL

Sworn to and subscribed before me
This 3rd day of June, 2009

Jill A. Rider
Notary Public for the State of South Carolina
My commission expires: 6-19-16

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF DORCHESTER)

Mr. Sam Glover, who appeared personally before me, affirms and states the following:

1. My name is Sam Glover. My address is [redacted].

Sub-contractor, brick work SG III

2. I am a ~~brick mason.~~ I employed Kenneth Simmons as a laborer. Kenneth worked for me after school and on weekends.

3. I did not require a formal application for Kenneth to work for me. I knew his family and we grew up in the same area. I am approximately 10 years older than Kenneth. Kenneth was quiet and well-behaved. He came from a good family.

4. When Kenneth worked for me, he did tasks like loading and unloading a wheelbarrow full of bricks and shoveling mortar.

5. Kenneth was not a brick mason. He did not lay bricks. Some of my employees would take initiative to learn new and more complicated tasks, but Kenneth was not like that. He was willing to work hard, but he did not take on the more complicated work.

Further affiant sayeth naught.

Samuel Glover III
SAM GLOVER

Sworn to and subscribed before me
This 11th day of June, 2009

Jill A. Rider
Notary Public for the State of South Carolina
My commission expires: 6-19-16

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF DORCHESTER)

Mr. Jack Simmons, who appeared personally before me, affirms and states the following:

1. My name is William ("Jack") Simmons. My address is [redacted].

2. I am currently retired from my position at Coca Cola where I ran a forklift, put up advertisement signs, stacked bottles, and cleaned the large steel mixing tanks.

3. I am the older brother of Kenneth Simmons and moved out of the family house in 1962 when Kenneth was a baby.

4. I recall that my siblings were born at home by a midwife. I remember one incident in particular where Kenneth's mother, Anna Simmons, went to the hospital to deliver a child, but was turned away because our family did not have any insurance.

5. When Kenneth lived at home after the other siblings moved out, our father, Eugene Simmons, or our sister Annette would do the cooking.

6. Kenneth worked a lot of odd jobs. A friend of Kenneth's named Charlie Wilson would have work to do and would stop by the house to pick Kenneth up to help. I do not remember Kenneth ever having a single steady job or formally applying for one.

7. I have never seen Kenneth drive a car and am unaware that Kenneth has ever possessed a driver's license. I cannot imagine that Kenneth could own a car titled in his name.

Further affiant sayeth naught.

William Simmons
JACK SIMMONS

Sworn to and subscribed before me
This 11th day of June, 2009
Jill A. Rider
Notary Public for the State of South Carolina
My commission expires: 6-19-16

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF DORCHESTER)

Mr. Lagare Simmons, who appeared personally before me, affirms and states the following:

1. My name is Legare Simmons. My work address is 387 South Railway Avenue, Ridgeville, South Carolina.

2. I am Kenneth Simmons's older brother. I grew up with him on Pigeon Bay Road.

3. All of my siblings were born at home with a midwife.

4. Kenneth did some work with our brother, Michael Simmons, doing masonry work. Kenneth mixed mortar and worked as a laborer. Kenneth did not have any jobs that required complex tasks.

5. After his mother died and our father became ill, several of our aunts came over to take care of Kenneth and Annette every day. Either our aunts or Annette did the cooking. I have never seen Kenneth cook anything. Our father was ill at home for approximately one month before he died.

Further affiant sayeth naught.

Legare Simmons
LEGARE SIMMONS

Sworn to and subscribed before me
This 11th day of June, 2009
Jill A. Rider
Notary Public for the State of South Carolina
My commission expires: 6-19-16

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF DORCHESTER)

Ms. Robyn Beach Schmeiding, who appeared personally before me, affirms and states the following:

1. My name is Robyn Beach Schmeiding. My address is [redacted].

2. I attended Alston Middle School with Kenneth Simmons. I was also friends and classmates with him in high school. I later reconnected with Kenneth when I was a volunteer at the Palmetto House Homeless Shelter.

3. Everyone in high school liked Kenneth because he was so simple that there was no reason not to like him. In fact, I always thought it would be very easy for someone to take advantage of him. Kenneth was very protective of girls and would help out with projects like the homecoming float.

4. In fact, I would have Kenneth do yard work for me and even left him alone with my baby once while I ran out to pick up lunch for him. I trusted Kenneth completely and knew she would be safe with him. I would not have asked Kenneth to do anything complicated like feed or bathe my daughter because I knew that he would not be able to do those tasks.

5. At the Palmetto House, Kenneth would do yard work and other basic chores. Kenneth was willing to work, but I do not remember him ever holding a steady job.

6. Kenneth was not a football star. He was just big and strong. I think he played a simple defensive position.

7. The other players on the football team were protective of Kenneth and looked out for him and liked him.

8. Kenneth was not bright and I believe that he did not get the help he needed while growing up. I believe that he fell through the cracks.

9. I have received at least one letter from Kenneth while he has been in prison. It was very difficult to read. The spelling was bad and the language was not fluent.

Further affiant sayeth naught.

Robyn Beach Schmeiding
ROBYN BEACH SCHMEIDING

Sworn to and subscribed before me
This 11th day of June, 2009

Jill A. Rider
Notary Public for the State of South Carolina
My commission expires: 6-19-16

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF DORCHESTER)

Ms. Paula Walsh, who appeared personally before me, affirms and states the following:

1. My name is Paula Walsh. I am employed at Summerville High School.

2. I testified as the records custodian at Kenneth Simmons's trial. I brought his school records to court.

3. I viewed my role as simply to take the records to the court. I do not have expertise in interpreting the records.

4. I was not aware that the IQ test scores on the school records were various group tests rather than individually administered IQ exams.

Further affiant sayeth naught.

Paula A Walsh
PAULA WALSH

Sworn to and subscribed before me
This 11th day of June, 2009

Cynthia L. Lee
Notary Public for the State of South Carolina
My commission expires: 3/9/2017

CYNTHIA L LEE NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 03-09-2017

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF DORCHESTER)

Mr. Bo Parks, who appeared personally before me, affirms and states the following:

1. My name is Bo Parks. My address is [redacted]

2. I was a former teammate of Kenneth Simmons's on the Summerville High School football team.

3. I remember one time at a game Kenneth had a sore throat and drank a whole bottle of cough syrup because he thought that the more he took, the faster he would get better.

Further affiant sayeth naught.

BO PARKS

Sworn to and subscribed before me
This 12th day of June, 2009

Notary Public for the State of South Carolina
My commission expires: 6-19-16

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF Charleston)

Dr. Lewis Randolph Waid, Ph.D., who appeared personally before me, affirms and states the following:

1. I am a licensed clinical psychologist. My office address is 1459 Stuart Engals Blvd., Mt. Pleasant, South Carolina.

2. I testified as an expert witness for the defense at the trial in *State v. Kenneth Simmons* in Dorchester County in 1999.

3. I evaluated Mr. Simmons regarding his competency to stand trial; his ability to understand his *Miranda* rights; and other potential mitigating factors.

4. I was not asked to determine whether or not Mr. Simmons met diagnostic criteria for mental retardation. Furthermore, I did not have all of the materials available to me that I would require for an evaluation of mental retardation per standards of current practice. For example, I did not have access to a complete social history or have family members and teachers available for interview. I did not formally assess Mr. Simmons' adaptive behavior functioning.

5. I conducted my evaluation of Mr. Simmons prior to the Supreme Court's decision in *Atkins v. Virginia*. Thus, distinguishing between mental retardation, borderline intellectual functioning or brain damage due to injury or drug use did not have the same legal significance that it has today. Given what I was asked to do – assess whether Mr. Simmons could comprehend and thus make a knowing and intelligent waiver of the *Miranda* rights – the important issue was Mr. Simmons' cognitive deficits, not determining whether he had mental retardation.

6. It was for these reasons that I did not make a formal assessment of Mr. Simmons' deficits in adaptive functioning or whether his significantly sub-average intellectual functioning manifested itself during the developmental period.

Further affiant sayeth naught.

Lewis Randolph Waid PhD
DR. LEWIS RANDOLPH WAID

Sworn to and subscribed before me
This 18 day of December, 2009

Notary Public for the State of South Carolina
My commission expires: 2011

STATE OF SOUTH CAROLINA)	
)	
COUNTY OF DORCHESTER)	IN THE COURT OF COMMON PLEAS
Kenneth Simmons,)	
)	
Applicant,)	C/A No.: 2005-CP-18-1368
)	
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
)	

AFFIDAVIT OF DR. RICHARD LEO

Comes now the undersigned who makes the following statement, under oath, and before the undersigned Notary Public who is authorized by law to hear and accept oaths, and based upon his own personal knowledge of the facts averred herein states as follows:

1. My contact information is: Richard Leo & Associates, Inc., 15 Ashbury Terrace, San Francisco, CA 94117, (415) 661-0162. This affidavit is per the request of Ms. Emily Paavola, counsel for Kenneth Simmons in the above-referenced case of *Kenneth Simmons v. South Carolina*.

Qualifications

2. I am an Associate Professor of Law at the University of San Francisco and formerly an Associate Professor of Criminology and an Associate Professor of Psychology at the University of California, Irvine. My areas of research training and specialization include social psychology, criminology, sociology and law. For almost two decades, I have conducted extensive empirical research on police interrogation practices, *Miranda* requirements, the psychology of interrogation and confessions, psychological coercion, police-induced false confessions, and wrongful convictions. In this time, I have analyzed several thousand cases involving interrogations and confessions; I have researched, written and published numerous peer-reviewed articles on these subjects in scientific journals; and I have

written several books as well, including *Police Interrogation and American Justice* (Harvard University Press, 2008). I am regarded as a national and leading expert on these topics, and I have won numerous awards for my scholarship and publications. My scholarship has often been cited by appellate courts, including the United States Supreme Court. To date, I have consulted with criminal and civil attorneys on more than one-thousand one-hundred (1,100) cases involving disputed interrogations and/or confessions, and I have been qualified as an expert witness one-hundred and eighty-eight (188) times in state, federal and military courts in twenty-seven (27) states, including in the State of South Carolina. I have given many lectures to judges, defense attorneys, prosecutors and other criminal justice professionals, and I have taught interrogation training courses and/or given lectures to police departments in America, China and the Republic of Cypress.

Materials Reviewed

3. I have reviewed the following materials:

- Trial transcript summary
- Full pre-trial testimony of witnesses at Jackson v. Denno Hearing concerning statements of Kenneth Simmons (Margaret Bush, Samuel Jackson, Nathan Perryman, Everett Howard, Anne Reese, Maybelle Hendricks, Kenny Mears)
- Full trial testimony of witnesses concerning statements of Kenneth Simmons (Everett Howard, Margaret Bush, Samuel Jackson, Nathan Perryman, Anne Reese, Maybelle Hendricks, Kenny Mears).
- Full trial testimony of Dr. Clay Nichols, Ronald Manchester, Michael Turner.
- Trial testimony of Dr. Michael Foxworth (Excerpt).
- Transcripts of three recorded statements taken from Kenneth Simmons.
- Written two-page statement of Kenneth Simmons.
- Timeline of investigation and supporting documents

- Summerville, SC Police Department Incident Reports
- Summerville, SC Police Department Supplementary Report by E. Worsham (dated 12/11/1997)
- Summerville, SC Police Department Report by Detective Hendricks (undated)
- Summerville, SC Police Department Report by Detective Hendricks (dated 11/4/1997)
- Summerville, SC Police Department Report by Detective Hendricks (dated 11/14/1997)
- Report of E. Howard (dated 12/5/1997)
- Report of Nathan Perryman (dated 12/6/1997)
- Report of Margaret Bush (dated 12/18/1997)
- Supplemental Report of Ron Thomason (dated 12/4/1997)

- Suspect Profile File of Robert Hazelwood
- FBI Fingerprint Reports
- Report of Dr. Behrmann (dated 1/13/1999)
- Report of Dr. Denis Keyes (dated 2/9/1999)
- Report of Dr. Leslie Sandler (dated 2/10/1999)
- School records of Kenneth Simmons
- Affidavit of Betty Profit
- Affidavit of Doris Russell
- Affidavit of Margaret Halstead
- Affidavit of Gene Simmons
- Affidavit of Robert Polk

- Affidavit of Linda Shwec
- Interview of Kenneth Simmons (1/15/09)
- Report of Dr. Susan Knight
- Summary of IQ tests administered to Kenneth Simmons
- Report of Dr. William Thompson
- Newspaper articles
    - "Woman, 89, Found Tied, Dead," *Charleston Post & Courier* (September 2, 1996)
    - "Autopsy Indicates Rape, Strangulation in Boyd Slaying," *Charleston Post & Courier* (September 3, 1996)
    - "Police Seek Public's Help to Solve Murder," *Summerville Journal Scene* (September 4, 1996)
    - "FBI Joins Probe of Murder," *Summerville Journal Scene* (September 18, 1996)

The Scientific Study of Police Interrogation and False Confessions

4. There is a well-established body of empirical social science research on the psychology of police interrogation and false confessions that dates back to 1908. This literature contains hundreds of peer-reviewed journal articles and books, and has produced a body of research findings that is generally accepted in the scientific community. This area of social scientific study is beyond common knowledge and contains findings that are highly counter-intuitive. For example, most lay people do not know that police are trained in highly specialized interrogation techniques that involve persuasion, manipulation, deception and sometimes even psychological coercion; the assumptions, goals, psychology or logic of these techniques; how and why these interrogation techniques, when misapplied to the innocent, can lead to false confessions; that numerous interrogation-induced false confessions have been documented and analyzed; the risk factors for eliciting false confessions from the innocent; or the patterns, characteristics and indicia of unreliability that researchers have found across false confession cases. Instead, most lay people (and criminal justice officials) tend to

erroneously assume that false confessions are rare anomalies that only occur if police physically torture suspects.

5. Because police-induced false confession occurs in surprisingly high numbers, and because there is a thriving body of social science research that explains the little-known psychology of police interrogation techniques and counter-intuitive phenomenon of false confession, attorneys in recent decades have increasingly called on interrogation and confession experts to testify as expert witnesses in criminal and civil cases involving disputed interrogations and confessions. These experts have been primarily academic social psychologists, criminologists, and sociologists. Their testimony has sought to educate the jury generally about the psychology of police interrogation and how and why innocent individuals might be manipulated into giving or agreeing to false confessions, as well as to address specific questions and issues in particular cases, without offering any ultimate opinions. To my knowledge, the first time an expert witness testified in a disputed interrogation/confession case was in the mid-1970s. By the mid to late 1980s, the use of social science expert testimony in disputed interrogation/confession cases was becoming increasingly common. By the 1990s it had already become widespread.

The Psychology of Police Interrogation and False Confessions

6. Once patrol officers promote to the rank of detective, they typically receive intensive training in the practice and law of interrogation and thereafter learn to apply, refine and hone their interrogation skills through extensive case experience, supervision, and/or additional training. Police interrogation is a structured process in which detectives draw on an arsenal of psychological techniques to overcome a suspect's anticipated denials and elicit incriminating statements, admissions and/or confessions. This is the sole purpose of custodial interrogation. To achieve this purpose, interrogators use techniques that may rely on influence, persuasion, pressure, stress, manipulation, deception, and/or psychological coercion. The psychological goal of these techniques is to break down a suspect's confidence in his ability to deny the accusations against him, cause him to perceive that all the evidence establishes his guilt beyond any doubt, and to motivate him to believe that he is better off by making or agreeing to an incriminating account. Once interrogators elicit an admission (i.e., the "I did it" statement), the next step is to elicit from the suspect a post-admission narrative (i.e., how and why the suspect committed the crime).

7. Social scientists have empirically studied and analyzed how and why the process of police interrogation can lead to false confessions from the innocent, as well as the situational and individual factors that elevate the risk of eliciting false confessions from the innocent. In addition, social scientists have identified three different types of false confessions: *voluntary* false confessions (made in response to minimal or no police pressure); *compliant* false confessions (given to terminate the stressful, punishing and/or coercive experience of interrogation by a suspect who privately knows that he is innocent); and *persuaded* false confessions (given by a suspect who comes to doubt the reliability of his memory and comes to believe that he or she may have committed the offense). Psychological methods of interrogation can and sometimes do cause innocent individuals to falsely confess, especially interrogations that involve methods that are inherently coercive (such as implied or explicit promises and threats) or that become cumulatively coercive. In addition, some types of individuals – particularly the mentally handicapped and/or cognitively impaired, juveniles and the mentally ill – are more vulnerable to the pressures of interrogation and possess personality characteristics and behavioral traits that increase their risk of giving or agreeing to interrogation-induced false confessions.

Evaluating the Reliability of Incriminating Statements, Admissions and Confessions

8. In addition to studying the psychology of police interrogation and the correlates and causes of false confessions from the innocent, social science researchers have also analyzed the patterns, characteristics and indicia of reliability in true and false confession cases. To evaluate the likely reliability or unreliability of an incriminating statement, admission or full confession from a suspect, social science researchers analyze the fit between the suspect's post-admission narrative and the crime facts and/or corroborating evidence derived from the confession (e.g., location of the missing murder weapon, loot from a robbery, the victim's missing clothing, etc.).

9. The purpose of evaluating the fit between a suspect's post-admission narrative and the underlying crime facts and derivative crime evidence is to test the suspect's actual knowledge of the crime. If the suspect's post-admission narrative corroborates details only the police know, leads to new or previously undiscovered evidence of guilt, explains apparent crime fact anomalies and is corroborated by independent facts and evidence, then the suspect's post-admission narrative objectively demonstrates that he possesses the actual knowledge that would be known only by the true perpetrator and therefore is strong evidence of guilt.

10. This, of course, assumes that the suspect's knowledge of the crime has not been contaminated by the media, community gossip, the police or some other source with inside knowledge about crime details. If a suspect has learned unique or non-public crime facts from one of these sources, then the fact that his confession contains these details is, of course, not indicative of pre-existing knowledge or probative of guilt. One problem with contemporary American police interrogation in practice is that police detectives often describe crime facts to suspects, lead or direct them to infer correct answers, and sometimes even suggest plausible motives for committing the crime.[1] Because they are trained to presume the guilt of those whom they interrogate, American police assume that they are interrogating suspects who already know the correct crime facts. But this is not true when they are mistakenly interrogating an innocent person. When the entirety of an interrogation is not electronically recorded, there may be a dispute about whether the interrogator(s) first suggested a non-public fact to the suspect or whether the suspect independently volunteered it. Without an electronic recording, there is typically no way of objectively resolving this swearing contest.

11. Contamination by police, however, regularly occurs in interrogation-induced false confession cases. And after police interrogators have contaminated the suspect with non-public crime facts, they often attribute "guilty knowledge" to the suspect when he repeats back and incorporates into his confession the very facts that they first educated him about. One researcher has called these contaminated details "misleading specialized knowledge."[2] In many false confessions cases, police and prosecutors argue that the suspect's confession corroborates his guilt because he "knows facts only the true perpetrator would know," even though the suspect first learned these facts from his interrogators. In a recent study of the first two-hundred and thirty two (232) DNA exonerations of innocent prisoners in the American criminal justice system, Brandon Garrett has shown that this pattern was present in more than 90% of the false confession cases in this data set (31 of 34 cases). In other words, in the overwhelming majority of these proven false confession cases, police interrogators fed the suspect unique non-public facts that "only the true perpetrator would know," but the prosecutor erroneously alleged that the suspect volunteered these facts and that the suspect thereby corroborated the reliability of his confession. But because the jury in each

[1]Richard A. Leo (2008), POLICE INTERROGATION AND AMERICAN JUSTICE (Harvard University Press).

[2]Gisli Gudjonsson (2003), THE PSYCHOLOGY OF INTERROGATIONS AND CONFESSIONS: A HANDBOOK (John Wiley & Sons Inc).

case mistakenly believed the prosecutor rather than the defense, each of the confessors was convicted, and in each of these cases the defendant's innocence (and the falsity of the confession) was only proven many years later by DNA.[3]

12. Absent contamination, the fit between the suspect's post-admission narrative and both the crime scene facts and the derivative crime evidence therefore provides an objective basis for evaluating the likely reliability of the suspect's incriminating statements. If the suspect cannot provide police with the actual details of the crime, fails to accurately describe the crime scene facts, cannot lead the police to new or derivative crime evidence, and/or provides an account that is full of gross errors and disconfirmed by the independent case evidence, then the suspect's post-admission narrative demonstrates that he fails to possess the actual knowledge that would be known only by the true perpetrator and is therefore strongly consistent with innocence.

13. The well-established and widely accepted social science research principle of using the fit standard to evaluate the validity of a confession statement is also a bedrock principle of criminal investigation within law enforcement. Properly trained police detectives realize that an "I did it" statement is not necessarily evidence of guilt and may, instead, turn out to be evidence of innocence. For example, in high profile murder cases, police regularly screen out volunteered confessions by seeing whether or not the person can tell the police details known only to the perpetrator or lead the police to derivative crime evidence that either corroborates, or fails to demonstrate, the person's guilty knowledge. If an element of a crime is particularly heinous or novel, police often keep this fact from the press so that it can be used to demonstrate a confessor's guilty knowledge. Police sometimes deliberately include an error in media releases or allow incorrect statements to go uncorrected so that a true perpetrator will be able to demonstrate his personal knowledge of the crime. In other types of cases, police detectives regularly rely upon the fit standard to identify a true admission that might be mixed in with a collection of volunteered statements.

14. Using the fit standard to evaluate the validity of a suspect's incriminating statements, admissions or confessions is a bedrock principle of law enforcement because police detectives realize that seeking corroboration during the post-admission phase of interrogation is essential to proper investigative work. This is because it is a fundamental principle of police investigation that true explanations can be supported and false explanations cannot be supported

[3] Brandon Garrett (2009). "The Substance of False Confessions." 62 *Stanford Law Review*.

(assuming no contamination has occurred), and because false explanations won't fit the facts of the crime, lead to derivative evidence or be corroborated by independent evidence.

15. Moreover, post-admission narrative analysis and the fit standard are central to proper criminal investigation because properly trained detectives realize that the purpose of detective work is not to clear a crime or get a conviction, but to carefully collect evidence in a way that will lead to the arrest, prosecution and conviction of the guilty while at the same time insuring that no innocent individual is wrongfully arrested, prosecuted or convicted.

16. A suspect's post-admission narrative therefore provides a gold mine of potential evidence to the unbiased, properly trained detective who is seeking to ferret out the truth. For if the suspect is guilty, the collection of a detailed post-admission narrative will allow the detective to establish the suspect's guilt beyond question, both by demonstrating the suspect's actual knowledge and by corroborating the suspect's statements with derivative evidence. Properly trained detectives realize that the strongest form of corroboration comes through the development of new evidence using a suspect's post-admission narrative. While it is not possible to verify every post-admission narrative with the crime facts, a skillful interrogator will seek as much verifiable information about the crime as he can elicit. The more verifiable information elicited from a suspect during the post-admission period and the better it fits with the crime facts, the more clearly the suspect demonstrates his responsibility for the crime.

17. If the suspect is innocent, the detective can use the suspect's post-admission narrative to establish his lack of knowledge and thus demonstrate his likely or certain innocence. Whereas a guilty suspect can corroborate his admission because of his actual knowledge of the crime, the innocent suspect cannot. The more information the interrogator seeks, the more frequently and clearly an innocent suspect will demonstrate his ignorance of the crime. His answers will turn out either to be wrong, to defy evaluation, or to be of no value for discriminating between guilt and innocence. Assuming that neither the investigator nor the media have contaminated the suspect by transferring information about the crime facts, or that the extent of contamination is known, the likelihood that his answers will be correct should be no better than chance. Absent contamination, the only time an innocent person will contribute correct information is when he makes an unlucky guess. The likelihood of an unlucky guess diminishes as the number of possible answers to an investigator's questions grows large. If, however, his answers about missing evidence are proven wrong, he cannot supply

verifiable information that should be known to the perpetrator, and he inaccurately describes verifiable crime facts, then the post-admission narrative provides evidence of innocence.

The Interrogation and Confessions of Kenneth Simmons

A) Disputed and Incomplete Accounts

18. Mr. Simmons was interrogated about the sexual assault and murder of Mrs. Lilly Boyd six times by Summerville, South Carolina police detectives and/or South Carolina Law Enforcement Division agents from December 2-9, 1997. During these interrogations, Mr. Simmons gave several incriminating statements and ultimately confessed to the rape and murder of Mrs. Boyd. Many of Mr. Simmons' statements are inconsistent, contradictory, do not correspond to any actual evidence, and/or are implausible. The detectives and agents who elicited Mr. Simmons' statements never recorded the entirety of his interrogations, but in some instances they recorded the "recap" or conclusion of the interrogation. Thus, there is no objective record of what transpired during most of Mr. Simmons' multiple interrogations, no record of what interrogation techniques were used and led him to make multiple changing confessions, and no record of most of what Mr. Simmons' told the various interrogators throughout his various accounts.

19. According to the police reports and police testimony, Mr. Simmons was first interrogated on December 2' 1997 by Detective Everett Howard for approximately 1 and ½-2 hours. At that time he gave a statement saying that Brenda Stevenson had paid two men to kill someone named Shorty. On December 3rd, the next day, Detective Howard interrogated Mr. Simmons a second time, this time for approximately 1½ to 2 hours. At the conclusion of this interrogation, Mr. Simmons confessed to killing the fictional character Shorty. On December 4th, Detective Howard interrogated Mr. Simmons for approximately 30 to 40 minutes, and Mr. Simmons this time gave a statement that two guys (someone named Blackie and another guy) killed an old woman in Summerville, South Carolina the prior year, saying that she was strangled and beaten in the head. Mr. Simmons also confessed to a murder in Travelers Rest, South Carolina. The next day, on December 5th, Mr. Simmons was interrogated for a fourth time, this time by Detective Hendricks and SLED Agents Kenny Mears and Anne Reese (and later joined by Detective Howard). This interrogation lasted an hour, after which Mr. Simmons produced a two page written statement in which he says that Brenda Stevenson and Shorty and Blackie framed Mr. Simmons for the Boyd murder.

Later on the same day, December 5th, Mr. Simmons was interrogated again on December 5th, this time by SLED Agent Mears, and for 1 and ½ hours, after which Mr. Simmons gives a statement that he killed Ms. Boyd. On December 9th, 4 days later, SLED Agent Mears again interrogated Mr. Simmons, and Mr. Simmons repeated his confession to sexually assaulting and killing Mrs. Boyd. SLED Agent Reese testified that Mr. Simmons allegedly told one of his sisters at a bond hearing that that "yes, I killed that woman," yet she failed to memorialize this apparent observation in any report and only remembered it two to three weeks before Mr. Simmons' trial began.

20. The various detectives and agents testified at a pre-trial suppression hearing and again at Mr. Simmons' trial. They denied using any improper interrogation techniques – indeed they did not really discuss the use of any interrogation techniques at all in their testimony – and they denied that anything was amiss about Mr. Simmons during his multiple interrogations or that he appeared anything other than normal or that he did not understand anything they said to him, including the reading of his Miranda rights.

21. Mr. Simmons never testified at his pre-trial suppression hearing or at his trial. His recollection of what occurred during the many unrecorded interrogations by Summerville police detectives and/or SLED agents never became part of the documentary case. Unfortunately, as I will discuss below, Mr. Simmons is mentally retarded and has a poor memory. In 2009, more than 11 years after his interrogations by Summerville police detectives and SLED Agents, Mr. Simmons could barely remember what occurred during these events.

22. According to Mr. Simmons recollection in 2009, he was told by Joe Johnson that police were looking for him in connection with Ms. Boyd's murder. Mr. Simmons naively assumed that if the police were looking for him, they must have had some evidence that he committed this crime, and so he assumed that he must have done it --even though he had no memory or knowledge of doing so – and that he should turn himself in. Because he did not know anything about the crime, he made up a story about the fictional characters Shorty and Blackie. The police detectives and agents, however, did not believe him and thus kept accusing him of committing the crime and imploring him to tell them how he did it. He did not know. However, they would ask him questions in ways that suggested the correct answer – such as, "are you sure you did not strangle her?" or "did you rob her?" or "Did you hit her with a stick?"). Mr. Simmons would answer these questions in hypothetical and speculative language ("Maybe I did," or "I could have"), always acknowledging the possibility, and then incorporating these details

into his statements. Because he assumed they must have unassailable evidence against him or they would not consider him a suspect, Mr. Simmons ultimately confessed to them "however you say I did it is how I did it."

B) Risk Factors for False Confession

23. As mentioned above, there are several risk factors – i.e., factors that heighten the risk or likelihood of /for – eliciting false confessions during police interrogation. These risk factors are typically broken down into two categories: *Situational* risk factors (factors associated with the interrogation techniques and/or interrogation environment) and *individual* risk factors (factors associated with the individual's personality traits, characteristics and background) that heighten the likelihood of eliciting or agreeing to a false confession. In Mr. Simmons' case, it is difficult to speak of many situational risk factors for the simple reason that there is no objective record of the many interrogations, and he remembers almost nothing of what occurred. He does however describe the use of standard accusatory interrogation, the feeding of facts about the crime (i.e., contamination) by the interrogators, and the psychological logic of giving a *persuaded* false confession (i.e., coming to believe that you committed a crime because you believe there is unassailable evidence of your guilt, even though you have no memory of committing the crime, and confessing in speculative and hypothetical language that reflects a lack of memory or knowledge about the crime).

24. With respect to Mr. Simmons' individual risk factors, repeated testing has established that he is mentally retarded with a full scale IQ in the mid to high 60s. As Dr. Foxworth indicates in his testimony, Mr. Simmons has many personality traits that are consistent with mental retardation, including that he is eager to please, easily led, and submissive. In addition, Mr. Simmons has memory problems, a history of blackouts, and, according to expert who testified at his trial, alcohol-related dementia and diminished intellectual capacity due to poly substance abuse. The studies of documented false confessions have demonstrated that some types of individuals – particularly the mentally handicapped and/or cognitively impaired, juveniles and the mentally ill – are more vulnerable to the pressures of interrogation and therefore less likely to possess or be able to muster the psychological resources or perspective necessary to withstand accusatorial questioning. In particular, the mentally handicapped and impaired possess personality characteristics that increase their risk of giving an interrogation-induced false confession. Because of their intellectual deficits and limited social skills, the mentally handicapped and cognitively impaired are slow thinking, easily confused, concrete (as opposed to abstract) thinkers, often lack the ability to

appreciate the seriousness of a situation, may not understand the long-term consequences of their actions, and tend to have short attention spans, poor memory and poor impulse control. The mentally handicapped and cognitively impaired also tend to be highly submissive (especially eager to please authority figures), compliant, suggestible, and unable to withstand to high levels of stress or conflict. For these reasons, it is not surprising that the mentally handicapped are disproportionately represented in the reported false confessions cases.

C) Indicia of Unreliability

25. The Stat introduced two types of evidence against Mr. Simmons at his trial: DNA evidence that they claimed, with supporting expert testimony, nearly definitively established that Mr. Simmons' had sexual intercourse with Mrs. Boyd, and his confession statement to raping and murdering her. My former colleague Dr. William Thompson, a professor at the University of California, Irvine, is one of the nation's leading authorities on DNA evidence. He has reviewed the scientific testimony and evidence and concluded that the State's expert witness testimony was highly misleading ("irresponsible and grossly unfair to the defendant"), and that the DNA evidence did not establish a match to Mr. Simmons. As Dr. Thompson points out:

> "Based on Dr. Baird's statistics the jurors could reasonably have concluded that it is unlikely that anyone else in the state of South Carolina, other than Kenneth Simmons, would be included as a possible contributor to the DNA in the vaginal swab. Based on the correct numbers, it is clear that thousands of other men in the state would match in the DNA in the vaginal swab as well as Mr. Simmons did...In summary, when viewed in light of a comprehensive and accurate statistical analysis, it appears that the value of the DNA evidence from incriminating Mr. Simmons was rather modest. He certainly could have been the source of the male DNA found in the vaginal swab, but many other men (either singly or in pairs) could also have accounted for it. The impression created by Dr. Baird's testimony of a nearly unique identification is plainly false."

In other words, contrary to what the state claims, the DNA evidence did not establish Mr. Simmons' guilt nor did it corroborate Mr. Simmons' confession.

26. I have articulated above how interrogation and confession experts assess the likely reliability of statements induced by police during interrogation, namely by analyzing the fit between the suspect's post-admission narrative and both the unique, non-public facts of the crime and the physical evidence. The state asserts that Mr. Simmons' incriminating statements contain unique, non-public knowledge that only the true perpetrator would know and therefore corroborate his guilt. This is not true. Because none of the multiple interrogations of Mr. Simmons were recorded in their entirety, it is impossible to know whether the accurate details in Mr. Simmons' later incriminating statements were independently volunteered by him, as the State claims, or whether they were the suggested and fed to him by police, as Mr. Simmons' account suggests and as Mr. Simmons indicated to Dr. Foxworth. Without a complete recording of all his interrogations, we cannot rule out the possibility, if not probability, of contamination by police. In addition, Mr. Simmons could have learned some of the details of the crime not only from the various detectives and agents who interrogated him, but also from the media coverage of this locally high profile case and the community gossip about it (30 men were rounded up and interrogated about this crime, almost certainly creating considerable community gossip). For example, immediately following the crime, the local media reported that: the victim was found with her hands and feet tied behind her; her front door had iron bars on it; the victim was raped and beaten; the victim was found lying on her kitchen floor; the victim's back door was ajar; police believed someone was waiting in her back yard and either slipped into her home while she fed her chickens or followed her inside when she finished; and that robbery was the apparent motive.

27. There are, however, several reasons to doubt the reliability of Mr. Simmons' statements.

28. First, Mr. Simmons initial statements – involving the fictional characters Shorty and Blackie – are bizarre, incoherent, and clearly false. As mentioned above, they are also inconsistent, contradictory, and do not fit the physical evidence.

29. Second, Mr. Simmons' statements contain many errors. To give a couple examples (1) Mr. Simmons' statement that it all happened on Friday night because Mr. Simmons and Derek always go to the club on Friday nights does not

fit with the facts because Mrs. Boyd was last seen alive on Saturday afternoon at 3:30 p.m, and the pathologist testified at trial that Mrs. Boyd was killed sometime Saturday evening; (2) Mrs. Boyd died due to manual asphyxiation or strangling according to Dr. Manchester, but in his statement Mr. Simmons said she was beaten and made no mention of asphyxiation or strangulation; and (3) Mr. Simmons says that he picked up a telephone to call 911, but the prints on the phone do not match Kenneth Simmons.

30. Third, as mentioned above, it cannot be demonstrated that Mr. Simmons provides any unique, non-public details that could not have been the product of contamination.

31. Fourth, there is no physical evidence corroborating Mr. Simmons's statements. The only other source of physical evidence other than the DNA is fingerprints. As just mentioned, there were unidentified set of prints on the telephone in the victim's house. These do not match the victim, her sister, the officer who secured the scene, or Mr. Simmons.

32. Finally, Mr. Simmons interrogation contains both individual and situation factors associated with the eliciting of, and believed to cause, false confessions.

D) Interrogation and False Confession Experts

33. In criminal prosecutions involving disputed interrogations and/or disputed confessions, it is common for criminal defense attorneys to call experts on police interrogation practices and false confessions to testify in court proceedings, especially if the attorney is putting on a false confession defense at trial. In such a situation, the primary reason why a criminal defense attorney will call an interrogation/confession expert is to explain to a jury how and why an innocent suspect could have been led during police interrogation to falsely confess to a crime he asserts he did not commit, what we know about the phenomenon (i.e., causes, correlates, characteristics, risk factors and indicia) of interrogation-induced false confessions from the empirical scientific research literature, and how this relates to the specific case at hand. That an innocent person would make or agree to a false confession to a serious crime during a police interrogation is highly counter-intuitive; it simply does not make sense to most people because the act of falsely confessing to a serious crime under any circumstances is generally considered irrational, self-destructive and always against one's self-interest. In light of this perhaps it is not surprising that studies show that the overwhelming

majority of individuals (73-81%) who falsely confess to police and take their cases to trial are wrongly convicted,[4] despite the fact that their erroneous confessions were not corroborated by any other meaningful evidence, often the result of lengthy and questionable interrogations, and ultimately proven false.

34. An interrogation/confession expert could provide both general and case-specific testimony that would help the jury understand the process through which psychological interrogation can, if misapplied to the innocent, lead to false confessions, the individual and situational risk factors that heighten the risk of eliciting interrogation-induced false confessions, and the indicia of reliable and unreliable confession evidence. Such general testimony can help neutralize a jury's natural bias in our society against the idea of interrogation-induced false confessions by educating them about how and why the phenomenon does, in fact, occur and what we know about it when it happens. An interrogation/confession expert could also analyze specific aspects of the defendant's interrogation and/or confession based on the findings from the scientific research literature, in other words how what we know from the empirical study of interrogation and confessions relates to the case at hand.

35. In this case for example, an interrogation/confession's expert's general testimony could have helped the jury make sense of the interrogation process and how and why it can lead to false and unreliable confessions. Such an expert, for example, could have described academic studies and police interrogation training materials showing that a universal police technique is to isolate suspects prior to interrogating them; that detectives are trained to presume the guilt of the suspects they interrogate; that it is a premise of modern police interrogation that suspects do not spontaneously confess, but rather must be persuaded to confess; that detectives use a variety of psychologically manipulative and deceptive interrogation methods and strategies to elicit confessions (including accusation, cutting off denials, confrontation with false evidence, time pressure, inducements such as offers of helps, and sometime attacks on a suspect's confidence in the reliability of his memory); and how these techniques are designed to achieve the goal of interrogation-- moving a suspect from the initial, anticipated denial to admission ("I did it") and ultimately a full narrative confession. At the same time, the expert could have discussed how these methods, when misapplied to innocent suspects, can and sometimes do lead to false confessions, especially when certain known risk factors are present, what those risk

[4]Steven Drizin and Richard A. Leo (2004). "The Problem of False Confessions in the Post-DNA world." *North Carolina Law Review*, 82, 891-1007.

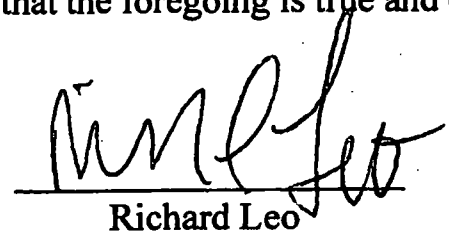
factors are and why they are associated with false confessions, as well as the patterns, characteristics and indicia of unreliability that scientific research has shown to be present in false confession cases.

36. As mentioned earlier, at the time of Mr. Simmons' trial in 1999, the use of interrogation/confession experts in false confession cases had become widespread. At the time, there were numerous expert witnesses available who could have provided testimony on Mr. Simmons' behalf. These include (but are not limited to) the following individuals: Dr. Richard Ofshe, Dr. Saul Kassin, Dr. Lawrence Wrightsman, Dr. Gisli Gudjonsson, Dr. Elliott Aronson, Dr. Daniel Lassiter and myself, among others.

Conclusion

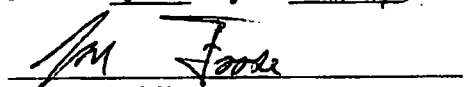
37. In sum, it is my professional opinion that there were individual and situation risk factors for eliciting a false confession present in Mr. Simmons' case; that Mr. Simmons multiple conflicting and inconsistent incriminating statements are not corroborated by any internal or external evidence and therefore do not contain any indicia of reliability; and that testimony by an interrogation/confession expert at Mr. Simmons' trial was not only appropriate, but could have been of substantial assistance to the jurors in his case.

I declare under the penalty of perjury that the foregoing is true and correct.



Richard Leo

Sworn to and subscribed before
me this 15 day of January, 2010.



Notary Public
My commission expires: Sep. 20, 2010



Woman, 89, found tied, dead

By VICTORIA AGNEW
Of The Post and Courier Staff

An 89-year-old Summerville woman was found dead in her home Sunday after being tied up and beaten, police said.



The body of Lillie Bell Boyd was found in her West Luke Street home by a sister and a first cousin who had not seen Boyd in church. Boyd had been seen last about 3 p.m. Saturday tending the dense garden in front of her home.

Summerville Police Chief Roy Whitehead said there were no signs of forced entry into Boyd's home, and they weren't sure if she'd been robbed. Boyd was discovered fully clothed, but Whitehead said police aren't ruling out the possibility she was sexually assaulted.



Post and Courier Map

Police were following up information from neighbors who had seen strangers in the neighborhood during the past several weeks. But

See BOYD, Page 10-A

POST & COURIER Sept 21, 1996



Dorchester County Coroner Jeff Rogers (center) talks with authorities Sunday before taking a gurney into the home where Lillie Bell Boyd was found dead.

BOYD

from Page 1-A

no one reported hearing or seeing anything strange in connection with Boyd's slaying, and police had no suspects, Whitehead added.

Dorchester County Coroner Jeff Rogers said obvious injuries to Boyd's body and head indicate she apparently died as a result of foul play. An autopsy today should reveal the extent of the injuries, he said.

Boyd was the eldest of four sisters. Whenever she missed church, a family member would stop by her gray shingled home to check on her. That Sunday was no different. When Boyd didn't answer the front door, her sister, Virginia Wilson, and a cousin went around back and found the door ajar. The women called for Boyd but never got an answer, Wilson said. She went in and walked to the small bedroom where Boyd usually sat, but didn't see her sister.

Moments later, Wilson said, she found Boyd lying in the kitchen with her hands and feet tied behind her, apparently bludgeoned to death.

Wilson said she felt no pulse but tried to revive her.

"I still kept trying because you always have hope," Wilson said. "Hope on top of hopes."

Wilson and other family members said Boyd was a quiet, private woman who married but never had children. She was so private that family members didn't know if she ever divorced the man from whom she'd been separated for about 15 years.

She'd lived for about 25 years in the little home that faced train tracks. Several years ago, someone broke into her home and robbed her, according to family members. About a year ago, Boyd installed ornate iron bars on the doors and windows. She wasn't the type of person to open the door to a stranger, or her cousin, Wilson said.

Boyd was a quiet, private citizen who rarely spoke about personal things. She was known for working in her garden and tending chickens she kept in a coop in her back yard. Boyd would give the eggs she didn't sell to neighbors, church members or friends at the senior citizens center and to the children that came to visit her in the backyard banana tree, Wilson and those who knew Boyd said.

Smith Saylor [illegible]

The banana tree was one of many exotic things Boyd tried to grow in her garden. She ordered seeds and plants that didn't normally grow in the Lowcountry and tried them in her yard. Sometimes they grew, sometimes they didn't.

"Every year, I make a beautiful garden," she said. "I can't [illegible] when there won't be a garden."

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Post & Courier Sept 9, 1996

Autopsy indicates rape, strangulation in Boyd slaying

■ SUMMERVILLE DEATH: Investigators think it's likely someone entered the home to rob Boyd. But it has not been determined yet if anything is missing from the home.

By EDWARD C. FENNELL
Of The Post and Courier staff

An elderly Summerville woman who was found dead on Sunday had been raped, beaten and strangled, an autopsy shows.

Authorities said Monday they still don't know who tied up and assaulted 89-year-old Lillie Bell Boyd in her West Luke Street apartment. Her body — still bound — was discovered by her sister and a cousin.

Dorchester County Coroner Jeff Rogers said Boyd was beaten badly and died of head trauma. She also had been strangled and had broken ribs. Although she was found clothed, the autopsy revealed she had been raped, Rogers said.

It has not been determined if any weapon other than the assailant's hands were used. The time of death is believed to have been late Saturday afternoon, Rogers said.

Summerville police said Boyd last was seen about 3 p.m. Saturday, tending the large garden in front of her home. No signs of forced entry were found to the home, which has protective bars on doors and windows.

Relatives said Boyd had been robbed before and wasn't likely to have let a stranger into her home.

Police Sgt. Michael Turner said investigators believe it's likely someone entered the home to rob Boyd. But it has not been determined yet if anything is missing from the home, he said.

Boyd mostly kept to herself, so relatives are not sure what valuables or cash she may have had in her home, Turner said.

Police on Monday continued questioning Boyd's relatives and neighbors, in hopes of turning up information that might solve the case, Turner said. On Sunday, police were told by neighbors that some strangers had been seen in the neighborhood during the past several weeks.

But no one reported hearing or seeing anything unusual at the time of the slaying, police said.

Boyd was the eldest of four sisters, and when she missed church on Sunday, her relatives went to the home to check on her. When Boyd didn't answer the front door, her sister, Virginia Wilson, and a cousin went around back and found the door ajar.

Wilson said she found Boyd lying in the kitchen with her hands and feet tied behind her. Wilson said she felt no pulse but tried to revive her.

Boyd lived for about 25 years in her small home facing the railroad tracks. Several years ago, someone broke into her home and robbed her, according to family members. About a year ago, Boyd installed ornate iron bars on the doors and windows.

She was known for working in her garden and tending chickens she kept in a coop in her lush back yard.

Reward offered in Boyd death

By VICTORIA AGNEW
Of The Post and Courier staff

The family members of Lillie Bell Boyd are praying the person who raped and killed the 89-year-old Summerville woman last weekend will be overcome by guilt and confess to the crime.

In the meantime, Summerville Police Chief Roy Whitehead vowed Tuesday to search until police find the person who tied, raped and beat Boyd to death. And if Boyd's assailant doesn't confess, Whitehead said he hopes a $5,000 award offered by the town of Summerville will help flush him out.

He said police are interviewing about 15 people in connection with the killing but have no definite suspects. They also are investigating fingerprints left at the scene.

"We don't intend to rest until we catch this person," Whitehead said. "The information is out there in the community, and we're just waiting for the right person to come forward."

Police believe Boyd was killed sometime Saturday after 3:30 p.m.

A neighbor saw Boyd [illegible] in her frontyard garden on Wadsworth Street. When [illegible] church the following morning, family members went to her home.

Her sister, Virginia Wilson, found Boyd's back door ajar and went inside, calling [illegible]. Moments later, she found Boyd dead on the kitchen [illegible].

Her hands and feet had been tied behind her and she obviously had been bludgeoned, Wilson said. Wilson called police and tried to revive her older sister [illegible].

Boyd was dressed in a shirt and skirt, and an autopsy later revealed her attacker also raped her.

Police believe someone may have been waiting in Boyd's backyard and either slipped into her home while she fed her animals or followed her inside when she returned. They believe Boyd died sometime shortly after she was seen in her yard because she wouldn't have gone out after dark or opened her door to a stranger, Whitehead said.

Family members said they are happy about the reward and hope it will help bring the killer to justice.

Post & Courier Sept 4 1986

Police seek public's help to solve murder

by JULIE R. SMITH
Staff Writer

The day after her sister's murder was discovered, Catherine Gilliard sat quietly on the front porch of her West Doty Avenue home, directly across the railroad tracks from 911 West Lake St., where Lillie Bell Boyd died.

"She was very private. She didn't bother anyone and kept to herself," Mrs. Gilliard said.

The body of Mrs. Boyd, 88, was discovered in the kitchen of the small, shingled cottage about 1:30 p.m. Sunday by another sister, Virginia Wilson.

Mrs. Wilson and a relative stopped in to check on Mrs. Boyd after she failed to show up for services at the Brownsville Community Church of God.

Entering through the back door, they found her clothed body in the kitchen.

Mrs. Wilson called 911. She told authorities Mrs. Boyd was tied up when she found her, but she untied her before police arrived, Police Chief Roy Whitehead said.

Mrs. Boyd was killed by blunt-force trauma to the head, Dorchester County Coroner Jeff Rogers said.

She also had been manually strangled and sexually assaulted, Rogers said. Her face was bruised and several ribs were broken.

The autopsy showed death likely occurred late Saturday afternoon, Rogers said.

Detectives have not located a weapon; the blows were likely inflicted by fists, Whitehead said.

There were no signs of forced entry but a struggle apparently took place in the kitchen, Summerville police detective Mike Turner said.

Robbery is the apparent motive, "But we don't know if anything is missing or not because nobody really knew what she had," Whitehead said.

"She was evidently extremely private."

The small, shingled residence had protective iron bars on the doors and windows.

Mrs. Gilliard said she last saw Mrs. Boyd the Thursday before her death. Another sister, Jessie Mae Wilson, said she saw her on Friday. Neighbors said she was working in the front yard about 3 p.m., Mrs. Gilliard said.

Police have no suspects, Whitehead said yesterday.

"We're going to need the community's help to find out who did this. We will follow up every lead we get," the chief said.

Anyone with information about the murder or Mrs. Boyd's last hours can

See Murder, Page 12



Catherine Gilliard, left, and Jessie Mae Wilson discuss their sister's death. Staff photo by Julie R. Smith

Summerville Journal Scene Sept 4, 1996

Murder

From Page 1

contact the police department at 871-2463 or Crimestoppers at 554-1111.

Mrs. Boyd, the eldest of four sisters, had lived on West Luke Street for about 25 years. Her sisters said she enjoyed tending the flourishing plants in her yard and was active in her church.

"She was dressed when they found her, like she might have been getting ready to go to church," Mrs. Gilliard theorized.

"I knew something had happened when I saw all those people gat...ing over there [Sunday afternoon]," she added. "I walked over there."

Jessie Mae Wilson said Mrs. Boyd was "a lovely sister."

"I'll just always remember her as being very quiet — and always outside, working in her garden," Mrs. Gilliard said.

Mrs. Boyd's death is the first murder in Summerville since February 1993, when 19-year-old Dorrine Williams of Ridgeville was shot to death at a Brownsville residence.

Five months later Benjamin Palmer, 22, was captured in New York by FBI agents.



Staff photo by Julie R. Smith

Crime tape keeps bystanders away from the murder scene.

He pleaded guilty to involuntary manslaughter and was sentenced to 21 years in prison.

FBI joins in probe of murder

by JULIE R. SMITH
Staff Writer

Summerville police have turned to the FBI for help in solving the brutal murder of an 88-year-old Brownsville woman.

Lily Bell Boyd was found battered and bound by family members in her West Luke Street home on Sept. 1. She had been sexually assaulted, strangled and beaten to death, police said.

Police Chief Roy Whitehead said authorities won't rest until a suspect is apprehended. Investigators, led by Sgt. Mike Turner, have canvassed area residents and combed the community for clues.

Last week FBI investigators joined the case, using a computer database called ViCAP (Violent Criminal Apprehension Program).

With ViCAP, dozens of facts about the crime are fed into a specialized program that helps authorities craft a probable profile of the killer.

The analysis can indicate approximate age, race, occupation, hobbies and other details about an unknown suspect.

Authorities said the brutality of the murder - a retiring, elderly woman raped and savagely beaten in her own home - makes it even more disturbing.

"In 25 years in law enforcement, I've seen few things that have evoked the passion I have for making sure this one is solved," Whitehead said.

"We're working every aspect of the case. No lead, no matter how small, will be overlooked," he added.

Meanwhile, Mrs. Boyd's sisters - Virginia Wilson, Catherine Gilliard and Jessie Mae Wilson - gathered this week at Mrs. Gilliard's home, across the railroad tracks from the murder scene, to talk about the murder and the faith that keeps them strong.

"Lily Bell" was the eldest sister and a natural leader when they were growing up in the Sand Ridge area of Berkeley County.

"She acted the part of a mother to me," Virginia Wilson recalled, "I feel grateful to her."

Mrs. Gilliard's front porch faces the murder scene. Every day she sees the yellow crime tape that still stretches across the gate at 911 West Luke St.

But she refuses to be bitter. Instead, she's willing to forgive.

Speaking as if to the murderer, Mrs. Gilliard said, "Take a good look at your hands. All the soap and water in the world will never cleanse them... God has his spotlight upon you. You can run but you can't hide.

"The good news is that God has the answer. So come to Him now before it is too late."

Sister Jessie Mae Wilson thinks only God can make the killer examine his conscience. "He knows everything," she said. The murder didn't seem real for a while, she added. "I never dreamed this could really happen."

Virginia Wilson, who discovered Mrs. Boyd's body, said she has experienced a personal change since the crime.

"Before, I was kind of fearful, but not now. This has emboldened me. I have no fear. You can't keep me quiet," she said. "Sometimes fear can kill you also," Mrs. Gilliard noted. "I don't have the fear that people think I should."

She stared through the screen door at the ribbon of yellow crime tape still draped across her sister's gate.

Anyone with information about the case is asked to call CrimeStoppers at 554-1111 or Summerville police at 871-2463.

Summerville Journal Scene Sept 18, 1996

STATE OF SOUTH CAROLINA)) COUNTY OF DORCHESTER)	IN THE COURT OF COMMON PLEAS
Kenneth Simmons,)) Applicant,)	C/A No.: 2005-CP-18-1368
v.)) The State of South Carolina,)) Respondent.)	

AFFIDAVIT OF MRS. FLOY HART SHULER

Comes now the undersigned who makes the following statement, under oath, and before the undersigned Notary Public who is authorized by law to hear and accept oaths, and based upon her own personal knowledge of the facts averred herein states as follows:

1. My name is Floy Shuler. I am employed as a Coordinator of Special Education by Dorchester School District Two, Office of Special Services. My office telephone number is 843-875-4161.

2. Attached to my affidavit as Exhibit A are pages taken from the Spring 1978 edition of the book "*Procedures for Survey, Screening, Evaluation, Placement & Dismissal of Children Into/Out of Programs For The Handicapped.*" This book was published by the South Carolina Department of Education. It is referred to as the "Red Book" because of its color. This book set forth the requirements for student placement in special education programs, such as a resource program or self-contained class..

3. According to the Red Book 1978, to qualify for placement in the area of Mental Disability, a child had to measure intellectual functioning in the 50-70 range on an individual battery of tests administered by a psychologist, exhibit adaptive behavior consistent with the IQ

and struggle academically due to achievement scores consistent with the other scores.. *See Red Book*, page 18-20.

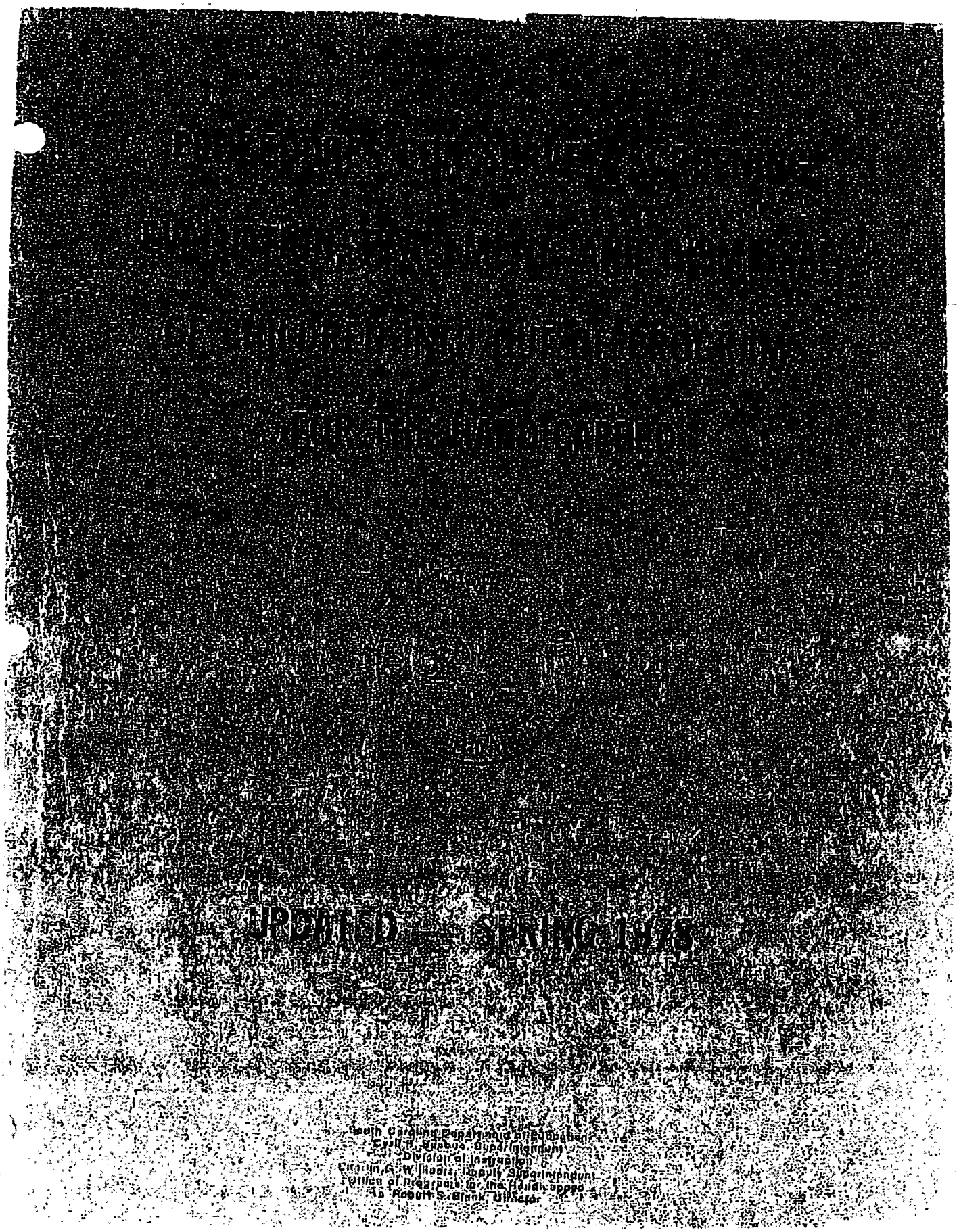
I declare under the penalty of perjury that the foregoing is true and correct.

Floy Hart Shuler
Mrs. Floy Hart Shuler

Sworn to and subscribed before
me this 21st day of Jan., 2010.

Notary Public
My commission expires: 5/23/2018

EXHIBIT A



EDUCABLE MENTALLY HANDICAPPED

I. *Definition*

Educable mentally handicapped pupils means pupils of legal school age whose intellectual limitations require special classes or specialized instruction to make them economically useful and socially adjusted (Article 4.1, Section 21-295, South Carolina Code of Laws, as amended, 1972).

II *Identification*

A. Criteria for Participation/Enrollment

In order to participate in the program, candidates must meet all the following criteria:

1. Pupils must be of legal school age

2. Pupils shall have vision, speech, and hearing screening

3. Biographical, environmental and behavioral data shall be obtained by appropriate school personnel (counselor, teacher, nurse, etc.). This date should include, but not be limited to:

   a. a health and developmental history

   b. an educational history reviewing previous records, school work habits and specific learning strengths and weaknesses.

4. A minimal test battery consisting of at least three (3) different instruments shall be administered (full scale) by a State Department of Education certificated educational evaluator or certificated psychologist. This battery shall include one (1) intellectual measure selected from the following:

WISC	WPPSI
WAIS	McCarthy Scales of Children's Ability
WISC-R	Escala de Inteligencia Wechsler para Ninos
Stanford-Binet-Form LM	

and at least two (2) supplemental measures of adaptive and psychological functioning, with the following exceptions:

   a. If a candidate manifests minor auditory and/or visual impairment (to such a degree that it is not thought to be the primary handicapping condition), then supplemental testing instrumentation should be selected from those measures commonly used with the visually and hearing impaired. It is suggested that in addition to the Wechsler or Binet, the test battery for the mentally handicapped individual who has minor hearing impairments should include:
      1. Wechsler (Performance section, to supplement the Binet full scale) or
      2. Hiskey-Nebraska Test of Learning Aptitude or
      3. Leiter International Performance Scale

   b. For the mentally handicapped person who has minor visual impairments, the verbal portion of the Wechsler or McCarthy may be used as an appropriate follow-up to the Binet. In addition, at least one (1) supplemental measure should be administered.

   The selection of two appropriate required supplemental measures (i.e., Adaptive Behavior and one other) should include consideration of the following tests and adaptive behavior measures. For the mental handicapped individual, a measure of Adaptive Behavior is required.

   System of Multicultural Pluralistic Assessment (SOMPA includes Adaptive measures)
   Goodenough or Goodenough-Harris Drawing Test
   Peabody Picture Vocabulary Test
   Bender Visual Motor Gestalt Test
   Benton Visual Retention Test
   Raven Progressive Matrices

Kinetic Family Drawings
Memory-For-Designs Tests
Pictorial Test Of Intelligency (Ages 3-8)
McCarthy Screening Test
House-Tree-Person
Sentence Completion
Frostig Test of Visual Perception
Vineland Social Maturity Scale (for adaptive behavior)
AAMD Adaptive Behavior Scale (Public School Version)
Columbia Mental Maturity Scale
Leiter International Performance Scale
McCarthy Scales of Children's Abilities
Cain-Levine Social Competency Scale (for adaptive behavior)
Arthur Point Scale or Performance Tests, Revised Form II
Adaptive Behavior Checklist

Additional Scales that may be used as measures of adaptive behavior are found in Appendix B. In order to qualify for enrollment in a program for the educably mentally handicapped, test results and supplemental data must yield consistent findings relative to the following:

i. An IQ in the range of 50-70± standard error of measurement for the particular test administered. Pupil should show evidence of an intellectual ability of approximately ½ to ¾ that of an average child of comparable chronological age.

ii. Consistent subnormal intertest performance in all areas evaluated.

iii. Biographical, environmental, and behavioral data which support the hypothesis that the educational handicap is *not* a result of behavioral disorders, cultural, or educational deprivation.

c. At least one (1) standardized academic achievement evaluation at the appropriate age levels shall be administered to assess academic areas and general achievement. Selection may include, but not be limited to, the following and shall be administered by a State Department of Education certificated psychologist or certificated educational evaluator, guidance counselor or teachers.
Stanford Test of Academic Skills (TASK)
Wide Range Achievement Test
Peabody Individual Achievement Test
California Achievement Test
Iowa Test of Basic Skills
Stanford Achievement Test
Stanford Achievement Test (Normed for hearing impaired)
Stanford Achievement Test (Normed for visually impaired)
Metropolitan Achievement Tests
Metropolitan Achievement Test (Normed for visually impaired)
Comprehensive Test of Basic Skills

B. Requirements for Re-Evaluation

1. Reassessment:

An annual review shall be made by the special class teacher. This review shall include, but not be limited to, the following:

a. Record of pupil's progress through the educational objectives outlined for the pupil
b. Recommendation for educational objectives for the following academic year
c. Summary of the most recent parent/teacher conference
d. Speech reports, social history, and new information

Should the annual assessment indicate a need for re-evaluation, the teacher may recommend that the pupil receive a complete re-evaluation.

2. Re-evaluation

Children participating in EMH programs shall be re-evaluated every three years. This re-evaluation shall be identical to that required in Section II-A, 4 and shall be administered by the State Department of Education certificated educational evaluator or psychologist. If there is sufficient progress or regression to warrant a re-evaluation prior to the three year requirement, provision shall be made for re-evaluation.

Dismissal may occur in the following:

1 The pupil exceeds the legal school age, transfers, or withdraws from the public school program.

2. The parent/surrogate, legal guardian, or the majority-age pupil submits a written request that services be terminated (consistent with "Procedural Due Process").

3. The pupil, teacher, and the staffing committee conclude that the goals and objectives which have been clearly stated have been achieved and the pupil can function adequately in the regular classroom setting.

The superintendent or his designee must verify by signature any changes in placement and/or dismissal of pupils

D. Program Model (Recommended)

The following program models and subsequent assessment batteries are recommended to assist in determining the most efficacious program model for an educable mentally handicapped pupil:

Itinerant

An educable mentally handicapped pupil may qualify for an itinerant program when the degree of mental retardation is in the upper scores of the 50-70 range, he exhibits social and behavioral characteristics indicating that he can function in the regular classroom for the majority of time, and he requires a minimum of specialized instruction.

Resource Room Model

Educable mentally handicapped pupils may qualify for resource room models when they measure intellectual functioning in the upper scores of the 50-70 range on the individual battery of tests administered by the psychologist. The pupil must exhibit characteristics socially and behaviorally that he will be able to function in a regular class.

Self-Contained

Educable mentally handicapped pupils may qualify for a self-contained class when their intellectual functioning is in the lower scores of the 50-70 range and they exhibit social and behavioral characteristics to the extent that they require a more structured academic environment

III. *Placement*

No child shall be placed in programs for educable mentally handicapped until the following process has been completed:

A. The child has been "staffed" by the district's staffing committee. The staffing committee shall include, but not be limited to the following:
   a psychologist
   b person obtaining child's social history
   c a person presenting the child's medical records
   d. a member of the district's administrative staff

B Additional persons may include the person initiating the referral, the special teacher who may receive the pupil, guidance counselors, or others who may be able to offer pertinent information relative to the child. The child's

parent/surrogate *must* be invited to the staffing conference. Final responsibility for determining the child's eligibility for participation in the district's program for handicapped children shall be either the district superintendent, or his *specific* designee.

C. Prior to final placement, individually sequenced instructional objectives must be developed for each pupil and kept on file by the special teacher receiving the child.

IV *Record Keeping*

A. Complete diagnostic information, including evidence that "Procedural Due Process" has been fully accorded the child, shall be housed in one central depository whose site shall be determined by the district superintendent.

B. The principal of each facility where special instructional programs are provided shall maintain a completed placement form for each handicapped child enrolled in any special program in that school. (See attached placement form — note these are categorical)

C. Each teacher/clinician providing special education instruction shall maintain specific instructional objectives for each pupil he serves. These objectives must be updated at least twice each academic year.

Marjorie Brittain Hammock, MSW, LISW
Licensed Independent- Social Worker-Clinical Practice, #1689
[redacted] Columbia, South Carolina 29223
Home phone [redacted] Home e-mail [redacted] Home fax [redacted]
Office phone [redacted] Office e-mail [redacted]

Education

Master of Social Work 1959, Bachelor of Arts 1957, Howard University, Washington, DC
Completed course work for the Doctor of Philosophy in Social Work Degree, University of South Carolina Columbia, SC, 1993

Experience Capsule

50 years professional social work practice
20 years experience in clinical social work practice with children, adults, families and communities
20 years in the development and delivery of training services
18 years in program development and management, technical assistance, staff development and clinical supervision
Eight years adjunct faculty teaching Seven years grant administration Ten years full time faculty teaching
Ten years Expert witness in capital cases.

Current Employment

Benedict College, Social Work Department 1600 Harden Street Columbia, SC 29204
Assistant Professor/Coordinator, Field Instruction, September 1999 to the present
Responsible for the field practice experience for students including preparation, placement, monitoring and the evaluation of the field placement experience and teaching social work courses

Private Practice

Social work Consultant, part time, April 1968 to present. Independent practice: Conducts program evaluations, Clinical assessments, Bio Psycho Social assessments for capital and other court cases. Provide Cultural Competency and Diversity, Social Work Ethics and Criminal Justice Training. Provided clinical admission assessments for inpatient mental health and substance abuse clients-PRN at a residential treatment facility.

Current Professional, Academic, and Community Related Memberships

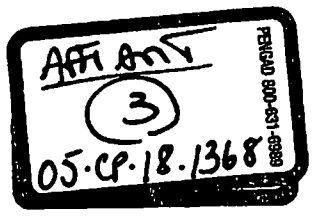
National Association of Social Workers Council on Social Work Education
National Association of Black Social Workers South Carolina Clinical Social Work Society
Diplomate in Clinical Social Work, National Association of Social Workers (DCSW)
Academy of Certified Social Workers (ACSW)
Chair, Palmetto AIDS Legal Support Services, Member, South Carolina Fair Share
Co-chair, University of South Carolina African-American Studies Partnership Board
Member, South Carolina Board of Social Work Examiners
Co-chair African American Film Festival, The Columbia Film Society, Nickelodeon Theatre

Employment History

South Carolina Department of Corrections
4434 Broad River Road, Columbia, SC 29210
Human Service Coordinator, 1996-1999 provided clinical assessment, crisis intervention, short term counseling, educational and transitional services for inmates assigned to the Maximum Security Unit. Provided training for program and security staff
Provided initial assessment, crisis intervention, and referral services for incoming inmates in the Reception and Evaluation unit

Mental Health/Social Work Coordinator, 1986-1996 Served as the central representative for Mental Health/Social Work program development, program evaluation, clinical supervision and coordination with other program services, responsible for 101 staff, technical assistance to 31 institutions, direct supervision of 15 staff and liaison with community based human services agencies and organizations through out the state.

Social Work Supervisor,1984-986 Provided assessment, individual and group counseling, crisis and transitional services to disabled, geriatric and female work release inmates



Marjorie Brittain Hammock, MSW, LISW

SC Chapter National Association of Social Workers, Columbia, SC, Executive Director 1979-1981, Managed an association state chapter office, provided direct services to the membership, monitored the state legislative agenda, produced the newsletter and represented the chapter in the community an the state house

Yes, Inc. Columbia, SC, Director of Training and Technical Assistance, South Carolina Head Start Programs 1981-1983 Developed and implemented training programs, provided staff development and technical assistance to South Carolina Head Start Programs

Brooklyn College, City University of New York Brooklyn, NY
SEEK Program, Coordinator of Counseling, School of Science, 1972-1978. Provided program coordination and supervision of counseling services and grant management of the Health Careers Opportunity and the Brooklyn College/Downstate program

Head Start Regional Training Office and Project Head Start New York, NY
Social Work Consultant and Social Services Director 1966-1972
Assisted sponsoring agencies in the development of social services program in Head Start centers

Urban League Voter Registration Campaign Brooklyn, NY Area Coordinator 1964
Directed a voter participation program for low-income urban residents through the organization of street rallies, mailing and community forums

Mobilization For Youth New York, NY
School based Social Worker 1963-1964
Provided school based social work services to students, staff and parents

Children's Aid Society New York, NY
Foster Care Social Worker 1961-1963
Provided clinical and casework services and supervision to children and adolescents living in foster care and supportive services to foster parents, birth parents and school personnel

District of Columbia, Department of Public Welfare, Washington DC
Foster Care Social Worker, 1959-1962
Provided clinical and casework services and supervision to children and adolescents living in rural foster care settings and supportive services to foster parents, birth parents and school personnel

Honors and Awards

Inducted as a Pioneer: National Association of Social Workers Washington, DC 2008
Profiled as an Exemplar in *Celebrating Social Work: Faces and Voices of the Formative Years*. Council on Social Work Education. Alexandria, VA 2003
Proclamation for Outstanding Social Work Service, South Carolina House of Representatives 1999
Awarded "Key to the City of Columbia, South Carolina for outstanding service to the community 1999
University of South Carolina, Ernest E. Just Award for Scholarship at the Doctoral level 1992
SC National Association of Social Workers, Social Worker of the Year 1990
Leadership South Carolina Department of Corrections 1989
Leadership South Carolina 1986

Selected Professional Presentations

The Mandate for Change, South Carolina Chapter, National Association of Social Workers Annual Symposium,3/5/08 Myrtle Beach,*SC*
Educating a Challenged Student Population for the Social Work Profession. Association of Caribbean Social Work Educators. 6/29/07 Port of Spain, Trinidad-Tobago
Cultural Competence and the Practice Act. Palmetto Health Baptist 4/23/07 Columbia, SC
Legal and Ethical Issues in Clinical Practice. The Action Council for Cross Cultural and Mental Health Services. 2/25/07. Myrtle Beach SC

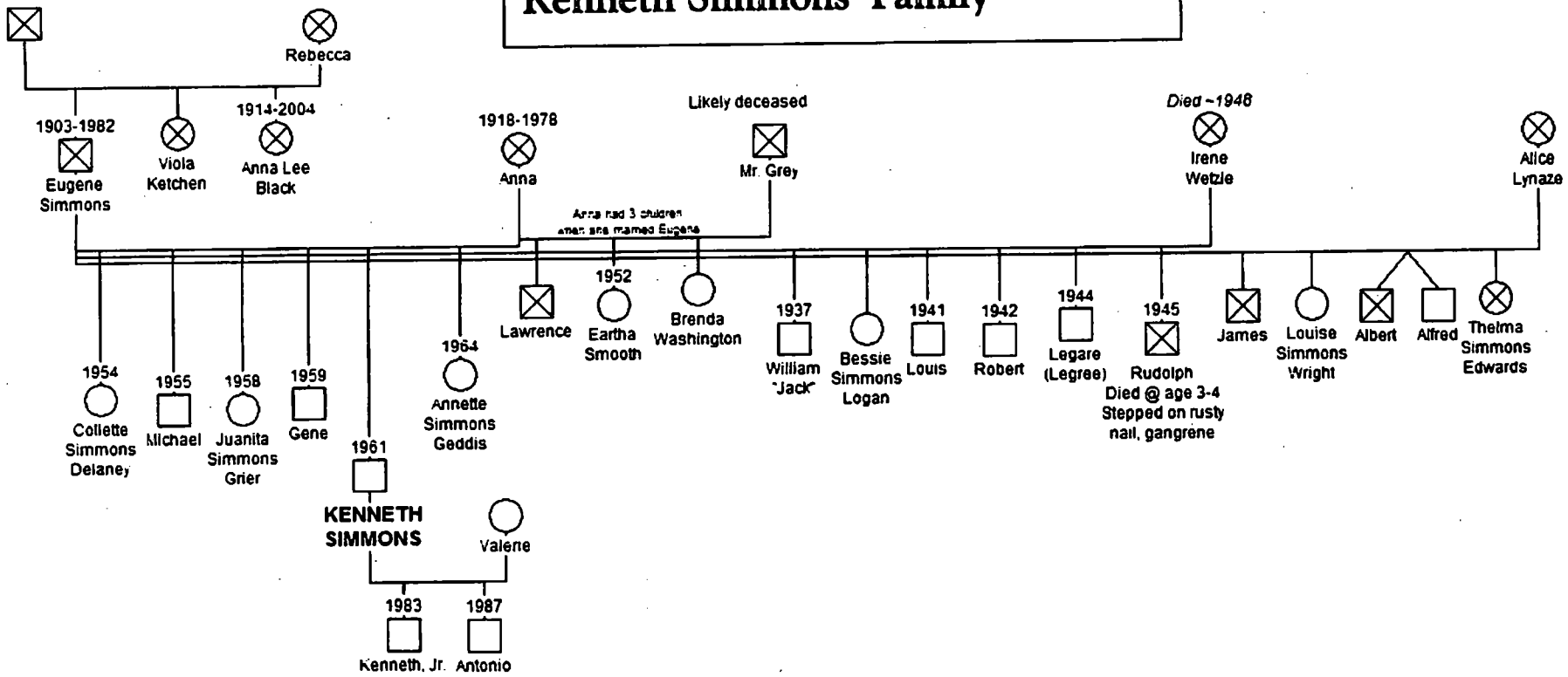
Educating a Challenged Student Population for the Social Work Profession. Southeastern Regional Conference of the National Association of Black Social Workers. 9/16/06. Durham, NC

Marjorie Brittain Hammock , MSW, LISW

Celebrating Social Work Month, A portrait of Ida B. Wells Barnett. Sister Care, 3/21/06 Columbia, SC
The Social Worker as an Expert Witness in Death Penalty Cases. Annual Meeting of the National Association of Black Social Workers, 4/8/05 Houston Texas
African American Cultural Barriers in Health Care Settings. Palmetto Baptist Hospital, 2/9/04 Columbia SC
Understanding and Making Use of the NASW Standards of Cultural Competence in Social Work Practice SC NASW Symposium, SC 3/3/03 Columbia SC
Interviewing Skills for Law Students, Center for Capital Litigation. 5/7/02. Columbia, SC
Underserved, Underrepresented: A Culturally Diverse Population Needing Diverse Interventions: Creating Culturally Competent Care Part II Cross Cultural Mental Health Conference 2/7/02 Myrtle Beech, SC
Challenges in School Social Work: Services Provisions for Families, Children and Schools. Richland School District One, Social Work staff. 1/8/02 Columbia, SC
Culturally Competent Care Part I Cross Cultural Mental Health Conference 2/27/01 Myrtle Beach, SC
Depression in Women and Its Impact on the Family: Co-presenter with Dr. Joyce Kelly-Lewis South Carolina Annual AIDS Conference. 5/10/00. Myrtle Beach, SC
Engagement and Retention of the African-American Ex-offender Client in a Chemical Dependency Treatment Program Continuing Education Institute for Addiction Training. State University of New York. 10/20/99 Buffalo, NY

4257

Kenneth Simmons' Family



Full siblings: (oldest to youngest)	½ Maternal siblings:	½ Paternal siblings:
Collette Delaney ([redacted]/1954)	Eartha Smooth ([redacted]/1952)	Jack ([redacted]/1937)
Michael Simmons ([redacted]1955)	Brenda Washington	Robert – New York
Juanita Greer ([redacted]/1958)	Lawrence	Louis – New York
Eugene "Gene" ([redacted]/1959)		Legare ([redacted]/1944)
Kenneth ([redacted]/1961)		Bessie
Annette Geddis ([redacted]/1964)		Louise
		Albert
		Alfred
		James

Mother: Irene

Mother: Alice

AFFIANT (4)
05-CP-18-1368

CURRICULUM VITAE

Marc J. Tassé, PhD, FAAIDD

Director, Nisonger Center - UCEDD
Professor, Department of Psychology
The Ohio State University
[redacted] ~ Columbus, OH USA 43210
Telephone: [redacted] ~ Fax: [redacted]
E-mail: [redacted]

Clinical Psychology
Developmental Disabilities
Consulting and Psychological Services
[redacted], Columbus, OH, USA 43085-0793
Telephone: [redacted]8 ~ Fax: [redacted]
E-mail: [redacted]

EDUCATION:

January 1994 - June 1995	The Ohio State University *Postdoctoral fellowship from the Nisonger Center - UCEDD* Mentor: Steven Reiss, PhD
1988 - 1994	Université du Québec à Montréal *Ph.D. (Research-Clinical Psychology)* Dissertation Advisor: Paul Maurice, DPs
1982 - 1985	Concordia University *B.A. (Honors in Psychology)* Honors Thesis Advisor: Anna-Beth Doyle, PhD

EMPLOYMENT HISTORY:

August 2009 – Present	The Ohio State University *Director, Nisonger Center - UCEDD*
August 2009 – Present	The Ohio State University *Professor, Department of Psychology*
December 2006 – August 2009	University of South Florida *Associate Professor, Department of Child and Family Studies*
December 2006 – August 2009	University of South Florida *Associate Director, Florida Center for Inclusive Communities - UCEDD*
January 2003 – December 2006	University of North Carolina at Chapel Hill *Associate Professor, Department of Psychiatry*
January 2000 – December 2006	University of North Carolina at Chapel Hill *Community Education Director, Center for Development and Learning - UCEDD*
September 1999 – January 2003	University of North Carolina at Chapel Hill *Assistant Professor, Department of Psychiatry*
June 1995 – September 1999	Université du Québec à Montréal *Assistant Professor, Department of Psychology*

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August 1985 – December 1993 Douglas Hospital (Montreal, Canada)
Behavior Modification Agent (worked providing behavioral supports to children and adults with mental retardation or autism spectrum disorders.)

LICENSURE:

- 2000 – present North Carolina Board of Psychologists - Licensed Psychologist (license # 2613)
- 2000 – present Human Services Provider – Licensed Practicing Psychologist
- 1995 – 2000 Quebec (Canada) Board of Psychologists - Licensed Psychologist

PROFESSIONAL SOCIETIES:

- American Association on Intellectual and Developmental Disabilities (Fellow)
  - President of the Psychology Division (2003 – present)
  - Board of Directors – Member at Large (2008 – 2010)
- American Psychological Association (Divisions: 5, 33, 41)
- Association for Behavior Analysis International
- NADD (National Association for the Dually Diagnosed)
  - Member of the NADD Research Committee

PROFESSIONAL ACTIVITIES:

- Associate Editor for the American Journal on Intellectual and Developmental Disabilities (1/09 - ...)
- *Ad hoc* reviewer for Psychological Assessment
- *Ad hoc* reviewer for American Journal on Intellectual and Developmental Disabilities
- *Ad hoc* reviewer for British Journal of Clinical Psychology;
- *Ad hoc* reviewer for Intellectual and Developmental Disabilities;
- *Ad hoc* reviewer for International Clinical Psychopharmacology;
- *Ad hoc* reviewer for Journal of Intellectual Disability Research;
- *Ad hoc* reviewer for Journal of Autism and Developmental Disorders;
- *Ad hoc* reviewer for Research in Developmental Disabilities;
- *Ad hoc* reviewer for Revue francophone de la déficience intellectuelle;

GRANTS AND CONTRACTS:

1995 - 1996 Sub-grant: "Home-of-Your-Own: Cooperative Living Skills Training." Funding from **The Ohio State University**.
$13,500 (Marc J. Tassé, Principal Investigator).

1995 - 1996 Research Contract: "Exploratory Study of Transition Plans with Adolescents with Moderate Mental Retardation." One-year grant from the **Quebec Ministry of Education**.
$21,000 (Marc J. Tassé & Georgette Gotpil, Co-Principal Investigators).

1995 - 1997 Young Researcher Grant: "Validation of the French Translation of the Nisonger Child Behavior Rating Form." Two-year grant from the Programme d'aide financière aux chercheurs et créateurs de

l'**Université du Québec à Montréal** [University seed grant].
$27,000 (Marc J. Tassé, Principal Investigator).

1996 - 1999 Young Researcher Grant: "The Determination of Autistic Profiles on the Nisonger Child Behavior Rating Form." Three-year grant from the **Fonds pour la formation de chercheurs et l'aide à la recherche** (FCAR) [Research Fund to promote Training of Researchers and Promoting Research].
$42,000 (Marc J. Tassé, Principal Investigator).

1996 - 1999 Research Grant: "Training Parents of Aggressive Adolescents: Crisis Intervention and Functional Assessment." Two-year grant from the **Quebec Office for Handicapped People.**
$101,000 (André Bélanger, Marc J. Tassé & Jacques Forget, Co-Principal Investigators).

1997-1999 Research Grant: "The Study of Transition Planning with High School Students with Mental Retardation." Two-year grant from **The Scottish Rite Charitable Foundation.**
$35,000 (Marc J. Tassé & Georgette Goupil, Co-Principal Investigators).

1997 - 2000 Research Grant: "Descriptive Analysis of the Individualized Education Plans of Students with Moderate Mental Retardation." Three-year grant from the **Social Sciences and Humanities Research Council of Canada.**
$84,000 (Georgette Goupil, Principal Investigator, Marc J. Tassé, Co-Investigator).

1998 - 2000 Research Contract: "The French Translation, Adaptation, and Validation of the *Reiss Profile of Fundamental Goals and Motivational Sensitivities for Persons with Mental Retardation.*" Two-year grant from three developmental centers: **Butters-Savoy et Horizon, Centre du Florès, and Centre de Services en Déficience Intellectuelle.**
$10,500 (Marc J. Tassé, Principal Investigator).

1998 - 2001 Young Scholar Research Grant: "Motivation of Individuals with Mild Mental Retardation: A Study of its Role in Adaptive Behavior." Three-year grant from the **Social Sciences and Humanities Research Council of Canada.**
$38,000 (Marc J. Tassé, Principal Investigator).

2000 – 2001 Seed Grant: "Motivation of Individuals with Mental Retardation." University Research Council of the **University of North Carolina at Chapel Hill.**
$3,000 (Marc J. Tassé, Principal Investigator).

2000 – 2003 Research Grant: "Measuring the Environments of Children & Youth with Disabilities." Three-year grant from the **Center for Disease Control and Prevention (CDC).**
$947,186 (Rune J. Simeonsson, Principal Investigator; Marc J. Tassé Co-Investigator).

2001 – 2002 Research Contract: "Developing an Individualized Resource Allocation Model for Individuals with Developmental Disabilities." Contract from the **North Carolina - Developmental Disabilities Section.**
$8,200 (Marc J. Tassé, Principal Investigator).

2002 – 2004 Research Grant: "Hospital Early Intervention." Funded by the **Duke Endowment Foundation.**
$150,000 *(Jane Barlow, Principal Investigator; Marc J. Tassé, Co-Investigator)*

2002 – 2005 Research Grant: "Hospital Early Intervention: Replication Project." Funded by the **Duke Endowment Foundation.**
$250,000 *(Jane Barlow, Principal Investigator; Marc J. Tassé, Co-Investigator)*

2004 – 2005 Training Contract: "MR/MI: Positive Behavior Supports and the NC Diversion Law." Contract with the **North Carolina – MH/DD/SAS Division State Operated Services** to provide state-wide training (12 workshops across NC).
$50,000 (Marc J. Tassé, Principal Investigator).

2005 – 2006 Research & Training Contract: (1) White Paper "Serving in the Community the 'Difficult-to-Serve' Individuals with Multiple Diagnoses" and (2) Provide one-day training on "MR/MI: Understanding and Treating" provided to social workers, psychologists, and psychiatrists in the four psychiatric hospitals in North Carolina. Contract with the **MH/DD/SAS Division State Operated Services.**
$60,000 (Marc J. Tassé, Principal Investigator).

2006 – 2009 Research grant: *"Development of a Diagnostic Assessment Instrument to Assess Adaptive Behavior."* Funded by the **American Association on Intellectual and Developmental Disabilities.**
$180,000 (Marc J. Tassé, Principal Investigator).

2007 – 2008 Research grant: *"Transportation Guidebook."* Funded by **Florida Developmental Disabilities Council.**
$120,687 (Beverly G. Ward, Principal Investigator, Marc J. Tassé, Co-Principal Investigator)

2007 – 2009 Research grant: *"Self-employment for adults and youth with disabilities." Funded by the* ***US Department of Labor/ODEP.***
$415,594 (Marc J. Tassé, Principal Investigator)

2007- 2010 Research grant: "*État de santé des personnes présentant une déficience intellectuelle au Québec.*" Funded by the **Conseil de recherche en sciences humaines du Canada (CRSH).**
$ 110,000 (Diane Morin, Principal Investigator, Marc J. Tassé, Co-Principal Investigator).

2007- 2011 Research-Team grant: "*Déficience intellectuelle et intersectorialité.*" Funded by the **Fonds québécois de la recherche sur la société et la culture (FQRSC) – Programme de soutien aux équipes de recherche.**
$693 275 (Céline Mercier, *Principal Investigator, Marc J. Tassé, Co-Investigator).*

2007 – 2009 Research grant: *"Self-employment for adults and youth with disabilities." Funded by the* **US Department of Labor/ODEP.**
$415,594 (Marc J. Tassé, Principal Investigator).

2009 – 2011 *Core grant: "Nisonger Center - University Center for Excellence in Developmental Disabilities."* **Administration on Developmental Disabilities.**
$1,056,000 (Marc J. Tassé, Principal Investigator).

COMMITTEES:

State & National

2002 – present Member of the NADD Research Committee (Dr. Elizabeth Dykens, Chairperson).

2003 – present Chairperson of the American Association on Intellectual and Developmental Disabilities' *ad hoc* Committee on Adaptive Behavior Assessment Inventory. This committee is charged with the development of an individualized assessment of adaptive behavior for the purpose of diagnosing intellectual disability (also known as mental retardation).

2008 – present Member at-large of the American Association on Intellectual and Developmental Disabilities Board of Directors.

2009 – present Member of the American Association on Intellectual and Developmental Disabilities' *ad hoc* Committee on Terminology and Classification – 11th Edition: Implementation Committee (Drs. Robert L. Schalock & Ruth Luckasson, Co-chair).

COURSES PREVIOUSLY TAUGHT:

Undergraduate:

- Psychology of Mental Retardation
- School and Educational Psychology
- Introduction to Psychometrics

Graduate:

- Psychological Assessment and Testing
- Psychological Intervention in Schools
- Psychological Intervention and Treatment of Individuals with Mental Retardation

RECENT CLINICAL AND PROFESSIONAL ACTIVITIES:

- 2004. State-wide training to mental health and developmental disabilities professionals on the North Carolina *Diversion Program: Preventing hospitalizations in individuals with developmental disabilities and mental illness and severe problem behaviors.* NC MH/DD/SAS.
- 2004. Full-day workshop on the AAMR Support Intensity Scale: Administration and Scoring. Support Brokers of the Arc of NC.
- 2004. MR/MI: Positive Behavior Supports. Full-day workshop given in 7 regions of North Carolina. Workshop for Professionals and Paraprofessionals (6.0 contact hours).
- 2004. Full-day workshop on the AAMR Support Intensity Scale: Administration and Scoring. Lancaster County, PA.
- 2004. Half-day workshop on the AAMR Support Intensity Scale: General Overview. Case Managers of Piedmont Behavioral Healthcare, NC.
- 2005. MR/MI: Positive Behavior Supports. Full-day workshop given in 7 regions of North Carolina. Workshop for Professionals and Paraprofessionals (6.0 contact hours).
- 2005. Full-day workshop on the AAMR Support Intensity Scale: Administration and Scoring. Division of Developmental Disabilities, Washington State. Olympia, WA.
- 2005. Full-day workshop on the AAMR Support Intensity Scale: Administration and Scoring. Professionals from three Developmental Disabilities Center in Montreal, Canada.
- 2005. Consulting and training on the Supports Intensity Scale. Office for Citizens with Developmental Disabilities, State of Louisiana.
- 2005 - 2006. MR/MI: Gaining a Better Understanding and Making More Effective Interventions. Full-day workshop given in all 4 Psychiatric Hospitals of North Carolina. Workshop co-presented with L. Jarrett Barnhill, MD – targeting Psychologists, Psychiatrists, Social Workers, Psychiatric Nurses, and Allied Health Professionals (6.0 contact hours/CME-CEU).
- 2006: Member of the Scientific Committee for organization of the International Summit for the Alliance of Social Inclusion. 3–5 May 2006. Montreal, Canada.

- 2006: "***Improving Services to Individuals with High Behavior Support Needs: White Paper.***" Prepared for the North Carolina Division on Mental Health/Developmental Disabilities/Substance Abuse Services.
- 2006: "***Best Practices in Working with Individuals with Developmental Disabilities.***" Practice Guidelines prepared for the Piedmont Behavioral Healthcare – Local Management Entity.
- 2006: Member of the Scientific Committee for organization of the Journées Cliniques Jérome Lejeune. International conference on genetic disorders associated with mental retardation. 20-21 November 2006. Paris, France.
- 2006 – 2007: 10-day seminar on co-occurring psychiatric disorders and intellectual disabilities. Centre d'expertise de Montréal en troubles graves du comportement (CEM-TGC; Montreal Center of Expertise on Severe Problem Behaviors). Montreal, QC.
- 2007: Grant reviewer for the following funders:
  - o Administration on Developmental Disabilities (panel reviewer for University Centers of Excellence on Developmental Disabilities grant applications)
  - o Social Sciences and Humanities Research Council of Canada (external reviewer)
  - o Fonds québécois de la recherche sur la société et la culture (FQRSC ; panel reviewer for « Institut Universitaire » & « Centre Affilié Universitaire » grant applications).
- 2007 – 2008: 4-day training session on the NADD Diagnostic Manual for Intellectual Disabilities (DM-ID). Centre d'expertise de Montréal en troubles graves du comportement (CEM-TGC; Montreal Center of Expertise on Severe Problem Behaviors). Montreal, QC.
- 2004 – 2008. Consultation and training - implementation of the Supports Intensity Scale as a measure for individualized supports planning and individualized resource allocation. Piedmont Behavioral Healthcare, NC.
- 2008 – 2009: Grant reviewer for the Florida Developmental Disabilities Council.
- 2008: Grant reviewer for the Maternal and Child Health Bureau: HRSA-08-149: Leadership Education in Neurodvelopmental and Other Related Disabilities Program (LEND) – Autism Supplemental Awards.
- 2008 – SIS Training for the Ontario Ministry of Community and Social Services. Canada.
- 2005 – Ongoing. Expert assessment and testimony in death penalty cases involving mental retardation claims (U.S. Supreme Court: Atkins v. Virginia).

AWARDS:

2009	Service Award from the American Association on Intellectual and Developmental Disabilities (AAIDD) for his contributions to the AAIDD Terminology & Classification Manual.
2007	Service Award from the American Association on Intellectual and Developmental Disabilities (formerly the American Association on Mental Retardation).
2005	"Fellow" of the American Association on Intellectual and Developmental Disabilities.
2001	"The Philia Award" from the Quebec Institute on Mental Retardation (Institut québécois de la déficience intellectuelle) for a published research paper entitled "Démarche du plan de transition: de l'école à la vie adulte" Goupil, Tassé, Doré & Labrie.
1995	"Distinguished Dissertation Award" from the Academy on Mental Retardation.

PUBLICATIONS:

1. Tassé, M. J., Sabourin, G., Garcin, N., & Lecavalier, L. (in press). Définition d'un trouble grave du comportement chez les personnes ayant une déficience intellectuelle [Definition of Severe Problem Behavior in Individuals with Intellectual Disability]. *Canadian Journal of Behavioural Science.*

2. Schalock, R. L., Buntinx, W. H. E., Borthwick-Duffy, S., Bradley, V., Craig, E. M., Coulter, D. L., Gomez, S. C., Lachapelle, Y., Luckasson, R. A., Reeve, A., Shogren, K. A., Snell, M. E., Spreat, S., Tassé, M. J., Thompson, J.

R., Verdugo, M. A., Wehmeyer, M. L., & Yeager, M. H. (2010). *Mental retardation: Definition, classification, and system of supports.* Washington, DC: American Association on Intellectual and Developmental Disabilities.

3. Tassé, M. J. (2009). Adaptive Behavior Assessment and the Diagnosis of Mental Retardation in Capital Cases. *Applied Neuropsychology, 16,* 114-123.

4. Wehmeyer, M.L., Chapman, T.E., Little, T.D., Thompson, J.R., Schalock, R.L., & Tasse, M.J. (2009). The efficacy of the Supports Intensity Scale (SIS) to predict extraordinary support needs. *American Journal on Intellectual and Developmental Disabilities, 114,* 3-14.

5. Weiss, J. A., Lunsky, Y., Tassé, M. J., & Durbin, J. (2009). Support for the construct validity of the Supports Intensity Scale based on clinician rankings of need. *Research in Developmental Disabilities, 30,* 933-941.

6. Thompson, J. R., Tassé, M. J., & McLaughlin, C. A. (2008). The inter-rater reliability of the *Supports Intensity Scale (SIS). American Journal on Mental Retardation, 113,* 231-237.

7. Wehmeyer, M. L., Buntinx, W. H. E., Lachapelle, Y., Luckasson, R. A., Schalock, R. L., Verdugo, M. A., Borthwick-Duffy, S., Bradley, V., Craig, E. M., Coulter, D. L., Gomez, S. C., Reeve, A., Shogren, K. A., Snell, M. E., Spreat, S., Tassé, M. J., Thompson, J. R., & Yeager, M. H. (2008). The Intellectual Disability Construct and Its Relation to Human Functioning. *Intellectual and Developmental Disabilities, 46, 311-318.*

8. Thompson, J. R., Tassé, M. J., & Schalock, R., (2008). *Supports Intensity Scale: Supplemental Administration and Scoring Procedures.* American Association on Intellectual and Developmental Disabilities: Washington, DC.

9. Audet, N., Desrosiers, H., Garant, L., Guérin, A., Tavares, C. A., & Tassé, M. J. (2007). *Lignes directrices sur l'évaluation du retard mental. [Practice Guidelines for the Assessment of Mental Retardation]* Montréal. QC: Ordre des psychologues du Québec [Quebec Licensing Board of Psychologists].

10. Tassé, M. J., Barnhill, L. J., Havercamp, S. M., & Reeve, A. (2007). Elimination disorders. In R. J. Fletcher, E. Loschen, C. Stavrakaki, & M. First (Eds.), *Diagnostic manual for individuals with intellectual disabilities: A textbook of diagnosis of mental disorders in persons with intellectual disability* (pp. 173-182). Kingston, NY: NADD Press.

11. Tassé, M. J., Barnhill, L. J., Havercamp, S. M., & Reeve, A. (2007). Elimination disorders. In R. J. Fletcher, E. Loschen, C. Stavrakaki, & M. First (Eds.), *Diagnostic manual for individuals with intellectual disabilities: A clinical guide for diagnosis of mental disorders in persons with intellectual disability* (pp. 107-110). Kingston, NY: NADD Press.

12. Chung, K. M., Reavis, S., Mosconi, M., Drewry, J., Matthews, T., & Tassé, M. J. (2007). Peer-mediated social skills training program for young children with high-functioning autism. *Research in Developmental Disabilities, 28,* 423-436.

13. Konarski, E. A., Realon, R. E., & Tassé, M. J. (2007). Predicting individual budgets in a support program for people with developmental disabilities: An evaluation (pp. 75-94). In J. Holderegger & A. Poindexter (Eds.), *Rural Habilitation Programs for Individuals with Intellectual Disabilities and Mental Health Problems.* Kingston, NY: NADD Publishing.

14. Schalock, R. L., Buntinx, W. H. E., Borthwick-Duffy, S., Luckasson, R., Snell, M. E., Tassé, M. J., & Wehmeyer, M. L. (2007). *User's Guide Mental Retardation: Definition, Classification, and Systems of Supports, 10th Edition. Applications for Clinicians, Educators, Disability Program Managers, and Policy Makers.* Washington, DC: American Association on Intellectual and Developmental Disabilities (formerly AAMR).

15. Schalock, R. L., Shogren, K. A., Luckasson, R., Borthwick-Duffy, S., Buntinx, W. H. E., Coulter, D., Craig, E.

M., Gomez, S., Lachapelle, Y., Reeve, A., Snell., M. E., Spreat, S., Tassé, M. J., Thompson, J. R., Verdugo, M. A., Wehmeyer, M. L., & Yeager, M. (2007). The renaming of mental retardation: Understanding the change to the term intellectual disability. *Intellectual and Developmental Disabilities, 45,* 116-124.

16. Tassé, M. J. (2006). Déficience intellectuelle: la définition et le système de classification de l'AAMR [Intellectual Disability : The AAIDD Definition and System of Classification] (pp. 23 – 30). In Hubert Gascon, Daniel Boisvert, Marie-Claire Haelewyck, Jean-Robert Poulin, & Jean-Jacques Detraux (Eds.), *Déficience intellectuelle : savoirs et perspectives d'action* (pp. 23-30). Cap-Rouge, QC : Presses Inter-Universitaires.

17. Tassé, M. J. (2006). Functional behavioural assessment in persons with intellectual disabilities. *Current Opinion in Psychiatry, 19,* 475-480.

18. Tassé, M. J. & Havercamp, S. M. (2006). The role of motivation and psychopathology in understanding the IQ-adaptive behavior discrepancy. In H. N. Switsky (Ed.), *International Review of Research on Mental Retardation* (Volume 31; pp. 231-259). San Diego, CA: Elsevier Science.

19. Tassé, M. J., Havercamp, S. M., & Thompson, C. (2006). *Practice Guidelines in Working with Individuals who have Developmental Disabilities.* Concord, NC: Piedmont Behavioral Healthcare.

20. Konarski, E. A. & Tassé, M. J. (2005). Assessing risk of injury in people with mental retardation living in an Intermediate Care Facility. *American Journal on Mental Retardation, 110, 333-338.*

21. Tassé, M.J., Schalock, R., Thompson, J.R., & Wehmeyer, M. (2005). *Guidelines for interviewing people with disabilities: Supports Intensity Scale.* Washington, DC: American Association on Mental Retardation.

22. Lecavalier, L. & Tassé, M. J. (2005). An exploratory study of the "personality" of adolescents and adults with Down syndrome. *Journal of Intellectual and Developmental Disability, 30,* 67-74.

23. Thompson, J. R., Bryant, B., Campbell, E. M., Craig, E. M., Hughes, C., Rotholz, D., Schalock, R. L., Silverman, W., Tassé, M. J., & Wehmeyer, M. L. (2004). *Supports Intensity Scale: User manual.* Washington, DC: American Association on Mental Retardation.

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comportements adaptatifs [Test-retest and interrater reliability of the Quebec Adaptive Behavior Scale]. *Revue francophone de la déficience intellectuelle, 4,* 57-68.

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Dissertation

Tassé, M. J. (1994). *Étude de la stabilité et de la concordance de l'Échelle québécoise de comportements adaptatifs (ÉQCA) et élaboration d'une version testage adaptatif informatisé de l'ÉQCA* [Test-retest and interrater reliability of the Quebec Adaptive Behavior Scale (QABS) and construction of a computerized adaptive testing version of the QABS]. Unpublished doctoral dissertation. Department of Psychology, Université du Québec à Montréal.

Book Review

Tassé, M. J. (2001). Book Review of Psychiatric and Behavioural Disorders in Developmental Disabilities and Mental Retardation. Nick Bouras (Editor). Cambridge: Cambridge University Press, 1999. *American Journal on Mental Retardation, 106,* 287-291.

Videos

1. Desrosiers, H., Germain, A., Goineau, J., Noël, D., Sabourin, G., Tassé, M. J., & Tremblay, G. (2000). *Les troubles de santé mentale chez les personnes présentant une déficience intellectuelle. Vidéo 1 : Reconnaître un trouble de santé mentale ; Vidéo 2 : Traiter un trouble de l'humeur.* Montreal, QC : CECOM.

2. Goupil, G. & Tassé, M. J. (1999). *La transition de l'école à l'âge adulte* [Transition From School to Adult Life]. Montreal, QC : Université du Québec à Montréal Audio-visual Service.

3. Goupil, G., Tassé, M. J., & Prud'Homme, M. (1998). *Mon enfant est autiste* [My Child Is Autistic]. Montreal, QC: Université du Québec à Montréal Audio-visual Service.

PRESENTATIONS: **(Invited Presentations = *)**

1. Tassé, M. J. (2009, November). Mental Retardation : Issues Related to the Assessment of Intellectual Functioning . Workshop given at the Capital Defense Mental Health Training – II. Kansas City, MO.*

2. Wehmeyer, M. L. & Tassé, M. J. (2009, November). *The Use and Importance of Individual Support Needs Assessment.* Paper presentation at the Annual Meeting of the Association of University Centers on Disabilities. Washington, DC.

3. Tassé, M. J., Schalock, R. L., Balboni, G., Bersani, H., Borthwick-Duffy, S. A., Scherba de Valenzuela, J., Spreat, S., Thissen, D. T., Widaman, K. F., & Zhang, D. (2009, June). *Diagnosis of Intellectual Disability : Assessment of Adaptive Behavior.* Panel Presentation given at the 133rd Annual Meeting of the American Association on

Intellectual and Developmental Disabilities. New Orleans, LA.

4. Tassé, M. J. (2009, May). *Resource allocation and Developmental Disabilities.* Invited presentation to the North Carolina Program Innovations Committee. Chapel Hill, NC.*

5. Tassé, M. J. (2009, February). *Mental retardation and behavior management.* Presentation at the 2009 Clinical Update & Psychopharmacology Review – Southeastern AHEC. Pinehurst, NC.*

6. Tassé, M. J. (2008, October). *Troubles graves du comportement et troubles psychiatriques chez les personnes ayant une déficience intellectuelle* [Severe problem behaviors and psychiatric disorders in individuals with an intellectual disability]. Workshop given at the Colloque pour le 50e Anniversaire du Centre François-Michelle. Montreal, Canada.*

7. Lunsky, Y., Weiss, J., Tassé, M J., & Durbin, J. (2008, October). *Using the Supports Intensity Scale for Classification Purposes.* Paper presentation at the NADD 25th Annual Conference. Niagara Falls, Canada.

8. Bersani, H., Tassé, M. J., Schalock, R. L., Balboni, G., , Borthwick-Duffy, S. A., Scherba de Valenzuela, J., Spreat, S., Thissen, D. T., Widaman, K. F., & Zhang, D. (2008, August). *The Diagnostic Adaptive Behavior Scale.* Paper presentation given at the IASSID 13th World Congress in Cape Town, South Africa.

9. Tassé, M. J., Schalock, R. L., Balboni, G., Bersani, H., Borthwick-Duffy, S. A., Scherba de Valenzuela, J., Spreat, S., Thissen, D. T., Widaman, K. F., & Zhang, D. (2008, August). *The AAIDD Diagnostic Adaptive Behavior Scale.* Paper presentation given at the American Psychological Association Convention. Boston, MA.

10. Tassé, M. J. (2008, May). The importance of training in the assessment of an individual's support needs. Paper presentation at the 132 Annual Meeting of the American Association on Intellectual Disabilities. Washington, DC.*

11. Tassé, M. J. (2007, November). Mental Health and Behavior Problems in Aging Individual with Intellectual Disability. Colloque international du 30e anniversaire du Centre Espoir et Joie. Brussels, Belgium.*

12. Tassé, M. J. (2007, October). *L'impact des comportements problématiques sur la personne et sur sa famille* [Impact of problem behavior on the person and their family]. La 9ème Université d'automne de l'arapi. Le Croisic, France.*

13. Tassé, M. J. & LeVelle, J. (2007, May). *Respective Role and Importance of Adaptive Behavior and Support Needs.* Plenary presentation at the 131st Annual Meeting of the American Association on Intellectual Disabilities. Atlanta, GA.*

14. Tassé, M. J. Balboni, G., Bersani, H., Borthwick-Duffy, S. A., Horner, R. H., Scherba de Valenzuela, J., Schalock, R. L., Spreat, S., Thissen, D. T., Widaman, K. F., & Zhang, D. (2007, May). *The Development of the Diagnostic Adaptive Behavior Scale for Diagnosing Intellectual Disability.* Symposium presentation at the 131st Annual Meeting of the American Association on Intellectual Disabilities. Atlanta, GA.

15. Tassé, M. J. (2007, March). *If You Think You Can Tell When Someone is Mentally Retarded by Looking at Them or Talking to Them – You Don't Want to Miss this Session.* Presentation at the National Seminar on the Development and Integration of Mitigation Evidence – Habeus Assistance and Training National Project. Washington, DC.*

16. Tassé, M. J., Simon, H., & Kase, K. (2007, February). *Understanding mental retardation.* Presentation at the Monterey Federal Habeas Corpus Seminar. Pittsburgh, PA.*

17. Tassé, M. J. (2006, November). *Common psychological characteristics of individuals with mental retardation.* Presentation at the Journées Cliniques Jérome Lejeune. Paris, France.*

18. Tassé, M. J. & Olive, M. E. (2006, August). *Fighting the mental retardation stereotypes.* Presentation at the Eleventh Annual Federal Habeas Corpus Seminar. Pittsburgh, PA.*

19. Tassé, M. J. (2006, August). *Improving services to individuals with complex behavior support needs.* Presentation to the North Carolina Practice Improvement Committee. Raleigh, NC.*

20. Moscato, M., Morin, D., Tasse, M. J., & Picard, I. (2006, August). *Stress parental: effet du soutien social et des caractéristiques de l'enfant ayant une déficience intellectuelle et de l'autisme.* Presentation at the « 10e congrès de l'Association internationale de recherche scientifique en faveur des personnes handicapées mentales (AIRHM) ». Lausanne, Suisse.

21. Tassé, M. J. (2006, July). White Paper on improving services to individuals with complex behavior support needs. Presentation to the North Carolina Division on Mental Health/Developmental Disabilities/Substance Abuse Services. Raleigh, NC.*

22. Tassé, M. J., (2006, May). *Open Forum: The measurement and construct of adaptive behavior.* Open Forum held at the AAMR 128th Annual Meeting and Exhibit Show. Philadelphia, PA.

23. Tassé, M. J. Balboni, G., Bersani, H., Borthwick-Duffy, S. A., Horner, R. H., Scherba de Valenzuela, J., Schalock, R. L., Spreat, S., Thissen, D. T., Wacker, D. P., Widaman, K. F., Zhang, D. (2006, May). *Open forum: Conceptualizing and measuring adaptive behavior in diagnosing mild mental retardation.* Symposium presentation at the International Summit on the Alliance for Social Inclusion. Montreal, Canada.

24. Patton, J. R., Siperstein, G., Tassé, M. J., & Polloway, E. (2006, May). *Ongoing saga of Daryl R. Atkins.* Symposium presentation at the International Summit on the Alliance for Social Inclusion. Montreal, Canada.

25. Schalock, R. L., Tassé, M. J., Greenspan, S. , & Verdugo, M. (2006, May). *Dialog on the conceptualization and measurement of intellectual disabilities.* Symposium presentation at the International Summit on the Alliance for Social Inclusion. Montreal, Canada.

26. Tassé, M. J., Thompson, J. R., & McLaughlin, C. (2006, May). *Inter-interviewer and inter-respondent concordance on the Supports Intensity Scale.* Poster presentation at the International Summit on the Alliance for Social Inclusion. Montreal, Canada.

27. Lachapelle, Y., Couture, G., Haelewyck, M.-C., Verdugo, M. A., Wehmeyer, M., Noonan-Walsh, P., & Tassé, M. J. (2006, May). *Enhancing quality of lige and self-determination in people with intellectuel disabilities: A collective initiative*l Symposium presentation at the International Summit on the Alliance for Social Inclusion. Montreal, Canada.

28. Desrosiers, H., Audet, N., Tassé, M. J., Guerin, A., Tavares C. A., Lamoiureux-Hebert, M., Cloutier, G., Desjardins, P., Garant, L., & Bishop, N. (2006, May). *L'évaluation diagnostique de la déficience intellectuelle: une démarche guidée.* Symposium presentation at the International Summit on the Alliance for Social Inclusion. Montreal.

29. Shipman, P., Misenheimer, A., Tassé, M. J., & Polston, D. (2006, May). *New horizons: Self-direction in a managed-care environment.* Symposium presentation at the International Summit on the Alliance for Social Inclusion. Montreal, Canada.

30. Sabourin, G., Garcin, N., Tassé, M.J., Lecavalier, L., Caron, J. & Morin, D. (2006, May). *Comment définir un trouble grave du comportement?* Symposium presentation at the International Summit on the Alliance for Social Inclusion. Montreal, Canada.

31. Tassé, M. J. & Realon, Rodney E. (2006, April). *Understanding Individual Support Needs: How They Help in Planning*

Supports and Individualized Resource Allocation Models. Paper presentation given at the North Carolina 2006 Best Practice Conference. Greensboro, NC.*

32. Tassé, M. J. & Borthwick-Duffy, S. (2006, March). *Assessment of Adaptive Behavior in the Diagnosis of Mental Retardation.* Half-day workshop given to Federal Public Defenders in the course of a seminar on Mental Retardation and the US Supreme Court's Atkins Decision. Phoenix, AZ.*

33. Tassé, M. J. & Farley, D. (2006, March). *Understanding Intelligence and IQ Testing.* Half-day workshop given to Federal Public Defenders in the course of a seminar on Mental Retardation and the US Supreme Court's Atkins Decision. Phoenix, AZ.*

34. Tassé, M. J. (2005, October). *Planning Supports for Individuals with Complex Needs.* Paper presentation at the NADD 22nd Annual Conference. St-Louis, MO.*

35. Tassé, M. J. (2005, September). *Individualized Support Needs and Funding.* Symposium presentation at the Summit 2005: Alliance for Full Participation. Washington, DC.*

36. Thompson, J., Schalock, R. L., & Tassé, M. J. (2004, June). *Half-day Workshop on Using the AAMR Supports Intensity Scale.* Post-conference workshop at the AAMR 128th Annual Meeting and Exhibit Show. Philadelphia.*

37. Tassé, M. J. (2004, June). *One-day Workshop on Using the AAMR Supports Intensity Scale.* Presentation given to the Support Brokers of the Arc of North Carolina. Carrboro, NC.*

38. Tassé, M. J., Havercamp, S. M., & Morin, I. N. (2004, June). *Behavioural profile of children with autistic disorder.* Paper presented at the 12th World Congress of the International Association of Scientific Study of Intellectual Disabilities. Montpellier, France.

39. Tassé, M. J. (2004, June). *The role of intelligence and adaptive behavior in the 2002 AAMR system.* Paper presented at the 12th World Congress of the International Association of Scientific Study of Intellectual Disabilities. Montpellier, France.

40. Thompson, J., Schalock, R. L., & Tassé, M. J. (2004, June). *The AAMR Supports Intensity Scale.* Paper presented at the 12th World Congress of the International Association of Scientific Study of Intellectual Disabilities. Montpellier, France.

41. Tassé, M. J. (2004, June). *Open Forum: The measurement and construct of adaptive behavior.* Open Forum held at the AAMR 128th Annual Meeting and Exhibit Show. Philadelphia, PA.

42. Thompson, J., Schalock, R. L., Silverman, W., Tassé, M. J., Craig, E. M., Campbell, E. M., Hughes, C., & Wehmeyer, M. (2004, June). *The AAMR Supports Intensity Scale.* Paper presented at the AAMR 128th Annual Meeting and Exhibit Show. Philadelphia, PA.

43. Tassé, M. J., Morin, D., & Aunos, M. (2003, May). *Le rôle de la motivation sur les comportements adaptatifs.* [The impact of motivation on adaptive behavior]. Paper presentation at the Colloque Recherche Défi, Montréal, QC.

44. Goupil, G., Tassé, M. J., Boisseau, E., Bouchard, G., & Dansereau, V. (2003, May). *Le plan de transition : la contribution des élèves et des parents.* [The transition plan: The students' and parents' contributions]. Paper presentation at Colloque Recherche Défi, Montréal, QC.

45. Goupil, G., Tassé, M. J., Boisseau, E., & Dansereau, V. (2003, May). *Le MAP (Making Action Plan) : un outil facilitant la transition.* [MAPS (Making Action Plans): A tool to facilitate transition]. Paper presentation at

Colloque Recherche Défi, Montréal, QC.

46. Thompson, J., Schalock, R. L., Silverman, W., Tassé, M. J., Craig, E. M., Campbell, E. M., Hughes, C., & Wehmeyer, M. (2003, May). *Using the AAMR Supports Intensity Scale.* Paper presented at the AAMR 127th Annual Meeting and Exhibit Show. Chicago, IL.

47. Thompson, J., Schalock, R. L., Silverman, W., Tassé, M. J., Hughes, C., & Craig, E. M. (2003, May). *One-day Workshop on Using the AAMR Supports Intensity Scale.* Pre-conference workshop at the AAMR 127th Annual Meeting and Exhibit Show. Chicago, IL.*

48. Luckasson, R., Snell, M., & Tassé, M. J. (2003, April). *Mental Retardation: Definition, Classification, and Systems of Supports.* 1½-Day Workshop given for the Quebec Chapter of the American Association on Mental Retardation. Montréal, QC.*

49. Borthwick-Duffy, S. & Tassé, M. J. (2003, February). *Mental Retardation: Definition, Classification, and Systems of Supports.* Workshop given by the John F. Kennedy Partners/University of Colorado. Denver, CO.*

50. Tassé, M. J., Realon, R. E., & Konarski, E. A. (2002, November). *Estimating Cost of Supporting Individuals with Multiple Diagnoses and Comparing these Costs by Diagnosed Psychiatric Group.* Paper presentation at the 9th Annual Institute Conference on Complex Disabilities. Winston-Salem, NC.*

51. Luckasson, R., Schalock, R. L., Snell, M., & Tassé, M. J. (2002, September). *Mental Retardation: Definition, Classification, and Systems of Supports.* Workshop given by the American Association on Mental Retardation. Washington, DC.*

52. Luckasson, R., Schalock, R. L., Borthwick-Duffy, S., & Tassé, M. J. (2002, September). *Mental Retardation: Definition, Classification, and Systems of Supports.* Workshop given by the American Association on Mental Retardation. New Orleans, LA.*

53. Tassé, M. J. (2002, October). *The sad reality of supporting individuals with mood disorders and other psychiatric disorders.* Paper presentation presented at the NADD 19th Annual Conference. Denver, CO.

54. Konarski, E. A., Realon, R. E., & Tassé, M. J. (2002, August). *Exploring some correlates of cost of community support in North Carolina.* Paper presentation at the Annual Meeting of the North Carolina Chapter of the American Association on Mental Retardation. Raleigh, NC.

55. Luckasson, R., Borthwick-Duffy, S., Buntinx, W. H E., Coulter, D. L., Craig, E. M., Reeve, A., Schalock, R. L., Snell, M. E., Spitalnik, D. M., Spreat, S., & Tassé, M. J. (2002, May). *Mental retardation: Definition, classification, and systems of supports.* Open Forum presented at the AAMR 126th Annual Meeting and Exhibit Show. Orlando, FL.

56. Thompson, J., Schalock, R. L., Craig, E. M., Wehmeyer, M., Tassé, M. J., Bryant, B., Campbell, E. M., & Silverman, W. (2002, May). *The Supports Intensity Scale.* Paper presented at the AAMR 126th Annual Meeting and Exhibit Show. Orlando, FL.

57. Tassé, M. J., Lanson, A., & Goupil, G. (2002, May). *La transition de l'école à la vie adulte: une étape importante [Transition from school to adult life: An important step].* Invited workshop at the Congrès annuel de l'Association québécoise pour l'intégration sociale. Quebec City, QC.*

58. Luckasson, R., Buntinx, W. H E., Craig, E. M., Reeve, A., Schalock, R. L., Snell, M. E., & Tassé, M. J. (2002, May). *Implications of the Mental retardation: Definition, classification, and systems of supports.* Open Forum presented at the AAMR 127th Annual Meeting and Exhibit Show. Chicago, IL.

59. Tassé, M. J. (2002, March). *La récente nouvelle definition du retard mental de l'AAMR [AAMR's recent new definition of mental retardation].* Invited workshop for the Quebec Chapter of the American Association on Mental Retardation. Montreal, QC. *

60. Tassé, M. J. (2002, March). *Conférence-synthèse et regard d'ailleurs [Closing plenary – synthesis and a look from the outside].* Invited closing address for the Fédération québécoise des centres de réadaptation en déficience intellectuelle – Colloque sur l'autisme et autres TED. Montreal, QC.*

61. Tassé, M. J. (2002, March). *L'importance d'évaluer la motivation individuelle des personnes ayant un trouble de l'autisme* [The importance of evaluating the motivation of individuals with autism]. Invited presentation for the Fédération québécoise des centres de réadaptation en déficience intellectuelle – Colloque sur l'autisme et autres TED. Montreal, QC.*

62. Tassé, M. J. (2002, March). *Understanding psychiatric disorders and problem behaviors in individuals with mental retardation.* Invited full-day workshop at the Carolina's Medical Center - Randolph. AHEC-Charlotte, NC.*

63. Tassé, M. J. (2002, February). *Psychopathology and Mental Retardation.* Invited presentation at the Conference on Dual Diagnosis. Amsterdam, Netherlands.*

64. Tassé, M. J., & Havercamp, S. M. (2001, August). *Understanding behavior problems and establishing a positive behavior support plan.* Invited half-day workshop at the Eastern AHEC Annual Children Services State of the Art Conference. Atlantic Beach, NC.*

65. Thompson, J., Schalock, R. L., Craig, E. M., Campbell, E. M., Silverman, W., & Tassé, M.J. (June, 2001). *Support needs assessment and planning.* Paper presented at the 125th Annual Meeting of the American Association on Mental Retardation. Denver, CO.

66. Tassé, M. J. (2001, January). *Assessment and treatment of psychiatric disorders and problem behaviors in individuals with mental retardation.* Invited full-day workshop at the Eastern AHEC Center. Greenville, NC.*

67. Tassé, M. J. (2000, October). *Ce que tout psychologue doit savoir concernant la déficience intellectuelle ... et plus [What All Psychologists Should Know About Mental Retardation ... and More].* Invited one-day workshop at the Quebec Board of Psychologists Annual Meeting, Montreal, Quebec.*

68. Tassé, M. J. (2000, August). *Mental health problems in children with intellectual disabilities.* Invited full-day workshop at the Eastern AHEC's Annual Children's Services State of the Art Conference. Atlantic Beach, NC.*

69. Tassé, M. J. (2000, August). *The assessment of support needs.* Paper presented at the 7th Institute on Dual Diagnosis. Chapel Hill, NC.

70. Tassé, M. J. & Havercamp, S. M. (2000, August). *Cross-cultural validation of the Profile of Fundamental Motivation Goals and Sensitivities.* Paper presented at the 11th IASSID World Congress. Seattle, WA.

71. Tassé, M. J. (2000, June). *Place à la recherche dans le domaine de la déficience intellectuelle [The contributions of research in the field of mental retardation].* Invited address at the "Colloque : Recherchons et innovons en déficience intellectuelle." Quebec City, QC.*

72. Tassé, M. J., Havercamp, S. M., & Morin, I. N. (2000, May). *A behavioral profile of children with autistic disorder using the Nisonger Child Behavior Rating Form.* Paper presented at the 124th Annual Meeting of the American Association on Mental Retardation. Washington, DC.

73. Thompson, J. R., Bryant, B., Campbell, E. M., Craig, E. M., Hughes, C., Schalock, R. L., Silverman, W., & Tassé, M. J. (2000, May). *The support needs intensity assessment: Model and measurement instrument.* Paper presented at the 124th Annual Meeting of the American Association on Mental Retardation. Washington, DC.

74. Olley, J. G., Tassé, M. J., & Havercamp, S. M. (2000, February). *Applications of applied behavior analysis in community settings serving people with disabilities.* Paper presented at the Annual North Carolina Association for Behavior Analysis Conference. Asheville, NC.

75. Tassé, M. J. & Havercamp, S. M. (1999, July). *Home of Your Own: A cooperative living skills program.* Paper presented at the 6th Annual Institute on Dual Diagnosis Conference. Chapel Hill, NC.

76. Goupil, G., Tassé, M. J., Doré, C., Coallier, S., Horth, R., Lévesque, J.-Y., & Mainguy, E. (1999, May). *Analyse des plans d'intervention personnalisés [Analysis of Individualized Education Plans].* Paper presented at the 13th Colloque Recherche Défi de l'AQDI. Shawinigan, QC.

77. Goupil, G., Tassé, M. J., Doré, C., & Labrie, P. (1999, May). *Démarche des plans de transition: de l'école à la vie adultes. [Process of Individualized Transition Plans: From School to Adult Life].* Paper presented at the 13th Colloque Recherche Défi de l'AQDI. Shawinigan, QC.

78. Lecavalier, L. & Tassé, M. J. (1999, May). *Disturbing facts regarding the practices of school psychologists in Quebec with regards to the diagnosis/ classification of mental retardation and the measurement of adaptive behavior.* Paper presented at the 122nd Annual Meeting of the American Association on Mental Retardation. New Orleans, LA.

79. Tassé, M. J. (1999, May). *Cross-cultural validation of the Reiss Profile of Fundamental Goals and Motivaiton Sensitivities.* Paper presented at the 122nd Annual Meeting of the American Association on Mental Retardation. New Orleans, LA.

80. Tassé, M. J. & Havercamp, S. M. (1999, July). *Home of Your Own: A cooperative living skills program.* Paper presented at The 6th Annual Institute on Dual Diagnosis Conference. Chapel Hill, NC.

81. Tassé, M. J., Girouard, N., Lecavalier, L., & Morin, I. N. (1998, November). *Les caractéristiques de la Grille d'évaluation comportementale pour enfants (GÉCEN) [The Characteristics of the French Version of the Nisonger Child Behavior Rating Form].* Paper presented at the 10th Annual Convention of the Quebec Association of School Psychologists. Drummondville, QC.

82. Tassé, M. J. & Craig, E. M. (1998, May). *Standards for translation and transcultural adaptation of adaptive behavior scales.* Paper presented at the 121st Annual Meeting of the American Association on Mental Retardation. San Diego, CA.

83. Goupil, G., Tassé, M. J., & Lanson, A. (1998, May). *Individual transition plans: A new process for some.* Paper presented at the 121st Annual Meeting of the American Association on Mental Retardation. San Diego, CA.

84. Tassé, M. J., Goupil, G., & Lanson, A. (1997, October). *Le plan de transition : de l'école à la vie adulte [Transition plans: From school to adult life].* Paper presented at the 60th Annual Conference of American Association on Mental Retardation Region X. Montreal, QC.

85. Tassé, M. J., Forget, J., Bélanger, A.,& Bélanger, C. (1997, October). *Comportements agressifs : formation des parents à l'intervention en situation de crise et à l'évaluation fonctionnelle [Aggressive behavior: Crisis intervention and functional assessment training for parents].* Paper presented at the 60th Annual Conference of American Association on Mental Retardation Region X. Montreal, QC.

86. Tassé, M. J. (1997, October). *Le rôle des parents dans l'évaluation et l'intervention auprès des personnes présentant un double diagnostic [The role of parents in the assessment and intervention of individuals with dual diagnosis].* Invited address at the 6th French International Conference on Research in Mental Handicaps. Sion, Switzerland.*

87. Havercamp, S. M., & Tassé, M. J. (1997, June). *Teaching Cooperative Living Skills in the Community.* Paper presented at the Fourth RECLAIM Ohio Conference, Ohio Department of Youth Services. Columbus, OH.

88. Bélanger, A., Tassé, M. J., & Forget, J. (1997, May). *Projet ICARE (Intervention pour comportements agressifs en réadaptation) [Training parents of adolescents with mental retardation and severe aggression in crisis intervention and functional assessment].* Paper presented at the 16th Annual Conference of the Quebec Association for Social Integration. Rimouski, QC.

89. Goupil, G., Lanson, A., & Tassé, M. J. (1997, May). *Le plan de transition : de l'école à la vie adulte [The Transition Plan: From School to Adult Life].* Paper presented at the 16th Annual Conference of the Quebec Association for Social Integration. Rimouski, QC.

90. Tassé, M. J. (1997, April). *Cooperative Living Skills: Facilitating Independent Living.* Paper presented at the International Congress III of the National Association for the Dually Diagnosed. Montreal, QC.

91. Tassé, M. J. (1996, November). *La psychopathologie et les comportements problématiques auprès d'élèves présentant une déficience intellectuelle. [Students with Mental Retardation: Psychopathology and Problem Behaviors].* Paper presented at the 8th Annual Conference of the Quebec Association of School Psychologists. Trois-Rivières, QC.

92. Lajoie, J. & Tassé, M. J. (1996, November). *La psychologie scolaire chez les internautes [The School Psychologist and the Internet].* Paper presented at the 8th Annual Conference of the Quebec Association of School Psychologists. Trois-Rivières, QC.

93. Havercamp, S. M., Tassé, M. J., & Lunsky, Y. (1996, May). *Cooperative Living Skills: A pilot study.* Paper presented at the Annual Meeting of the American Association on Mental Retardation. San Antonio, TX.

94. Tassé, M. J. (1996, May). *Methodological issues in the cross-cultural validation of adaptive behavior measures.* Paper presented at the Annual Meeting of the American Association on Mental Retardation. San Antonio, TX.

95. Tassé, M. J., Rojahn, J., Hammer, D., & Aman, M. G. (1996, May). *The development of the Nisonger Child Behavior Rating Form.* Paper presented at the Annual Meeting of the American Association on Mental Retardation. San Antonio, TX.

96. Rojahn, J., Tassé, M. J., & Sturmey, P. (1996, May). *The Stereotyped Behavior Scale for adults with mental retardation.* Paper presented at the Annual Meeting of the American Association on Mental Retardation. San Antonio, TX.

97. Havercamp, S. M. & Tassé, M. J. (1996, April). *Cooperative living skills: Facilitating community inclusion.* Paper presented at YAI's 17th Annual International Conference. New York, NY.

98. Hanley, B. & Tassé, M. J. (1995, July). *Pre-schoolers' families: Poverty and competency for research and practice.* Paper presented at The Annual Head Start Meeting. Washington, DC.

99. Tassé, M. J. (1995, June). *Computerized adaptive testing and the measurement of adaptive behavior.* Distinguished Dissertation Award Presentation at the Academy on Mental Retardation during the Annual Meeting of the American Association on Mental Retardation. San Francisco, CA.*

100. Rojahn, J., Tassé, M. J., & Sturmey, P. (1995, June). *The psychometric development of the Stereotyped Behavior Scale.* Paper presented at the Annual Meeting of the American Association on Mental Retardation. San Francisco, CA.

101. Craig, P. & Tassé, M. J. (1995, June). *The critical behavior items in adaptive skills measurement.* Paper presented at the Annual Meeting of the American Association on Mental Retardation. San Francisco, CA.

102. Tassé, M. J., Hammer, D., Rojahn, J., & Aman, M. G. (1995, March). *The development of the Child Behavior Rating Form: Nisonger version.* Paper presented at the Gatlinburg Conference on Research and Theory in MR/DD. Gatlinburg, TN.

103. Tassé, M. J. (1994, November). *Les troubles de la santé mentale auprès d'enfants et d'adolescents présentant un retard mental [Psychopathology and children/ adolescents with mental retardation].* Invited address to the Department of Psychology at the Université du Québec à Montréal. Montréal, QC.*

104. Tassé, M. J. & Maurice, P. (1993, October). *Computerized adaptive testing and the measurement of adaptive behavior.* Paper presented at the 56th Annual Meeting of the American Association on Mental Retardation Region X. Burlington, VT.

105. Maurice, P., Morin, D., Tassé, M. J., Belhumeur, C., Saint-Germain, P., & Vandoni, C. M. (1993, August). *Le rôle de l'Échelle québécoise de comportements adaptatifs dans l'intégration des personnes présentant une déficience intellectuelle [The Role of the Quebec Adaptive Behavior Scale in the Inclusion of Individuals with Mental Retardation].* Paper presented at the French International Conference on Research in Mental Handicaps. Trois-Rivières, QC:

106. Maurice, P., Tassé, M. J., & Morin, D. (1993, May). *La nouvelle définition du retard mental. [The New Definition of Mental Retardation].* Paper presented at the 11th Annual Meeting of the Quebec Board of Licensed Psychologists. Montréal, QC.

107. Maurice, P., Tassé, M. J., & Morin, D. (1992, October). *Prevalence and psychometric consequences of the new definition of mental retardation with regards to adaptive skills.* Paper presented at the 55th Annual Meeting of the American Association on Mental Retardation Region X. Albany, NY.

108. Maurice, P., Morin, D., & Tassé, M. J. (1992, April). *Le développement de l'Échelle québécoise de comportements adaptatifs (ÉQCA): Aujourd'hui et demain [The Development of the Quebec Adaptive Behavior Scale: Yesterday and Tomorrow].* Paper presented given at the *Journées d'étude de l'A.I.R.H.M.* Paris, France.

POSTER PRESENTATIONS

1. Clark, B., Dileo, D. Gamache, P., & Tassé, M J. (2009, June). ***Employment and Developmental Disabilities: Capacity Building through Training and Technical Assistance.*** Poster presentation at the 133rd Annual Meeting of the American Association on Intellectual Disabilities. New Orleans, LA.

2. Jorgensen Smith, T. Noel, D., & Tassé, M J. (2009, June). ***Small Business Ownership: Expanding Employment Options for Individuals with Disabilities.*** Poster presentation at the 133rd Annual Meeting of the American Association on Intellectual Disabilities. New Orleans, LA.

3. Tassé, M. J., Benito, N., Vaughn, B., Bustamante, S. O., & Sallo, M. (2008, November). *Disability and Law Enforcement.* Poster presentation at the Annual AUCD Conference. Washington, DC.

4. Lunsky, Y., Weiss, J., Tassé, M J., & Durbin, J. (2008, August). *Needs and Current Service Utilization in Adults with*

an Intellectual Disability in Ontario. Poster presentation at the IASSID 13th World Congress in Cape Town, South Africa.

5. Balboni, G., Tassé, M. J., Schalock, R.L., Bersani, H. Jr., Borthwick-Duffy, S.A., Horner, R.H., Scherba de Valenzuela, J., Spreat, S., Thissen, D.M., Wacker, D.P., Widaman, K.F., & Zhang, D. (2008, July). *Diagnostic Adaptive Behavior Scale (DABS): A new scale to use for the diagnosis of intellectual disabilities.* Poster presentation at the 6th Conference of the International Test Commission. Liverpool, UK.

6. Lunsky, Y., Weiss, J., Tassé, M J., & Durbin, J. (2008, May). *Using the Supports Intensity Scale for Classification Purposes: An Ontario Validity Study.* Poster presentation at the 132st Annual Meeting of the American Association on Intellectual Disabilities. Washington, DC.

7. Morin, D., Tassé, M. J., Moscato, M., & Picard, I. (2007, November). *Differences in Stress Levels in Parents of Children with and without Developmental Disabilities.* Poster presentation at the 2nd International Conference on Intellectual Disabilities/Mental Retardation. Bangkok, Thailand.

8. Morin, D., Cobigo, V., & Tassé, M. J. (2007, November). *Reliability of the Supports Intensity Scale – French Version.* Poster presentation at the 2nd International Conference on Intellectual Disabilities/Mental Retardation. Bangkok, Thailand.

9. Morin, D. Cobigo, V., & Tassé, M. J. (2007, May). *The Inter-interviewer and Inter-respondent Reliability of the French Version of the Supports Intensity Scale.* Poster presentation at the 131st Annual Meeting of the American Association on Intellectual Disabilities. Atlanta, GA.

10. Tassé, M. J., Thompson, J. R., & McLaughlin, C. A.. (2006, May). *Inter-interviewer and Inter-respondent Reliability on the AAMR Supports Intensity Scale.* Poster presentation at the International Summit on the Alliance for Social Inclusion. Montreal, Canada.

11. Tassé, M. J., Balboni, G., Borthwick-Duffy, S. A., Horner, R. H., Scherba de Valenzuela, J., Schalock, R. L., Spreat, S., Thissen, D. M., Wacker, D. P., Widaman, K. F., Zhang, D. (2005, September). *Conceptualizing and measuring adaptive behavior.* Poster presentation at the Summit 2005: Alliance for Full Participation. Washington.

12. Chung, K. M., Tassé, M. J., & Drewry, J. (2004, March). *Intellectual and adaptive functioning of children with developmental disabilities: Inter-relationship and change over time.* Poster presented at the 37th Annual Gatlinburg Conference on Research and Theory in Mental Retardation and Developmental Disabilities. San Diego, CA.

13. Goupil, G., Tassé, M. J., Boisseau, E., & Bouchard, G. (2002, May). *Individualized transition plans: Student and parent expectations and participation.* Poster presented at the AAMR 126th Annual Meeting & Exhibit Show. Orlando, FL.

14. Havercamp, S. M., Tassé, M. J., & Mandal, R. L. (2002, May). *Prader-Willi syndrome and problem behavior.* Poster presented at the AAMR 126th Annual Meeting & Exhibit Show. Orlando, FL.

15. Lecavalier, L., & Tassé, M. J. (2002, May). *The sensitivity theory of motivation: Validity studies.* Poster presented at the AAMR 126th Annual Meeting & Exhibit Show. Orlando, FL.

16. Tassé, M. J., Havercamp, S. M., Lunsky, Y., & Garcin, N. (2002, May). *Surveying the future leaders of our field.* Poster presented at the AAMR 126th Annual Meeting & Exhibit Show. Orlando, FL.

17. Garcin, N., Goupil, G., Tassé, M. J. (2001, June). *Transition planning: Topics discussed during transition plan meetings and content analysis of the written plans.* Poster presented at the 125th Annual Meeting of the American Association on Mental Retardation. Denver, CO.

18. Goupil, G., Tassé, M. J., & Garcin, N. (2000, December). *Transition plans to adult life: Content analysis of transition plan meetings in the province of Quebec.* Poster presented at the International TASH Conference. Miami, FL.

19. Tassé, M. J., Havercamp, S. M., & Olley, J. G. (2000, August). *Services and programs at the Center for Development and Learning UAP.* Poster presented at the 11th IASSID World Congress. Seattle, WA.

20. Goupil, G., Tassé, M. J., & Garcin, N. (2000, May). *Transitions plans to adult life: Analysis of the process in the province of Quebec.* Poster presented at the 124th Annual Meeting of the American Association on Mental Retardation. Washington, DC.

21. Lecavalier, L. & Tassé, M. J. (2000, May). *Cross-cultural adaptation and validation of the Reiss Screen for Maladaptive Behavior.* Poster presented at the 124th Annual Meeting of the American Association on Mental Retardation. Washington, DC.

22. Méthot, S. & Tassé, M. J. (1998, November). *Programme de formation à l'intervention pour les parents d'adolescents présentant une déficience intellectuelle et des comportements agressifs* [Training Curriculum for Parents of Aggressive Adolescents with Mental Retardation]. Poster presented at the 10th Annual Convention of the Quebec Association of School Psychologists. Drummondville, QC.

23. Morin, I. N., Girouard, N., & Tassé, M. J. (1998, May). *Test-retest and interrater reliability of the French translation of the Nisonger Child Behavior Rating Form.* Poster presented at the 121st Annual Meeting of the American Association on Mental Retardation. San Diego, CA.

24. Morin, I. N., Girouard, N., Lévesque, S., Lecavalier, L., & Tassé, M. J. (1997, November). *Activités du laboratoire de recherche en déficience intellectuelle et psychopathologie* [Projects of the Research Laboratory on the Study of Mental Retardation and Psychopathology]. Poster presented at the 9th Annual Convention of the Quebec Association of School Psychologists. Trois-Rivières, QC.

25. Tassé, M. J., Girouard, N., Morin, I., & Lecavalier, L. (1997, May). *French translation and cross-cultural adaptation of the Nisonger Child Behavior Rating Form.* Poster presented at the 121st Annual Meeting of the American Association on Mental Retardation. New York, NY.

26. Tassé, M. J., Aman, M. G., Rojahn, J., & Hammer, D. (1996, August). *The Construction and Psychometric Properties of the Nisonger Child Behavior Rating Form.* Poster presented at the XXVI International Congress of Psychology. Montréal, QC.

27. Morin, I., Girouard, N., & Tassé, M. J. (1996, August). *Validation de la Grille d'évaluation comportementale pour enfants Nisonger: traduction française* [Validation of the French Translation of the Nisonger CBRF]. Poster presented at the XXVI International Congress of Psychology. Montréal, QC.

28. Girouard, N., Morin, I., & Tassé, M. J. (1996, November). *Traduction et validation d'instruments de mesure* [Translation and Validation of Assessment Instruments]. Poster presented at the 8th Annual Conference of the Quebec Association of School Psychologists. Trois-Rivières, QC.

29. Hanley, B. & Tassé, M. J. (1996, June). *The Family Start Project: Integrating Research, Assessment, and Service.* Poster presented at Head Start's Third National Research Conference. Washington, DC.

30. Hanley, B. & Tassé, M. J. (1995, June). *Pre-schoolers' families: Poverty and competency for research and practice.* Poster presented at the Annual Meeting of the American Association on Mental Retardation. San Francisco, CA.

31. Tassé, M. J., Maurice, P., & Auger, R. (1994, June). *Construction of a computerized adaptive testing version of the Quebec Adaptive Behavior Scale.* Poster presented at the Annual Meeting of the American Association on Mental Retardation. Boston, MA.

32. Tassé, M. J., Maurice, P., Belhumeur, C., & Vandoni, C.M. (1994, June). *Reliability study of the Quebec Adaptive Behavior Scale.* Poster presented at the Annual Meeting of the American Association on Mental Retardation. Boston, MA.

33. Tassé, M. J., Maurice, P., & Auger, R. (1993, May). *La construction d'une version de testage adaptatif informatisé de l'Échelle québécoise de comportements adaptatifs.* [The Construction of a Computerized Adaptive Testing Version of the Quebec Adaptive Behavior Scale]. Poster presented at the Annual Meeting of the Canadian Psychological Association. Montréal, QC.

34. Tassé, M. J., Maurice. P., & Morin, D. (1992, June). *Étude de la fidélité de l'Échelle québécoise de comportements adaptatifs* [Test-retest and Interrater Reliability of the Quebec Adaptive Behavior Scale]. Poster presented at the Annual Meeting of the Canadian Psychological Association. Québec, QC.

Kenneth Simmons

Historical IQ Test Results

Psychologist(s)	Test/Year	Test Scores		
		FSIQ	VIQ	PIQ
Dr. Saylor	WAIS-R => 5/15/98	69	66	75
Drs. Behrmann/Vidic	WAIS-III => 1/8/99 TOMM & Rey-15	66	65	74
Drs. Sandler/McAbee	WAIS-R => 2/9/99 CAST-MR	75	70	82
Dr. Keyes	KAIT =>2/5/99	70	71 crystallized	73 fluid
Dr. Knight	WAIS-IV => 12/10/2008	67	61 Verbal comprehension	81 Perceptual reasoning

ACADEMIC ACHIEVEMENT TESTING

Psychologist(s)	Test/Year	Test Scores		
		Reading	Spelling	Arithmetic
Dr. Saylor	WRAT-3 => 5/15/98	2nd Grade	1st Grade	3rd Grade
Dr. Keyes	WJ-Ach. => 2/5/99	2nd Grade	1st Grade	3rd Grade
Dr. Zenger	Writing analysis => 2009	Kottmeyer Spelling Test		4th Grade
		Sample Letter Writing		1st Grade
		Hand written statement 12/5/98		1st Grade

ADAPTIVE BEHAVIOR SCALE

Psychologist(s)	Test/Year	Test Scores			
		Composite	Comm.	DLS	Social
Drs. Sandler & McAbee	2/9/99	No scores – failed to recruit approp. Respondent			
Dr. Keyes	VABS => 2/5/99 Ex-wife & Sister	43	32	59	48

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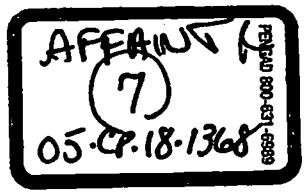
James Evans Aiken

The undersigned maintains a consulting concern in prison management and adjustment matters as James E. Aiken & Associates, Inc. I also served as Director of Corrections for the United States Virgin Islands, and Commissioner for the Indiana Department of Correction. I began my corrections career in 1971 at the South Carolina Department of Corrections as a counselor with the Comprehensive Drug Abuse Treatment Program. Also, while with the South Carolina Department of Corrections, I held positions as Deputy Regional Administrator in the Midlands Correctional Region (managing 16 prisons), Deputy Warden and Administrative Assistant to the Warden of the Manning Correctional Institution, Deputy Warden and Warden at the Central Correctional Institution (state penitentiary), and Warden of the Women's Correctional Center. While serving in these positions, I received extensive experience in the areas of prison classification and management of inmate population. During my years in prison work, I have conducted thousands of inmate classification evaluations relative to their adjustment to prison and current/future danger to the public, prison staff, and other inmates. These reviews included minimum custody (low security offenders) to maximum security (violent, high profile, disruptive, predatory, aggressive inmates). Additionally, I participated in the development of prison classification systems designed to better protect inmate population from other more violent inmates and the public.

The United States Congress appointed me, in July 2004 to the National Prison Rape Elimination Commission. Over a five (5) year period, the Commission conducted comprehensive hearings and examined all penalogical, economic, physical, mental, medical and social issues relating to prison rape in America. At the conclusion of it's review, the Commission issued a comprehensive report on the subject, including a recommended set of national standards to reduce and eliminate prison rape. Also, a grant program made annual grants (up to $40 million each year) to state and local programs that enhanced the prevention and punishment of prison rape and maintain safe and secure prisons despite budget reductions. The Commission had authority to issue subpoenas, and the statue allowed for the Attorney General to seek enforcement of subpoenas in district court. The Federal Bureau of Prisons must have total compliance to the final standards. (Resume attached)

I received a Masters Degree in Criminal Justice from the University of South Carolina and Bachelors of Arts Degree from Benedict College, Columbia, South Carolina. I have also taught a number of courses in corrections at the university and technical college levels.

I have consulted with the U.S. Department of Justice, National Institute of Corrections, as well as served as a private contract provider to federal, state and county jurisdictions in a number of areas to include but not limited to inmate classification, managing violent youthful offenders in adult prisons, managing prison security systems, correctional leadership development, assessment of security operational performance, executive



training for new and experienced wardens, prison critical event avoidance, management of super-maximum security prisons, management of the hard to manage-violent inmate, and riot/gang management.

I also have consulted with attorneys and render expert testimony in capital as well as other criminal/civil cases. I have been qualified as an expert and provided such testimony in the states of Georgia, Arizona, North Carolina, Pennsylvania, New York, South Carolina, Indiana, Virginia, Maryland, Louisiana, Oregon, New Hampshire, Missouri, Alabama, Mississippi, Florida, Idaho and in the United States District Courts relative to future danger, prison adjustment issues, prison conditions and other prison/jail/ criminal justice matters.

More specific overview of background qualifications is submitted: From August 1992 to August 1994, I was Director of the Bureau of Corrections for the United States Virgin Islands. My responsibilities encompassed the overall administration of the bureau. I also worked closely with other territorial agencies, the legislature, courts, and federal governmental entities. In the Virgin Islands, I had a specific mission to re-establish a correctional system which was diminished by overcrowded conditions, gang problems, escapes, non-compliance with court orders, general mismanagement, and public mistrust.

From March 1989 until August 1992, I was Commissioner for the Indiana Department of Corrections. I was responsible for the overall administration of the Indiana corrections system that consisted of 46 separate adult and juvenile facilities with a population of 14,000 inmates and parole services with a population of 3,490 parolees. I reported directly to the Governor of Indiana and worked closely with the state legislature. Also, during my Indiana administration, I created a Division of Security to address gang problems, contraband control, drug testing, and other concerns. My administration also initiated an Offender Relations Division to resolve offender grievances and complaints, and to reduce court involvement.

From September 1971 until March 1989, I was with the South Carolina Department of Corrections in a variety of capacities including Deputy Regional Administrator, and different times as Warden of the Central Correctional Institution, Warden of the Women's Correctional Institution and as an inmate social worker.

As Deputy Regional Administrator from April 1987 to March 1989, I supervised sixteen South Carolina institutions at all security levels including maximum. I supervised a workforce of 2,500 with an annual budget of $97 million. This position required that I select institution heads and I was intimately involved with new facility design.

As Warden of the Central Correctional Institution (state penitentiary) from May 1982 until April 1987, I operated the largest correctional facility in South Carolina with 1,800 medium and maximum custody inmates, 530 staff members, and an annual budget of $8 million. I was personally responsible for all activities involving security and treatment staff, as well as coordinating and supervising all welfare and morale services for inmates. CCI is now closed. At the time it was where the South Carolina death row was located and where executions were carried out. I was called upon to carry out two executions. From September 1976 until September 1979, I was deputy warden of this institution.

As Warden of the Women's Correctional Institution from September 1979 until May 1982, I was chief administrator of a state women's prison. I was responsible for all employee hiring, evaluation, and supervision as well as, all aspects of inmate welfare. During my tenure, I studied and reviewed all available records and files on assigned inmates to evaluate their behavior changes and rehabilitation progress.

From about 1990 to 1992, I was also Adjunct Professor at the Indiana University-Purdue University in Indianapolis, teaching corrections related criminal justice courses.

I am able to render an expert opinion as to prisons and confinement systems' ability to safety incarcerate inmates and prevent or minimize a risk of escape and risk of harm to other inmates, prison personnel and the community. Additionally, I can render an expert opinion relative to the defendant's previous and future adjustment to prison, prison culture and possible endangerment to staff, other inmates, and the community.

My compensation schedule is $125.00 per hour plus out of pocket expenses for travel, meals, and lodging.



James E. Aiken

Resume
James Evans Aiken

[redacted]
Brevard, North Carolina 28712
[redacted] **Telephone**
[redacted] **Fax**
[redacted] e-mail

Summary of Qualifications:

Mr. Aiken has over thirty-eight (38) years experience in correctional administration, facility operations/management, inspection/assessment of facility performance and technical assistance consultations with clients in the United States, Dutch Kingdom, Canada, Costa Rica, Puerto Rico, and U.S. Virgin Islands. He has provided services to federal, state, county and local correctional facilities and jurisdictions in the areas of correctional leadership/organizational development, management of prison disturbances, system productivity, cost containment, enhancing prison security systems, managing the violent youthful offender in adult prisons, gang/security threat group (STG) management, new warden's training, super maximum security facility management training, inmate classification, assessment of prison security/operational performance, prison staffing analyses, reduction of prison critical security events and advising governments relative to prison privatization transactions/productivity. I also have consulted with attorneys and render expert testimony in capital as well as other criminal/civil cases. I have been qualified as an expert and provided such testimony in the states of Georgia, Arizona, North Carolina, Pennsylvania, New York, South Carolina, Indiana, Virginia, Maryland, Louisiana, Oregon, New Hampshire, Missouri, Alabama, Mississippi, Florida, Idaho and in the United States District Courts relative to future danger, prison adjustment issues, prison conditions and other prison/jail/ criminal justice matters.

The United States Congress appointed me, in July 2004 to the National Prison Rape Elimination Commission. Over a five (5) five year period, the Commission conducted comprehensive hearings and examined all penalogical, economic, physical, mental, medical and social issues relating to prison rape in America. At the conclusion of it's review, the Commission issued a comprehensive report on the subject, including a recommended set of national standards to reduce and eliminate prison rape. Also, a grant program made annual grants (up to $40 million each year) to state and local programs that enhanced the prevention and punishment of prison rape and maintain safe and secure prisons despite budget reductions. The Commission had authority to issue subpoenas, and the statue allows for the Attorney General to seek enforcement of subpoenas in district court. The Federal Bureau of Prisons must have total compliance to the final standards.

Education:
M. A., Criminal Justice, University of South Carolina - Columbia, South Carolina. 1985
B. A., Benedict College- Columbia, South Carolina. 1972

Employment History:
August 1994 to present, president, James E. Aiken and Associates, Inc. (correctional consultant firm); August, 1992 to August 1994, Director, Bureau of Corrections, United States Virgin Islands and consultant; March, 1989 to August, 1992, Commissioner, Indiana Department of Correction; April, 1987 to March 1989, Deputy Regional Administrator, South Carolina Department of Corrections; May, 1982 to April, 1987, Warden, Central Correctional Institution (state penitentiary) South Carolina Department of Corrections; September, 1979 to May, 1982, Warden, Women's Correctional Center, South Carolina Department of Corrections; September, 1976 to September, 1979, Deputy Warden for Administration, Central Correctional Institution(state penitentiary) South Carolina Department of Corrections; February, 1974 to September, 1976, Deputy Warden for Institutional Operations, Manning Correctional Institution, South Carolina Department of Corrections; September, 1972 to February 1974 Administrative Assistant to Warden, Manning Correctional Institution, South Carolina Department of Corrections; September, 1971 to September, 1972, Social Worker for Substance Abuse Treatment, South Carolina Department of Corrections.

Relevant Experience:
Mr. Aiken has provided direct professional and consultant services in almost every aspect of the correctional field. More specifically, his scope of expertise includes the following:

Director, Bureau of Corrections, United States Virgin Islands
Held the position as Director that encompassed authority and responsibility for the overall administration of the Corrections Bureau for the United States Virgin Islands. Worked closely with other territorial agencies, the legislature, courts and federal governmental agencies.

Mr. Aiken's task was to coordinate a project to re-establish a correctional system which was diminished by overcrowded conditions, escapes, and noncompliance to court orders, corruption, general mismanagement, negative media, gang involvement, work force dysfunction, and public mistrust.

Commissioner, Indiana Department of Correction
The position encompassed the overall administration of the Department of Correction for the State of Indiana, which consisted of forty-six (46) separate adult and juvenile facilities (population 14,000) and parole services (population 3, 490) with an operations budget of $305 Million.

As Commissioner, reported directly to the Governor of the State of Indiana and worked closely with the legislature, other state and federal agencies, the courts and the public. Mr. Aiken's tasks were to establish an operational mission and priority of issues for the agency; establish agency mission goals; develop a new basic employee supervision program; and reorganized daily operations to ensure a more responsive and efficient structure.

His accomplishments included but were not limited to:

Offender Health Care Delivery: The department contracted with the Indiana University School of Medicine to provide a medical director for clinical services. Developed and implemented a program to reduce cost and increase the quality of medical care.

Security: Created the Division of Security to address agency security needs. Initiated a gang intelligence network to tract and evaluate their activities. Increased contraband control efforts by additional searches, drug testing, use of K-9 units, provided additional training and equipment, and increased prosecution efforts. Designed 650 bed maximum security unit that conforms to modern correctional security management and Court mandates. Conducted meetings with the National Guard, State Police, as well as other mutual aid agencies to coordinate and develop an emergency response and disaster preparedness program. Conducted full response drills to evaluate the agency's response capability. Evaluated and enhanced escape prevention/apprehension measures. Conducted security audits and inspections of facilities.

Offender Relations: Established an Offender Relations Division and appointed a coordinator. This division functions as part of Internal Audits and works in tandem with the Division of Internal Affairs, the Operations Division and the Division of Legislative and Information Services. The task of this division is to resolve offender grievances and complaints that originate from inside the agency and resolve them prior to court involvement.

Prison Population:

- Completed site selection, plans and construction of a new maximum security Institution
- Increased community corrections coverage from 35 to 50 counties (from 3,500 to 7,000 clients)
- Established community service/restitution programs
- Established county work release programs
- Established residential treatment programs and created home detention utilizing electronic monitoring
- Created over five hundred (500) new emergency prison beds within the first nine months of tenure

Juvenile Justice:

- Reduced Indiana Boy's School population from a high of 670 in 1989 to a low of 380 in 1990

- Conducted comprehensive reviews using several committees of community representatives concerning treatment programs, educational programs and employee training programs
- Established a Research Department at the Indiana Boy's School.
- Group home placements had tripled during 1992.
- Community involvement and recreational programs have been increased at both Indiana Boy's School and Indiana Girl's School.

Cost Containment: Developed a plan to increase participative management and input to the budget process. Meetings were held with State Budget Agency personnel on a regular basis in an effort to increase the Budget Agency's participation in the department's budget preparation regarding cost control. Reduced the operational budget of 305 million dollars by 41 million dollars for fiscal year 1992.

Deputy Regional Administrator, Midlands Correctional Region, South Carolina Department of Corrections

Served as the Deputy Chief Administrator for the following: Directly planned, prescribed and supervised activities of sixteen (16) institutions, including minimum, medium and work release, shock probation (boot camp), restitution centers and maximum security facilities. Also, had general supervision of a ninety-seven (97) million dollar budget, as well as a work force of 2,500 employees. Duties also included policy development and interaction with lawmakers, the community and other departmental agencies concerning long-range agency planning and developing agency future needs. Additionally, made selections of institutional heads, as well as being involved in new facility design, reviewed all use of force actions, and provided supervision to prison wardens during emergency situations and normal operations.

Warden, Central Correctional Institution, South Carolina Department of Corrections

The previous largest correctional facility in South Carolina with 1800 medium/-maximum/super maximum custody inmates, 530 staff members, and an operating budget of eight (8) million dollars. Served as the chief administrator for the following areas/-activities: Directly planned, prescribed and supervised all security control and safety activities/operations, as well as, conducted announced and unannounced inspections of the institution. Interviewed, selected and evaluated employee's performance and effected other personnel actions as required. Personally responsible for all activities involving security and treatment staff, as well as, coordinated and supervised all welfare/morale services for inmates. Supervised and coordinated all activities with representatives from non-departmental agencies. Duties also involved emergency preparedness, interpreting all laws, policies, rules and regulations, compliance with court orders (conditions of confinement) and operating procedures for employees and inmates. Studied and analyzed

long-range department requirements for institutions, as well as participating in litigation action involving the South Carolina Department of Corrections. Duties also included meeting with the Inmate Advisory Council and acting on recommendations received from the Inmate Grievance Committee, as well as meeting with members of the legislature on matters relating to corrections. Also was responsible for carrying out the capital punishment laws for the state of South Carolina.

Warden, Women's Correctional Institution, South Carolina Department of Corrections
Served as the chief administrator for the following: Directly planned, prescribed and supervised all security, control and safety activities and operations, personally responded to all disturbances and emergencies, interviewed/selected and evaluated employee's performance, counseled employees, supervised and coordinated all activities of the security and treatment staff, coordinated ad supervised all welfare and morale services for female inmates including clothing, food service, mail service, visitation, medical services, religious services, educational programs and recreational programs. Supervised the implementation and executing of all laws, policies, rules, regulations and operating procedures applicable to the Women's Correctional Center. Also, studied and reviewed all available records/files on assigned inmates to evaluate their behavioral changes and rehabilitation progress. Duties included meeting with the Inmate Advisory Council as well as receiving and acting upon recommendations received from the Inmate Grievance Committee.

Deputy Warden/Administration, Central Correctional Institution, South Carolina Department of Corrections

Served as the Institutional Coordinator for the following areas/activities:

Maintenance/construction, boiler room/energy, food service, employee parking, canteen services, Adjustment Committee, mail service, all security systems, transportation, pest control, criminal investigations and emergency response.

Deputy Warden/Institutional Operations, Manning Correctional Institution South Carolina Department of Corrections

Served as the Institutional Coordinator for the following areas: Youthful Offender Division, medical services, living areas, maintenance/construction, laundry services, visitation, emergency response, security, transportation, food service, commissary, administrative/punitive segregation, officer's quarters, classification teams, inmate interview/correspondence, recreation programs, energy (usage/conservation), Parole Board (prepared parole evaluations), supervision of security staff of fifty-five (55) employees, Chairman of Employee Evaluation Committee, purchasing, inmate pay and Chairman of Adjustment Committee. Prepared correspondence for the warden, conducted the majority of institutional investigations, coordinated all escape apprehension efforts and remained on twenty-four (24) hour call.

Administrative Assistant/Institutional Operations, Manning Correctional Institution, South Carolina Department of Corrections

Responsibilities included vocational rehabilitation, alcoholics anonymous, Project Mate (Paraprofessional Counseling Program), Classification Team #2, Pastoral Care, Drug Abuse Treatment Program, Recreation Program, Occupational Safety and Health Act (O.S.H.A.), Emergency Response, Work Release Program, Education Program, tours, Employee Evaluation Committee member and inmate interviewing/correspondence.

Performed duties of deputy warden in his absence and remained on twenty- four (24) hour call at all times.

Social Worker/Drug Abuse Treatment Program, Manning Correctional Institution, South Carolina Department of Corrections

Responsibilities included conducting group therapy and individualized counseling to offenders with drug problems. Conferred with the warden and staff to integrate the Drug Abuse Program with other institutional activities. Member of the Adjustment committee and the Warden's Treatment Team.

Cirriculum Vitae

Stephen Jeffrey Lambert
[redacted]
Lexington, South Carolina 29072
Home: [redacted]
Cell: [redacted]
Email : [redacted]

Education

Ph.D. Chemistry, University of South Carolina, Columbia, South Carolina. 1990.
B.S. Chemistry, *cum laude*, Mars Hill College, Mars Hill, North Carolina, 1983.

Experience

1990 - 2008	Forensic DNA Analyst, South Carolina Law Enforcement Division, Columbia, South Carolina. Analyzed forensic DNA casework, processed crime scenes, and prepared scientific reports. Qualified as a forensic DNA expert witness in over 80 cases in state, federal, and military courts. Served as supervisor and technical leader to the Forensic DNA Casework Analysis Department.
1996 - present	Instructor, University of South Carolina, Department of Chemistry, Columbia, South Carolina. Teach the DNA component of Forensic Analytical Chemistry to upper level and graduate chemistry and biology students.
2007 - present	Consultant, Fox Valley Technical College, Appleton, Wisconsin. Teach evidence collection and forensic DNA analysis to law enforcement personnel who investigate missing children cases.
1984 - 1990	Research / Teaching Assistant, University of South Carolina, Department of Chemistry, Columbia, SC. Taught general chemistry laboratory and recitation. Taught Medicinal Biochemistry laboratory to first year medical students. Performed research pursuant to doctorate degree in chemistry.
1983-1984	High School Teacher, Buncombe County Schools, Asheville, North Carolina. Taught Physical Science, General Biology, and Advanced Placement Physics.

AFFIANT (8) 05-CP-18-1368

Awards and Honors

Member / Invited Guest – Scientific Working Group on DNA Analysis, Federal Bureau of Investigation, Quantico, VA.1999-2008.
Bouknight Teaching Award, 1987 - University of South Carolina
Taber Fellowship, 1984 - University of South Carolina

Additional Training and Symposia

NIJ Grantee's Workshop, Crystal City, VA, July, 2007
Sixth Annual Advanced DNA Workshop, Captiva, FL, May 2007
American Academy of Forensic Science Meeting, Seattle, WA, February, 2006
16th International Symposium on Human Identification, Grapevine, Texas, 2005
FBI Crime Laboratory Development Symposium, "Preparing Future Leaders", Ann Arbor, MI, 2005
ISO 17025 Auditor Training, SLED, 2005
Workshop "Courtroom Statistics", Dr. Martin Tracey instructor, Duck Key, FL, 2004
Third Annual Advanced DNA Technology Workshop, Duck Key, FL, 2004
14th International Symposium on Human Identification, Phoenix, AZ, 2003
First Annual Advanced DNA Technology Workshop, Duck Key, FL, 2002
DNA Auditor Training, Marshall University, Huntington, WV, May 2002
American Academy of Forensic Science Meeting, Seattle, WA, 2001
Forensic DNA Statistics - Chemistry 729- George Carmody, instructor -USC 2000
DNA 2000 Florida DNA Training Session V-(Miami, Florida 2000)
MAAFS DNA Auditor Training Workshop, FBI Academy, Quantico, Virginia, 1999
Advanced AmpFISTR and ABI Prism 310 Genetic Analyzer Training, Perkin-Elmer, Foster City, California, 1999
STR DNA Analysis- FBI Training) Nashville, TN August, 1998FBI Short Tandem Repeat Training, Dr. Bruce Budowle, FBI, Nashville, Tennessee, 1998
Presenting DNA Statistics in Court, Dr. Bruce Weir and Dr. George Carmody, Scottsdale, Arizona, 1997
8th International Symposium on Human Identification, Scottsdale, AZ, 1997
DNA Typing With STRs Workshop, Promega Corporation, Madison, Wisconsin, 1997
6th International Symposium on Human Identification, Scottsdale, AZ, 1995
Advanced PCR Applications: Florida DNA Training Session III, Orlando, Florida, 1993
Advanced DNA Typing Methods - Forensic Science Research and Training Center (FSRTC), FBI Academy, Quantico, VA (November, 1992)
Visiting Scientist – Forensic Science Research and Training Center (FSRTC), FBI Academy, Quantico, VA (July-September, 1990)
DNA Typing Methods – Forensic Science Research and Training Center (FSRTC), FBI Academy, Quantico, VA (Coursework and Laboratory) June 1990
Basic Police Officer Training, South Carolina Criminal Justice Academy, Columbia, South Carolina, 1990

Presentations and Publications

Invited faculty – "Prosecuting Sexual Assaults and Related Violent Crimes" – National District Attorney's Association, Washington, DC, December, 2009

Invited faculty – "Prosecuting Homicide Cases" – National District Attorney's Assoc., San Francisco, CA November, 2009

Faculty – "Forensic DNA Analysis", Specialized Investigative Techniques in Child Abduction Cases (SITCAC), Department of Justice – Amber Alert, Salt Lake City, UT, October, 2009

Faculty - "Forensic DNA Analysis", SITCAC, DOJ- Amber Alert, Seattle, WA, August, 2009

Faculty - "Forensic DNA Analysis", SITCAC, DOJ- Amber Alert, San Diego, CA July, 2009

Faculty - "Forensic DNA Analysis", SITCAC, DOJ- Amber Alert, Nashville, TN, June, 2009

Invited faculty – "Trial Advocacy II" – National Advocacy Center, Columbia, SC, June, 2009

Invited faculty – "Forensic DNA Analysis" – National Advocacy Center, Columbia, SC, May, 2009

Faculty - "Forensic DNA Analysis", SITCAC, DOJ- Amber Alert, Jersey City, NJ March, 2009

Faculty - "Forensic DNA Analysis", SITCAC, DOJ- Amber Alert, Albuquerque, NM, November, 2009

Faculty - "Forensic DNA Analysis", SITCAC, DOJ- Amber Alert, San Francisco, CA August, 2008

Faculty - "Forensic DNA Analysis", SITCAC, DOJ- Amber Alert, Seattle, WA, June, 2008

Invited faculty – "Forensic DNA Analysis", American Prosecutor's Research Institute, Denver, CO, March, 2008

Invited faculty – "The Future of Forensic DNA" - National District Attorney's Assoc., New Orleans, LA, October, 2007

Invited speaker – "SC v. Billy Wayne Cope", Human Identity University - Applied Biosystems - Atlanta, GA, August, 2007

Invited speaker - "SC v. Billy Wayne Cope", Human Identity University Applied Biosystems - Austin, TX, June, 2007

Invited faculty - Forensic DNA Analysis", National District Attorneys Assoc., Orlando, FL, June, 2007

Invited speaker - Forensic DNA Analysis", SC Bar Convention - Charleston, SC 2006

Invited faculty - Forensic DNA Analysis", National District Attorneys Assoc., Charleston, SC 2005

Invited faculty – "Forensic DNA Analysis", American Prosecutor's Research Inst., Columbia, SC 2005

Invited speaker – "Prosecuting Sexual Assault Cases" American Prosecutor's Research Inst., San Antonio, TX 2004

Invited Faculty: DNA: Witness to the Truth Training Seminar, American Prosecutors Research Institute (APRI), Columbia, SC. June 4-8, 2001

Invited Faculty: "Forensic DNA Analysis", Career Prosecutor Course, National College of District Attorneys, Charleston, SC. July, 2000

Invited faculty - "Forensic DNA Analysis", National District Attorney's Assoc. Advocacy Center, Columbia, SC 1998

Invited faculty: Trial Advocacy II, National District Attorney Advocacy Center, Columbia, SC. October, 1998 – 2008

Lambert, S.J., et al., Proceedings of the American Academy of Forensic Science, (1996) Vol. II, B59

I.W. Jeffcoat, et al, Proceedings of the American Academy of Forensic Science, (1996) Vol. II, B60

Lambert, S.J. and J.M. Sodetz (1988). Characterization of Functional Domains on the Beta Subunit of C8, Abstracts of the April, 1988 Meeting of SCAS

Brickner, A., S.J. Lambert, and J.M. Sodetz (1985) Evidence that a Single Tyrosine in Human C8 is Essential for Binding to C5b-7, Complement 2, 13.

56381

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CONFIDENTIAL

APPLICANT'S (9)
05.CP.18.1368

002

Evidence Notification Form

General information

Lifecodes' case #: F56381

Submitter's case #: 96-111607

Defendant's name:

☐ ***Return evidence to:***

Agency: Summerville Police Dept

Submitter's name or Designee:

Title: Evidence Room Sgt. Olsen

Street address 1: 300 W 2nd North St.

Street address 2:

City: Summerville State: SC Zip code: 29483

Name: Ron Manchester Signature: R Manch Date: 12-1-03

Please complete this section to instruct the destruction of the evidence.

☐ ***You may destroy the evidence in your possession.***

Name: _____ Signature: _____ Date: _____

LIFECODES CORPORATION
550 West Avenue
Stamford, CT 06902
203-328-9500

003

November 18, 1996

Chief Roy Whitehead
300 West Second North Street
Summerville, SC 29483

Re: Lifecodes Case Number 56381
Agency Reference Number 96-14607

I. Evidence Receipt

The following evidence samples were received on October 11, 1996 by hand from Detective Ronald Manchester in a sealed container:

Accession #	Sample
FI56382-60	1 glass slide from vaginal swab (v) Lily Boyd
FB56383-61	1 swab labeled oral (v) Lillie Boyd frozen in saline
FI56384-62	1 swab labeled vaginal (v) Lillie Boyd frozen in saline
FI56385-63	1 swab labeled rectal (v) Lillie Boyd frozen in saline
FI56386-64	2 swabs labeled Lillie Bell Boyd (v) 96-14607 vaginal
FI56387-65	2 swabs labeled Lillie Bell Boyd (v) 96-14607 rectal
FI56388-66	2 swabs labeled Lillie Bell Boyd (v) 96-14607 oral
FI56389-67	1 swatch of blood labeled Lilly B. Boyd L96-11313/ 96-14607
FI56390-68	1 envelope labeled rt hand finger nail scrapping 96-14607
FI56391-69	1 envelope labeled left hand finger nail scrapping 96-14607

LIFECODES CORPORATION
550 West Avenue
Stamford, CT 06902
203-328-9500

Case Number: 56381 - Continued Date: 11/18/96

The PCR Polymarker results were obtained with an AmpliType™ PCR Amplification and Typing Kit supplied by Perkin Elmer and the typing results reported using the manufacturer's recommendations. The loci examined by the Polymarker analysis include: Low Density Lipoprotein Receptor (LDLR), Glycophorin A (GYPA), Hemoglobin G Gammaglobin (HBGG), D7S8, and Group Specific Component (GC).

IV. Conclusion:

A comparison of the phenotypes obtained by PCR analysis from samples FI56382 and FI56389 indicates that they matched.

A comparison of the phenotypes obtained by PCR analysis from samples FI56384 and FI56386 is indicative of coming from more than one individual which does not exclude FI56389 as a possible contributor.

V. Disposition of Evidence:

The evidence will be repackaged and returned under separate cover to Ron Manchester unless notified about special handling instructions.

The results and conclusions in this report were reviewed by:

Lauren Galbreath, M.S.
Senior Forensic Scientist

Michael L. Baird, Ph.D.
VP Laboratory Operations

LIFECODES CORPORATION
550 West Avenue
Stamford, CT 06902
203-328-9500

-005

August 11, 1997

Chief Roy Whitehead
300 West Second North Street
Summerville, SC 29483

Re: Lifecodes Case Number 56381 ADDITIONAL REPORT
Agency Reference Number 96-14607

I. Evidence Receipt

The following evidence sample was received on June 18, 1997 by Federal Express from Detective Ronald Manchester in a sealed container:

Accession #	Sample
FB62761-70	1 EDTA blood vial from suspect, Exantheras Nunn

II. Summary of Results

The HLA DQA1 and PM results from the male fraction of the vaginal swabs frozen in saline and the vaginal swabs from Lillie Boyd is indicative of a mixture from more than one individual which does not exclude the HLA DQA1 and PM profile from the blood of Lillie Boyd, but does exclude Exantheras Nunn.

III. Results

PCR Results with Polymarker and HLA DQA1

	LDLR	GYPA	HBGG	D7S8	GC	HLADQA1
FB62761	A,B	A	C	A,B	B	1.3/4.1

LIFECODES CORPORATION
550 West Avenue
Stamford, CT 06902
203-328-9500

Case Number: 56381 - Continued Date: 08/11/97

The PCR Polymarker results were obtained with an AmpliType™ PCR Amplification and Typing Kit supplied by Perkin Elmer and the typing results reported using the manufacturer's recommendations. The loci examined by the Polymarker analysis include: Low Density Lipoprotein Receptor (LDLR), Glycophorin A (GYPA), Hemoglobin G Gammaglobin (HBGG), D7S8, and Group Specific Component (GC).

IV. Conclusion:

A comparison of the phenotypes obtained by PCR analysis from samples FI56384 and FI56386 is indicative of coming from more than one individual which does not exclude FI56389 as a possible contributor, but does exclude FB62761 as a contributor.

V. Disposition of Evidence:

The evidence will be repackaged and returned under separate cover to Ron Manchester unless notified about special handling instructions.

The results and conclusions in this report were reviewed by:

Lauren Galbreath, M.S.
Senior Forensic Scientist

Michael L. Baird, Ph.D.
VP Laboratory Operations

LIFECODES CORPORATION
550 West Avenue
Stamford, Connecticut 06902
(203) 328-9500

007

CHAIN OF CUSTODY

THIS DOCUMENT MUST ACCOMPANY A SPECIMEN AT ALL TIMES

Lifecodes Case # 56381
Agency Reference # 96-14607

SAMPLE REGISTRATION

LIFECODES ACCESSION #	REFERENT AGENCY ID	SAMPLE DESCRIPTION	ADDITIONAL PKG. INFO.
FI-56382-60	1	GLASS SLIDE FROM VAGINAL SWAB (V) LILY BOYD	
FI-56383-61	1	SWAB LABELLED ORAL (V) LILLIE BOYD FROZEN IN SALINE	
FI-56384-62	1	SWAB LABELLED VAGINAL (V) LILLIE BOYD FROZEN IN SALINE	
FI-56385-63	1	SWAB LABELLED RECTAL (V) LILLIE BOYD FROZEN IN SALINE	
FI-56386-64	2	SWABS LABELLED LILLIE BELL BOYD (V) 96-14607 VAGINAL	
FI-56387-65	2	SWABS LABELLED LILLIE BELL BOYD (V) 96-14607 RECTAL	
FI-56388-66	2	SWABS LABELLED LILLIE BELL BOYD (V) 96-14607 ORAL	
FI-56389-67	1	SWATCH OF BLOOD LABELLED LILLY B. BOYD L96-11313/ 96-14607	
FI-56390-68	1	ENVELOPE LABELLED RT HAND FINGER NAIL SCAPPING 96-14607	
FI-56391-69	1	ENVELOPE LABELLED LEFT HAND FINGER NAIL SCRAPPING 96-14607	

CLIENT # 1026682 OTHER
CLIENT NAME CHIEF ROY WHITEHEAD/ MAJOR MIKE TURNER
300 WEST SECOND NORTH ST.
SUMMERVILLE SC 29485 803 851-4108 FAX
803-871-2463
CONTACT: ROY WHITEHEAD/ MIKE TURNER/ RON MANCHESTER

CHAIN OF CUSTODY RECORD

METHOD OF DELIVERY In Person
RECEIVED FROM Ronald Manchester TITLE Cpl- Detective
DATE 10-11-96 TIME 10130 AM SIGNATURE
GIVEN TO (Lillie) Boyd TITLE Sh. Res Scientist
DATE 10/17/96 (Assessment) TIME SIGNATURE
GIVEN TO Sgt. Det (Ret) Manchester TITLE SC DSS Security Tech
DATE 1/31/97 TIME SIGNATURE
GIVEN TO TITLE
DATE TIME SIGNATURE
GIVEN TO TITLE
DATE TIME SIGNATURE

SAMPLES/MATERIALS RETURNED TO REFERENT
RECEIVED BY SIGNATURE

FOR EVIDENCE RECEIVED BY MAIL

I hereby certify that I received the specimens listed at Lifecodes facility, and that there is no evidence that the package has been opened.
SIGNATURE DATE 10/11/96 TIME
PACKAGE TAPED (YES/NO) Y TAPE INTACT Y SIGNS OF TAMPERING N

LC093.1

LIFECODES CORPORATION
550 West Avenue
Stamford, Connecticut 06902
(203) 328-9500

008

CHAIN OF CUSTODY

THIS DOCUMENT MUST ACCOMPANY A SPECIMEN AT ALL TIMES

Lifecodes Case # 56381
Agency Reference # 96-14607

SAMPLE REGISTRATION

LIFECODES ACCESSION #	REFERENT AGENCY ID	SAMPLE DESCRIPTION	ADDITIONAL PKG. INFO.
FB-62761-70		1 EDTA blood vial from suspect, Exantheras Nunn	

CLIENT # 1026682 OTHER
CLIENT NAME CHIEF ROY WHITEHEAD/ MAJOR MIKE TURNER
300 WEST SECOND NORTH ST.
SUMMERVILLE SC 29483
803-871-2463
Contact:ROY WHITEHEAD/ MIKE TURNER/ RON MANCHESTER

CHAIN OF CUSTODY RECORD

METHOD OF DELIVERY FEDEX.
RECEIVED FROM R. Manchester TITLE
DATE 6/18/97 TIME SIGNATURE
GIVEN TO J. LASTELLA TITLE SR SCIENTIST
DATE 6/24/97 TIME SIGNATURE J. Lastella
GIVEN TO [illegible] TITLE [illegible]
DATE 7/8/97 TIME SIGNATURE [illegible]
GIVEN TO Det. MAJOR Keeler TITLE SC FBI [illegible]
DATE 7/31/97 TIME SIGNATURE [illegible]
GIVEN TO TITLE
DATE TIME SIGNATURE TITLE

SAMPLES/MATERIALS RETURNED TO REFERENT
RECEIVED BY SIGNATURE

FOR EVIDENCE RECEIVED BY MAIL

I hereby certify that I received the specimens at the Lifecodes facility, and that there is no evidence that the package has been opened.
SIGNATURE J. Lastella DATE 6/24/97 TIME 1:00P
PACKAGE TAPED (YES/NO) Y TAPE INTACT Y SIGNS OF TAMPERING N

LC0981

009

Evidence Notification Form

General information

Lifecodes' case #: F5 6381

Submitter's case #: 96 - 14607

Defendant's name:

☐ ***Return evidence to;***

Agency: Summerville Police Dept

Submitter's name or Designee:

Title: Evidence Room Sgt Olsen

Street address 1: 300 West 2nd North St.

Street address 2:

City: Summerville State: SC Zip code: 29483

Name: Ron Manchester Signature: R Manch Date: 12-1-03

Please complete this section to instruct the destruction of the evidence.

☐ ***You may destroy the evidence in your possession.***

Name: Signature: Date:

4304

Summerville Town Hall
300 W 2nd North St
Summerville SC 29483

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UNITED STATES POSTAGE
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SUMMERVILLE SC 29483

Mahindra Nath Verma
Orchid Cellmark
20271 Goldenrod Lane
Germantown, MD 20876

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LIFECODES CORPORATION
550 West Avenue
Stamford, CT 06902
203-328-6500

-011

EXPERT WITNESS

EMPLOYEE NAME: Michael Baird

BILL TO: CASE NO. 56381

Name: Walter M. Bailey, Jr.

Address: Office of the Solicitor
140 North Main Street, Suite 102
Summerville, SC 29483

Telephone No.: (843) 871-2640

DESCRIPTION	DATE	AMOUNT
testimony at trial @ 1400/day	2/25+2/26	2,800.00
mileage for from airport - 80miles @ 0.31/mile		24.80
bridge tolls		7.00
parking		36.00
own meals -		30.00
		2,897.80

SIGNATURE: Michael T. Baird

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Table 4. Locus-Specific Information.

STR Locus	Chromosomal Location	GenBank® Locus and Locus Definition	Repeat Sequence 5′ - 3′
Amelogenin[a]	Xp22.1-p22.3 and Y	HUMAMEL, Human Y chromosomal gene for amelogenin-like protein	NA
CSF1PO	5q33.3-q34	HUMCSF1PO, Human c-fms proto-oncogene for CSF-1 receptor gene	AGAT[b]
D16S539	16q24-qter	NA	AGAT[b]
D7S820	7q11.21-q22	NA	AGAT[b]
D13S317	13q22-q31	NA	AGAT[b]
F13A01	6p24.3-p25.1	HUMF13A01, Human coagulation factor XIII a subunit gene	AAAG[b]
F13B	1q31-q32.1	HUMBFXIII, Human factor XIII b subunit gene	AAAT[b]
FESFPS	15q25-qter	HUMFESFPS, Human c-fes/fps proto-oncogene	AAAT[b]
HPRTB	Xq26	HUMHPRTB, Human hypoxanthine phosphoribosyl-transferase gene	AGAT[b]
LPL	8p22	HUMLIPOL, Human lipoprotein lipase gene	AAAT[b]
TH01	11p15.5	HUMTH01, Human tyrosine hydroxylase gene	AATG[b]
TPOX	2p25.1-pter	HUMTPOX, Human thyroid peroxidase gene	AATG[b]
vWA (formerly vWF)	12p12-pter	HUMVWFA31, Human von Willebrand factor gene	AGAT[b]

NA = Not applicable.

[a]Amelogenin is not an STR, but displays a 212 base X-specific band and a 218 base Y-specific band. K562 DNA (female) displays only the 212 base X-specific band.

[b]Repeat sequences represent all four possible permutations (e.g., AGAT is used for AGAT, GATA, ATAG or TAGA). The first alphabetic representation of the repeat (e.g., AGAT) is used according to the precedent of Edwards *et al.* (2). The recently published article "DNA Guidelines: Further Report of the DNA Commission of the ISFH Regarding the Use of Short Tandem Repeat Systems" (25) describes different rules for STR allele nomenclature. Allele designations for all listed loci are identical using both methods except for the locus F13B. In this case, alleles are one repeat unit larger when using the method described by the ISFH. For this locus, the community will have to decide whether to follow the new nomenclature or maintain the Edwards method to avoid confusion. The DNA Commission of the ISFH states, "If a repeat designation of a commonly used STR system does not follow these guidelines, the established nomenclature for the sequence can continue to be used to avoid new confusion".

Table 6. Additional Locus-Specific Information.

STR Locus	Allelic Ladder Size Range[a] (bases)	STR Ladder Alleles (# of repeats)	Other Known Alleles[b] (# of repeats)	K562 DNA Allele Sizes (# of repeats)	Comments (see below)
Amelogenin[c]	212-218	NA	None	212,212	1,2
CSF1PO	295-327	7,8,9,10,11, 12,13,14,15	6	10,9	1
D16S539	284-304	5,8,9[d],10,11,12, 13,14,15	None	12,11	1
D7S820	215-247	6,7,8,9,10,11,12,13, 14	None	11,9	1
D13S317	165-197	7,8,9,10,11,12,13, 14,15	None	8,8	1
F13A01	283-331	4,5,6,7,8,9,11, 12,13,14,15,16	3.2,10[e]	5,4[f]	1,3
F13B	169-189	6,7,8,9,10,11	12	10,10	1
FESFPS	222-250	7,8,9,10,11, 12,13,14	None	12,10	1
HPRTB	259-303	6,7,8[d],9,10,11,12, 13,14,15,16,17	None	13,13	1
LPL	105-133	7,9,10,11,12,13,14	8	12,10	1
TH01	179-203	5,6,7,8,9,10,11	9.3[g]	9.3,9.3	1,4
TPOX	224-252	6,7,8,9,10, 11,12,13	None	9,8	1
vWA (formerly vWF)	159-187	13,14,15,16, 17,18,19,20	11,21	16,16	1

NA = Not applicable.

[a]Lengths of each allele in the allelic ladders have been confirmed by sequence analyses.

[b]Alleles that represent <0.2% of the population may not be listed in this table.

[c]Amelogenin is not an STR, but displays a 212 base X-specific band and a 218 base Y-specific band. K562 DNA (female) displays only the 212 base X-specific band.

[d]Alleles in bold are present in greater amounts than other alleles. This simplifies interpretation.

[e]Allele 10 (307 bases) is not included because it is rare and its exclusion creates a gap that simplifies interpretation of the allelic ladder (26,27).

[f]F13A01 allele 5 appears more intense than allele 4 in the K562 control sample. The K562 strain is known to contain an unusual number of chromosomes, and some are represented more than twice per cell. It is hypothesized that in this strain the allele 5 version of chromosome 6 is present twice, while the allele 4 version of chromosome 6 is present only once.

[g]TH01 allelic ladder contains TH01 alleles 5 through 11. Allele 9.3 is provided free with the system, in pure and concentrated form, to allow the customer additional options in discriminating alleles 10 and 9.3. See Comment 4, below Table 6.

Table 6. Multiplex System Information.

GenePrint™ STR Multiplex Cat.#	Component Loci	Allelic Ladder Size Range (bases)	STR Ladder Alleles (number of repeats)	Other Known Alleles[a]	K562 DNA Allele Sizes	Comments (see below)
"CTT triplex"[c,d] DC6000 (DC6001)	CSF1PO	295-327	7,8,9,10,11, 12,13,14,15	6	10,9	1,5
	TPOX	224-252	6,7,8,9,10, 11,12,13	None	9,8	1,5
	TH01	179-203	5,6,7,8,9, 10,11	9.3[b]	9.3,9.3	1,4,5
"FFv triplex" DC6030 (DC6031)	F13A01	283-331	4,5,6,7,8, 9,11,12,13, 14,15,16	3.2,10	5[c],4	1,3,5
	FESFPS	222-250	7,8,9,10,11, 12,13,14	None	12,10	1,5
	vWA	139-167	13,14,15,16, 17,18,19,20	11,21	16,16	1,5
"SilverSTR™ III triplex" DC6450 (DC6451)	D16S539	284-304	5,8,9,10,11, 12,13,14,15	None	12,11	1,5
	D7S820	215-247	6,7,8,9,10,11, 12,13,14	None	11,9	1,5
	D13S317	165-197	7,8,9,10,11, 12,13,14,15	None	8,8	1,5

[a]Alleles that represent <0.2% of the population may not be listed in this table.

[b]TH01 allelic ladder contains TH01 alleles 5 through 11. Allele 9.3 is provided in pure and concentrated form free with the kit to provide the customer with additional options in discriminating alleles 10 and 9.3.

[c]F13A01 allele 5 appears more intense than allele 4 in the K562 control sample. The K562 strain is known to contain an unusual number of chromosomes, and some are represented more than twice per cell. It is hypothesized that in this strain the allele 5 version of chromosome 6 is present twice while the allele 4 version of chromosome 6 is present only once.

[d]The *GenePrint*™ Sex Identification System Amelogenin Primers may be combined with the CTT Primers to allow simultaneous amplification of all four loci, as described in Section V.B. The results provide information regarding the gender of the individual who contributed the DNA sample, as well as the STR information. Ordering information for the Amelogenin System may be found in Section II.B.

Comments on Tables 5 and 6

1. PCR amplification sometimes generates artifacts that appear as faint bands below the alleles. These products probably result from a process known as slippage, commonly observed in PCR amplification of regions that contain tandem repeats of short sequences (20,21,24). This characteristic is most pronounced with the vWA System.
2. A strong extra band may be observed below the 212bp Amelogenin allele when more than 25ng of template DNA is amplified.
3. Locus F13A01 has a common allele 3.2. It contains 4 copies of the repeat but has a 2 base deletion in the region flanking the repeat (26,27).
4. Locus TH01 has a common 9.3 allele (9). A one-base deletion is present in the allele that contains 10 repeats. Note that reference 9 refers to this allele as 10-1 rather than 9.3. This allele was renamed 9.3 at the ISFH Conference in Venice, Italy, in October of 1993.
5. A background haze of silver stain is sometimes seen in the region in and above the Allelic Ladder.

ITEM	LDLR	GYPA	HBGG	D7S8	GC	HLADQA1	CSF1PO	TPOX	THO1
LILLY BELL BOYD BLOOD FI56389	A, B	A, B	A, C	A	B	2, 4.2 / 4.3			
KENNETH SIMMONS BLOOD FB68555-60	B	A, B	A, C	AB	AC	1.1, 1.2	10, 11	10, 11	7, 8
VAGINAL SWAB IN SALINE FROM MUSC - MALE FRACTION FI56384	A, B	A, B	A, C	A, (B)	B, (AC)	1.1, 2, * 4.2 / 4.3	10, 11	10, 11	7, 8
VAGINAL SWAB IN SALINE FROM MUSC - FEMALE FRACTION FI56384F	A, B	A, B	A, C	A	B	2 4.2 , 4.3			
2 VAGINAL SWABS FROM SLED - MALE FRACTION FI56386	A, B	A, B	A, C	A, (B)	B, (AC)	1.1, 2,* 4.2 / 4.3	10, 11	10, 11	7, 8
2 VAGINAL SWABS FROM SLED - FEMALE FRACTION FI56386F	A, B	A, B	A, C	A	B	2, 4.2 / 4.3			

* indicates that a 1.2 allele may be present

( ) indicates allele of lesser intensity

SUMMERVILLE POLICE DEPARTMENT • 300 West 2nd North Street • Summerville, South Carolina 29483 • 803-851-4100

Roy B. Whitehead
Chief of Police

January 23, 1997

Lifecodes Corporation
550 West Avenue
Stamford, CT 06902

Attention: Lauren Galbreath

Reference: Summerville Police Department Case No. 96-14607
Lifecodes Case No. 56381

Dear Ms. Galbreath:

In reference to the September 1, 1996 murder of Lily Bell Boyd, please examine the following submittals for any possible DNA that could be used to identify the suspect(s) in connection with this offense. A list of the evidence is as follows:

1. One glass slide from vaginal swab (V) Lily Boyd.
2. One swab labeled Oral (V) Lillie Boyd frozen in saline.
3. One swab labeled Vaginal (V) Lillie Boyd frozen in saline.
4. One swab labeled Rectal (V) Lillie Boyd frozen in saline.
5. Two swabs labeled Lillie Bell Boyd (V) 96-14607 vaginal.
6. Two swabs labeled Lillie Bell Boyd (V) 96-14607 rectal.
7. Two swabs labeled Lillie Bell Boyd (V) 96-14607 oral.
8. One swatch of blood labeled Lilly B. Boyd L96-11313/96-14607.
9. One envelope labeled RT Hand Finger Nail Scrapping 96-14607.
10. One envelope labeled Left Hand Finger Nail Scrapping 96-14607.

Sincerely,

Roy B. Whitehead

Roy B. Whitehead, Chief

Service With Integrity

4311

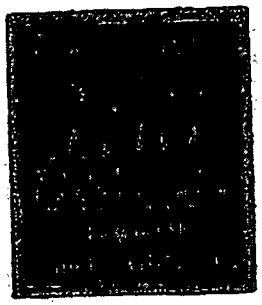
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SUMMERVILLE POLICE DEPARTMENT
300 West 2nd North Street
Summerville, South Carolina 29483

The Flavorlove
In the Pines

Lifecodes Corporation
550 West Avenue
Stamford, CT 06902

Lauren



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LIFECODES CORPORATION
550 West Avenue
Stamford, CT 06902
203-328-9500

018

PRELIMINARY REPORT

LIFECODES CASE NUMBER: F-56381
AGENCY REFERENCE NUMBER: 96-14607

Date: October 25, 1996

The following evidence has been received for DNA forensic analysis.

ITEM LIFECODES Accession No.	Description
FI56382-60	1 Glass slide labelled vaginal swab of Lillie Boyd
FI56383-61	1 Swab labelled oral, Lillie Boyd frozen in saline
FI56384-62	1 Swab labelled vaginal, Lillie Boyd frozen in saline
FI56385-63	1 swab labelled rectal, Lillie Boyd frozen in saline
FI56386-64	2 Swabs labelled Lillie Bell Boyd, vaginal
FI56387-65	2 Swabs labelled Lillie Bell Boyd, rectal
FI56388-66	2 Swabs labelled Lillie Bell Boyd, oral
FI56389-67	1 Swatch of Blood labelled Lilly B. Boyd
FI56390-68	1 Envelope labelled Rt hand finger nail scrapping
FI56391-69	1 Envelope labelled Lt hand finger nail scrapping

Preliminary Conclusion:

Data suggests that sperm was visualized in samples FI56382, FI56384, and FI56386. A PCR Polymarker and DQA1 DNA amplitype result was obtained from samples FI56384 and FI56386 which is indicative of coming from more than one person and does not exclude sample FI56389 as a possible contributor.

The PCR Polymarker and DQA1 amplitype result from sample FI56382 matched the amplitype result from sample FI56389.

Please note, the final conclusion may vary from the conclusions drawn thus far. The results given in the final report will supersede all information given in this report.

A complete, formal report will follow at the conclusion of all testing.

Sr. Forensic Scientist

LIFECODES CORPORATION
550 West Avenue
Stamford, CT 06902
203-328-9500

November 18, 1996

Chief Roy Whitehead
300 West Second North Street
Summerville, SC 29483

Re: Lifecodes Case Number 56381
Agency Reference Number 96-14607

I. Evidence Receipt

The following evidence samples were received on October 11, 1996 by hand from Detective Ronald Manchester in a sealed container:

Accession #	Sample
FI56382-60	1 glass slide from vaginal swab (v) Lily Boyd
FB56383-61	1 swab labeled oral (v) Lillie Boyd frozen in saline
FI56384-62	1 swab labeled vaginal (v) Lillie Boyd frozen in saline
FI56385-63	1 swab labeled rectal (v) Lillie Boyd frozen in saline
FI56386-64	2 swabs labeled Lillie Bell Boyd (v) 96-14607 vaginal
FI56387-65	2 swabs labeled Lillie Bell Boyd (v) 96-14607 rectal
FI56388-66	2 swabs labeled Lillie Bell Boyd (v) 96-14607 oral
FI56389-67	1 swatch of blood labeled Lilly B. Boyd L96-11313/ 96-14607
FI56390-68	1 envelope labeled rt hand finger nail scrapping 96-14607
FI56391-69	1 envelope labeled left hand finger nail scrapping 96-14607

LIFECODES CORPORATION
550 West Avenue
Stamford, CT 06902
203-328-9500

·020

Case Number: 56381 - Continued

Date: 11/18/96

II. Summary of Results

The HLA DQA1 and PM results of the glass slide from the vaginal swabs from Lillie Boyd matched the HLA DQA1 and PM results from the blood of Lillie Boyd.

The HLA DQA1 and PM results from the male fraction of the vaginal swabs frozen in saline and the vaginal swabs from Lillie Boyd is indicative of a mixture from more than one individual which does not exclude the HLA DQA1 and PM profile from the blood of Lillie Boyd.

III. Results

PCR Results with Polymarker and HLA DQA1

	LDLR	GYPA	HBGG	D7S8	GC	HLADQA1
FI56382	A,B	A,B	A,C	A	B	2, 4.2/4.3
FI56384	A,B	A,B	A,C	A,(B)	B,(AC)	1.1,2,* 4.2/4.3
FI56384F	A,B	A,B	A,C	A	B	2 4.2,4.3
FI56386	A,B	A,B	A,C	A,(B)	B,(AC)	1.1,2,* 4.2/4.3
FI56386F	A,B	A,B	A,C	A	B	2, 4.2/4.3
FI56389	A,B	A,B	A,C	A	B	2, 4.2/4.3

* indicates that a 1.2 allele may be present

() indicates allele of lesser intensity

F indicates female fraction

LIFECODES CORPORATION
550 West Avenue
Stamford, CT 06902
203-328-9500

-021

Case Number: 56381 - Continued

Date: 11/18/96

The PCR Polymarker results were obtained with an AmpliType™ PCR Amplification and Typing Kit supplied by Perkin Elmer and the typing results reported using the manufacturer's recommendations. The loci examined by the Polymarker analysis include: Low Density Lipoprotein Receptor (LDLR), Glycophorin A (GYPA), Hemoglobin G Gammaglobin (HBGG), D7S8, and Group Specific Component (GC).

IV. Conclusion:

A comparison of the phenotypes obtained by PCR analysis from samples FI56382 and FI56389 indicates that they matched.

A comparison of the phenotypes obtained by PCR analysis from samples FI56384 and FI56386 is indicative of coming from more than one individual which does not exclude FI56389 as a possible contributor.

V. Disposition of Evidence:

The evidence will be repackaged and returned under separate cover to Ron Manchester unless notified about special handling instructions.

The results and conclusions in this report were reviewed by:

Lauren Galbreath, M.S.
Senior Forensic Scientist

Michael L. Baird, Ph.D.
VP Laboratory Operations

LIFECODES CORPORATION
550 West Avenue
Stamford, CT 06902
203-328-9500

022

August 11, 1997

Chief Roy Whitehead
300 West Second North Street
Summerville, SC 29483

Re: Lifecodes Case Number 56381 ADDITIONAL REPORT
Agency Reference Number 96-14607

I. Evidence Receipt

The following evidence sample was received on June 18, 1997 by Federal Express from Detective Ronald Manchester in a sealed container:

Accession #	Sample
FB62761-70	1 EDTA blood vial from suspect, Exantheras Nunn

II. Summary of Results

The HLA DQA1 and PM results from the male fraction of the vaginal swabs frozen in saline and the vaginal swabs from Lillie Boyd is indicative of a mixture from more than one individual which does not exclude the HLA DQA1 and PM profile from the blood of Lillie Boyd, but does exclude Exantheras Nunn.

III. Results

PCR Results with Polymarker and HLA DQA1

	LDLR	GYPA	HBGG	D7S8	GC	HLADQA1
FB62761	A,B	A	C	A,B	B	1.3/4.1

LIFECODES CORPORATION
550 West Avenue
Stamford, CT 06902
203-328-9500

023

Case Number: 56381 - Continued

Date: 08/11/97

The PCR Polymarker results were obtained with an AmpliType™ PCR Amplification and Typing Kit supplied by Perkin Elmer and the typing results reported using the manufacturer's recommendations. The loci examined by the Polymarker analysis include: Low Density Lipoprotein Receptor (LDLR), Glycophorin A (GYPA), Hemoglobin G Gammaglobin (HBGG), D7S8, and Group Specific Component (GC).

IV. Conclusion:

A comparison of the phenotypes obtained by PCR analysis from samples FI56384 and FI56386 is indicative of coming from more than one individual which does not exclude FI56389 as a possible contributor, but does exclude FB62761 as a contributor.

V. Disposition of Evidence:

The evidence will be repackaged and returned under separate cover to Ron Manchester unless notified about special handling instructions.

The results and conclusions in this report were reviewed by:

Lauren Galbreath, M.S.
Senior Forensic Scientist

Michael L. Baird, Ph.D.
VP Laboratory Operations

LIFECODES CORPORATION
550 West Avenue
Stamford, CT 06902
203-328-9500

024

November 18, 1996

Chief Roy Whitehead
300 West Second North Street
Summerville, SC 29483

Re: Lifecodes Case Number 56821
Agency Reference Number 96-14607 REF056381

I. Evidence Receipt

The following evidence samples were received on October 28, 1996 from Chief Roy Whitehead via Federal Express in a sealed container:

Accession #	Sample
FB56822-60	1 EDTA blood vial from suspect Terry M. Edge
FB56823-61	1 EDTA blood vial from suspect Larry Duberry
FB56824-62	1 EDTA blood vial from suspect Anthony Dinckney
FB56825-63	1 EDTA blood vial from suspect David Green
FB56826-64	1 EDTA and 1 ACD blood vial from suspect Charles Hawes
FB56827-65	1 EDTA blood vial from Alfanzo Varner
FB56828-66	1 EDTA and 1 ACD vial of blood from suspect Felix Ross

II. Summary of Results

The HLA DQA1 and PM results from the blood of Terry Edge, Larry Duberry, Anthony Dinckney, David Green, Charles Hawes, Alfanzo Varner, and Felix Rose can all be excluded as possible contributors to the mixture of DNAs found in the evidentiary samples from Lifecodes Case Number 56381, the vaginal swabs from Lillie Boyd.

LIFECODES CORPORATION
550 West Avenue
Stamford, CT 06902
203-328-9500

025

Case Number: 56821 - Continued

Date: 11/18/96

III. Results

PCR Results with Polymarker and HLA DQA1

	LDLR	GYPA	HBGG	D7S8	GC	HLADQA1
FB56822	A,B	B	A,C	A	A,B	1.1,1.2
FI56823	B	A	A,C	A,B	B	1.1,2
FB56824	A,B	A	A,C	A,B	C	1.1,4.1
FB56825	A,B	B	A,B	A,B	B	1.2,2
FB56826	A,B	A,B	B,C	A	B	1.2, 4.2/4.3
FB56827	A,B	B	A,B	A,B	B	1.2,4.1
FB56828	B	B	A,C	A,B	B,C	1.1,1.2

The PCR Polymarker results were obtained with an AmpliType™ PCR Amplification and Typing Kit supplied by Perkin Elmer and the typing results reported using the manufacturer's recommendations. The Caucasian allele frequency was supplied by the manufacturer. The loci examined by the Polymarker analysis include: Low Density Lipoprotein Receptor (LDLR), Glycophorin A (GYPA), Hemoglobin G Gammaglobin (HBGG), D7S8, and Group Specific Component (GC).

LIFECODES CORPORATION
550 West Avenue
Stamford, CT 06902
203-328-9500

Case Number: 56821 - Continued

Date: 11/18/96

IV. Conclusion:

A comparison of the phenotypes obtained by PCR analysis from blood samples FB56822, FB56823, FB56824, FB56825, FB56826, FB56827, and FB56828 with evidentiary samples FI56384 and FI56386 (from Lifecodes Case Number 56821), excludes the individuals from whom the known blood samples originated, as contributing to the evidentiary sample.

V. Disposition of Evidence:

The evidence will be repackaged and returned under separate cover to Ron Manchester by UPS unless special handling is required.

The results and conclusions in this report were reviewed by:

Lauren Galbreath, M.S.
Senior Forensic Scientist

Michael L. Baird, Ph.D.
VP Laboratory Operations

LIFECODES CORPORATION
550 West Avenue
Stamford, CT 06902
203-328-9500

027

February 18, 1997

Chief Roy B. Whitehead
300 West Second North Street
Summerville, SC 29483

Re: Lifecodes Case Number 58665
Agency Reference Number 96-14607

I. Evidence Receipt

The following evidence samples were received on January 24, 1997 by hand from Chief Roy B. Whitehead in a sealed container via Federal Express:

Accession #	Sample
FB58666-60	1 EDTA blood vial from suspect, Charles Ferguson
FB58667-61	1 EDTA blood vial from suspect, Frank Duberry
FB58668-62	1 EDTA blood vial from suspect, Desmond Johnson
FI58669-63	1 envelope with bloodstain swatch from Darryl Brown

II. Summary of Results

The HLA DQA1 and PM results from the male fraction of the vaginal swabs frozen in saline and the vaginal swabs from Lillie Boyd is indicative of a mixture from more than one individual which excludes the HLA DQA1 and PM profiles from the blood of Charles Ferguson, Frank Duberry, Desmond Johnson, and Darryl Brown.

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650 West Avenue
Stamford, CT 06902
203-328-9500

-028

Case Number: 58665 - Continued

Date: 02/18/97

III. Results

PCR Results with Polymarker and HLA DQA1

	LDLR	GYPA	HBGG	D7S8	GC	HLADQA1
FB58666	B	A,B	B	A	B	1.2,2
FB58667	B	B	B,C	B	B,C	1.1,1.2
FB58668	A,B	A,B	A,B	A	B,C	1.2,3
FI58669	B	A,B	A	A	B	1.1,1.1

The PCR Polymarker results were obtained with an AmpliType™ PCR Amplification and Typing Kit supplied by Perkin Elmer and the typing results reported using the manufacturer's recommendations. The loci examined by the Polymarker analysis include: Low Density Lipoprotein Receptor (LDLR), Glycophorin A (GYPA), Hemoglobin G Gammaglobin (HBGG), D7S8, and Group Specific Component (GC).

IV. Conclusion:

A comparison of the phenotypes obtained by PCR analysis from samples FI56384 and FI56386 excludes FB58666, FB58667, FB58668 and FI58669 as possible contributors.

V. Disposition of Evidence:

The evidence will be repackaged and returned under separate cover to Ron Manchester unless notified about special handling instructions.

LIFECODES CORPORATION
550 West Avenue
Stamford, CT 06902
203-328-9500

029

Case Number: 58665 - Continued

Date: 02/18/97

The results and conclusions in this report were reviewed by:

Lauren Galbreath, M.S.
Senior Forensic Scientist

Michael L. Baird, Ph.D.
VP Laboratory Operations

LIFECODES CORPORATION
550 West Avenue
Stamford, CT 06902
203-328-9500

-030

May 6, 1997

Chief Roy Whitehead
300 West Second North Street
Summerville, SC 29483

Lifecodes Case Number: 59711

I. Sample Receipt

The following samples were received from the Summerville Police Department on March 11, 1997 in a sealed container via Federal Express:

Accession #	Sample
FB59712-60	1 EDTA blood vial from James Primius
FB59713-61	1 EDTA blood vial from James Evarn
FB59714-62	1 EDTA blood vial from Dewayne Duggins
FB59715-63	1 EDTA blood vial from Ronald Suggs
FB59716-64	1 EDTA blood vial from Adam Swinton
FI59717-65	1 envelope with 2 swabs taken from a steel Pipe with blood from George A. Guest

II. Summary of Results

As reported previously in Lifecodes Case Number 56381, PCR DNA testing of the vaginal swab from Lillie Boyd is indicative of a mixture from more than one individual which does not exclude Lillie Boyd. Excluded as contributing to this mixture are: James Primius, James Evarn, Dewayne Duggins, Ronald Suggs, Adam Swinton, and George A. Guest.

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Stamford, CT 06902
203-328-9500

031

Case Number: 59711 - Continued

May 6, 1997

III. Results

A. PCR Analysis

Genotypes Obtained from Samples

LOCUS	HLA DQA1	LDLR	GYPA	HBGG	D7S8	GC
SAMPLE #						
FB59712	4.1,4.2/4.3	B	A,B	C	A	B
FB59713	3,4.2/4.3	B	A	A	A,B	B
FB59714	1.2,1.2	A,B	A,B	A,C	A,B	A,B
FB59715	2,4.1	A,B	A,B	A,C	B	B
FB59716	1.1,1.1	B	A,B	A,B	A,B	B
FI59717	NR	NR	NR	NR	NR	A,B

NR = No Result

Testing was performed using an AmpliType™ DQA1 and PM kit manufactured by Perkin-Elmer. Genotypes represent the interpretation of typing results obtained on test strips processed according to the protocol and recommendations supplied by the manufacturer.

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83

032

Case Number: 59711 - Continued

May 6, 1997

IV. Conclusion

The DNA Profiles obtained by PCR analysis from samples FI56384, FI56386 is indicative of a mixture from more than one individual which does not exclude FI56389 as a contributor but does exclude as contributors FB59712, FB59713, FB59714, FB59715, FB59716, and FI59717.

The DNA sample from sample FI59717 produced results with only one genetic system. Since an AC genotype was detected in the male fraction of the vaginal swab at this locus, the lack of the C allele in sample FI59717 is the reason for declaring the exclusion of this sample.

V. Disposition of Samples

The samples submitted for analysis with this case will be returned to the Summerville Police Department via UPS unless notified about special handling instructions.

The results and conclusions in this report were reviewed by:

Lauren Galbreath, M.S.
Sr. Forensic Scientist

Michael L. Baird, Ph.D.
VP Laboratory Operation

LIFECODES CORPORATION
650 West Avenue
Stamford, CT 06902
203-328-9500

033

June 17, 1997

Chief Roy Whitehead
300 West Second North Street
Summerville, SC 29483

Re: Lifecodes Case Number 61583
Continuation of Lifecodes Case Number 56381
Agency Reference Number 96-14607

I. Evidence Receipt

The following evidence samples were received on October 11, 1996 by hand from Detective Ronald Manchester in a sealed container:

Accession #	Sample
FI56382-60	1 glass slide from vaginal swab (v) Lily Boyd
FB56383-61	1 swab labeled oral (v) Lillie Boyd frozen in saline
FI56384-62	1 swab labeled vaginal (v) Lillie Boyd frozen in saline
FI56385-63	1 swab labeled rectal (v) Lillie Boyd frozen in saline
FI56386-64	2 swabs labeled Lillie Bell Boyd (v) 96-14607 vaginal
FI56387-65	2 swabs labeled Lillie Bell Boyd (v) 96-14607 rectal
FI56388-66	2 swabs labeled Lillie Bell Boyd (v) 96-14607 oral
FI56389-67	1 swatch of blood labeled Lilly B. Boyd L96-11313/ 96-14607
FI56390-68	1 envelope labeled rt hand finger nail scrapping 96-14607
FI56391-69	1 envelope labeled left hand finger nail scrapping 96-14607

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203-328-9500

034

Case Number: 61583 - Continued Date: 06/17/97

The following evidence samples were received on May 6, 1997 from Roy B. Whithead, Chief, Summerville Police Department, in a sealed container via Federal Express:

Accession #	Sample
FB61584-60	1 EDTA blood vial from Melvin Fults
FB61585-61	1 EDTA blood vial from Wilson Mazyck

II. Summary of Results

The HLA DQA1 and PM results from the male fraction of the vaginal swabs frozen in saline and the vaginal swabs from Lillie Boyd is indicative of a mixture from more than one individual which does not exclude the HLA DQA1 and PM profile from the blood of Lillie Boyd, but does exclude the HLA DQA1 and PM profile of Melvin Fults and Wilson Mazyck.

III. Results

PCR Results with Polymarker and HLA DQA1

	LDLR	GYPA	HBGG	D7S8	GC	HLADQA1
FI56382	A,B	A,B	A,C	A	B	2, 4.2/4.3
FI56384	A,B	A,B	A,C	A,(B)	B,(AC)	1.1,2,* 4.2/4.3
FI56384F	A,B	A,B	A,C	A	B	2 4.2,4.3
FI56386	A,B	A,B	A,C	A,(B)	B,(AC)	1.1,2,* 4.2/4.3
FI56386F	A,B	A,B	A,C	A	B	2, 4.2/4.3
FI56389	A,B	A,B	A,C	A	B	2, 4.2/4.3
FB61584	B	B	C	A,B	B	4.1/4.1
FB61585	A,B	A,B	A,C	A	B	2, 4.2/4.3

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035

Case Number: 61583 - Continued

Date: 06/17/97

* indicates that a 1.2 allele may be present

() indicates allele of lesser intensity

F indicates female fraction

The PCR Polymarker results were obtained with an AmpliType™ PCR Amplification and Typing Kit supplied by Perkin Elmer and the typing results reported using the manufacturer's recommendations. The loci examined by the Polymarker analysis include: Low Density Lipoprotein Receptor (LDLR), Glycophorin A (GYPA), Hemoglobin G Gammaglobin (HBGG), D7S8, and Group Specific Component (GC).

IV. Conclusion:

A comparison of the phenotypes obtained by PCR analysis from samples FI56384 and FI56386 is indicative of coming from more than one individual which excludes samples FB61584 and FB61585 as contributors.

V. Disposition of Evidence:

The evidence will be repackaged and returned under separate cover to Ron Manchester unless notified about special handling instructions.

The results and conclusions in this report were reviewed by:

Lauren Galbreath, M.S.
Senior Forensic Scientist

Michael L. Baird, Ph.D.
VP Laboratory Operations

CONFIDENTIAL

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550 West Avenue
Stamford, CT 06902
203-328-9500

036

August 12, 1997

Chief Roy Whitehead
300 West Second North Street
Summerville, SC 29483

Re: Lifecodes Case Number 63636
Agency Reference Number 96-14607
Refer to Lifecodes Case Number 56381

I. Evidence Receipt

The following evidence sample was received on July 21, 1997 by Federal Express from Detective Ronald Manchester in a sealed container:

Accession #	Sample
FB63637-60	1 EDTA blood vial from Gerald Rhem
FB63638-61	1 EDTA blood vial from John Smalls, Jr.
FB63639-62	1 EDTA blood vial from Derek Duggins

II. Summary of Results

The HLA DQA1 and PM results from the male fraction of the vaginal swabs frozen in saline and the vaginal swabs from Lillie Boyd is indicative of a mixture from more than one individual which does not exclude the HLA DQA1 and PM profile from the blood of Lillie Boyd, but does exclude Gerald Rhem, John Smalls, Jr. and Derek Duggins.

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203-328-9500

037

Case Number: 63636 - Continued

Date: 08/12/97

III. Results

PCR Results with Polymarker and HLA DQA1

	LDLR	GYPA	HBGG	D7S8	GC	HLADQA1
FB63637	B	A,B	A,C	A,B	B	1.2,1.2
FB63638	A	A	B	A,B	C	1.3,4.1
FB63639	A,B	A	A	A,B	B	4.1,4.1

The PCR Polymarker results were obtained with an AmpliType™ PCR Amplification and Typing Kit supplied by Perkin Elmer and the typing results reported using the manufacturer's recommendations. The loci examined by the Polymarker analysis include: Low Density Lipoprotein Receptor (LDLR), Glycophorin A (GYPA), Hemoglobin G Gammaglobin (HBGG), D7S8, and Group Specific Component (GC).

IV. Conclusion:

A comparison of the phenotypes obtained by PCR analysis from samples FI56384 and FI56386 is indicative of coming from more than one individual which does not exclude FI56389 as a possible contributor, but does exclude FB63637, FB63638, and FB63639 as contributors.

V. Disposition of Evidence:

The evidence will be repackaged and returned under separate cover to Ron Manchester unless notified about special handling instructions.

The results and conclusions in this report were reviewed by:

Lauren Galbreath, M.S.
Senior Forensic Scientist

Michael L. Baird, Ph.D.
VP Laboratory Operations

LIFECODES CORPORATION
550 West Avenue
Stamford, CT 06902
203-328-9500

038

November 3, 1997

Chief Roy Whitehead
300 West Second North Street
Summerville, SC 29483

Re: Lifecodes Case Number: 64982
Agency Reference Number: 96-14607
Lifecodes Reference Case Number: 56381

I. Evidence Receipt

The following evidence sample was received on August 29, 1997 by Federal Express from Detective Ronald Manchester in a sealed container:

Accession #	Sample
FB64983-60	1 EDTA blood vial from suspect, Fred Turner
FB64984-61	1 EDTA blood vial from suspect, Derrick Lemon
FB64985-62	1 EDTA blood vial from suspect, McKent Limehouse

II. Summary of Results

The HLA DQA1 and PM results from the male fraction of the vaginal swabs frozen in saline and the vaginal swabs from Lillie Boyd is indicative of a mixture from more than one individual which does not exclude the HLA DQA1 and PM profile from the blood of Lillie Boyd, however, it does exclude the HLA DQA1 and PM results from the blood of Fred Turner, Derick Lemon, and McKent Limehouse.

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039

Case Number: 64982 - Continued

Date: 11/03/97

III. PCR Results

Phenotypes Obtained from Samples

LOCUS	HLA DQA1	LDLR	GYPA	HBGG	D7S8	GC
SAMPLE #						
FB64983	1.2	B	A	A,C	A,B	B
FB64984	4.1	B	A,B	A,C	A,B	B,C
FB64985	1.2,4.1	B	A,B	A	A	B

Testing was performed using an AmpliType™ kit manufactured by Perkin-Elmer. Phenotypes reflect the typing obtained from test strips processed according to the protocol supplied by the manufacturer.

IV. Conclusion

A comparison of the phenotypes obtained by PCR analysis from samples 56384 and 56386 is indicative of a mixture from more than one individual that excluded the phenotypes from samples 64983, 64984, and 64985 as possible contributors.

V. Disposition of samples

The samples submitted for analysis with this case will be returned via UPS unless notified about special handling instructions.

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650 West Avenue
Stamford, CT 06902
203-328-9500

040

Case Number: 64982 - Continued

Date: 11/03/97

The results and conclusions in this report were reviewed by:

Lauren Galbreath, M.S.
SR. Forensic Scientist

Michael L. Baird, Ph.D.
VP Laboratory Operation

LIFECODES CORPORATION
550 West Avenue
Stamford, CT 06902
203-328-9500

-041

December 16, 1997

Chief Roy Whithead
300 West Second North Street
Summerville, SC 29483

Lifecodes Case Number: 66558
Lifecodes Case Reference Number: 56381.

I. Evidence Receipt

The following evidentiary samples were hand delivered by Ronald Manchester to Lifecodes Corporation on October 22, 1997 in a sealed container:

Accession #	Sample
FI66559-60	1 cigarette butt found at front gate (bag #1)
FI66560-61	1 cigarette butt found near back door (bag #2)
FI66561-62	1 envelope with blood swab from crime scene (#1)
FI66562-63	1 envelope with blood swab from crime scene (#2)
FI66563-64	1 envelope with blood swab from crime scene (#3)
FI66564-65	1 envelope with blood swab from crime scene (#4)
FI66565-66	1 envelope with blood swab from crime scene (#5)
FI66566-67	1 envelope with blood swab from crime scene (#6)
FI66567-68	1 envelope with blood swab from crime scene (#7)
FI66568-69	1 envelope with blood swab from crime scene (#8)
FI66569-70	1 envelope with blood swab from crime scene (#9)
FI66570-71	1 envelope with blood swab from crime scene (#10)
FI66571-72	1 envelope with blood swab from crime scene (#11)

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203-328-9500

-042

Case Number: 66558 - Continued

Date: 12/16/97

II. Results and Conclusions

An insufficient amount of DNA was isolated for PCR analysis of the HLA DQA1 and Polymarker loci from sample FI66559, the cigarette butt found at the front gate, therefore no comparisons can be made. Additional PCR analysis will be attempted. The results of these additional tests will be reported when available.

III. Disposition of Evidence

The samples submitted for this case will be returned via UPS unless notified about special handling instructions.

The results and conclusions in this report were reviewed by:

Lauren Galbreath, M.S.
Senior Forensic Scientist

Michael L. Baird, Ph.D.
VP Laboratory Operations

LIFECODES CORPORATION
550 West Avenue
Stamford, CT 06902
203-328-9500

Date: January 23, 1998

Chief Roy Whitehead
300 West Second North Street
Summerville, SC 29483

Case Number: 68554

I. Evidence Receipt

The following evidence sample was received by hand from Ron Manchester on December 17, 1997 in a sealed container:

Accession #	Sample
FB68555-60	1 EDTA blood vial from Kenneth Simmons

II. Summary of Results

The HLA DQA1 and Polymarker profiles from the male fraction of the vaginal swabs frozen in saline and the vaginal swabs from Lillie Boyd submitted for analysis with Lifecodes Case Number 56381 are indicative of a mixture of DNAs from more than one individual which does not exclude Lillie Boyd and Kenneth Simmons as contributors. Additional genetic analysis will be performed to further characterize the samples.

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203-328-6500

044

Case Number: 68554 - Continued

Date: 01/23/98

III. Results

Phenotypes Obtained from PCR Analysis from Sample FB68555

	HLA DQA1	LDLR	GYPA	HBGG	D7S8	GC
68555	1.1,1.2	B	A,B	A,C	A,B	A,C

Testing was performed using an AmpliType Kit manufactured and supplied by Perkin-Elmer. Phenotypes reflect the typing obtained on test strips processed according to protocol supplied by the manufacturer.

Frequency of Occurrence of Phenotype Obtained from Sample FB6855

Race: Caucasian	Database Size # of Individuals	Frequency of Occurrence
HLA DQA1	148	0.0429
LDLR	148	0.2992
GYPA	148	0.4859
HBGG	148	0.0066
D7S8	148	0.4736
GC	148	0.2935

Combined Frequency of Occurrence 1 in 175,439

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045

Case Number: 68554 - Continued

Date: 01/23/98

Frequency of Occurrence of Phenotype Obtained from Sample FB68554

Race: Black	Database Size # of Individuals	Frequency Of Occurrence
HLA DQA1	145	0.0735
LDLR	145	0.6022
GYPA	145	0.4991
HBGG	145	0.3012
D7S8	145	0.4740
GC	145	0.0391

Combined Frequency of Occurrence 1 in 81,103

Source of the databases: Journal of Forensic Sciences. Volume 40, pages 45 - 54, 1995.

IV. Conclusion

The phenotypes obtained by PCR DNA analysis from samples FI56384 and FI56386 from Lifecodes Case Number 56381 are consistent with originating from more than one individual which does not exclude FI56389 and FB68555 as contributors.

046

Case Number: 68555 - Continued

Date: 01/23/98

V. Disposition of Sample

The blood sample submitted for analysis will be returned at a later date pending notification of handling instructions.

The results and conclusions in this report were reviewed by:

Lauren Galbreath, M.S.
Senior Forensic Scientist

Michael L. Baird, Ph.D.
VP Laboratory Operations

LIFECODES CORPORATION
550 West Avenue
Stamford, CT 06902
203-328-6500

047

Date: February 2, 1998

Chief Roy Whitehead
300 West Second North Street
Summerville, SC 29483

Case Number: 68554

ADDITIONAL REPORT

I. Evidence Receipt

The following evidence sample was received by hand from Ron Manchester on December 17, 1997 in a sealed container:

Accession #	Sample
FB68555-60	1 EDTA blood vial from Kenneth Simmons

II. Summary of Results

The HLA DQA1 and Polymarker profiles from the male fraction of the vaginal swabs frozen in saline and the vaginal swabs from Lillie Boyd submitted for analysis with Lifecodes Case Number 56381 are indicative of a mixture of DNAs from more than one individual which does not exclude Lillie Boyd and Kenneth Simmons as contributors.

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203-328-9500

048

Case Number: 68554 - Continued

Date: 02/02/98

III. Results

Phenotypes Obtained from PCR Analysis from Sample FB68555

	HLA DQA1	LDLR	GYPA	HBGG	D7S8	GC
68555	1.1,1.2	B	A,B	A,C	A,B	A,C

Testing was performed using an AmpliType Kit manufactured and supplied by Perkin-Elmer. Phenotypes reflect the typing obtained on test strips processed according to protocol supplied by the manufacturer.

	CSF1PO	TPOX	THO1
68555	10,12	10,11	7,8

Testing was performed using a CTT Multiplex Kit manufactured and supplied by Promega. Phenotypes reflect the typing obtained following the protocol supplied by the manufacturer from silver stained gels .

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049

Case Number: 68554 - Continued

Date: 02/02/98

Frequency of Occurrence of Phenotype Obtained from Sample FB6855

Race: Caucasian	Database Size # of Individuals	Frequency of Occurrence
HLA DQA1	148	0.0429
LDLR	148	0.2992
GYPA	148	0.4859
HBGG	148	0.0066
D7S8	148	0.4736
GC	148	0.2935
CSF1PO	236	0.1415
TPOX	236	0.0356
THO1	236	0.0271

Combined Frequency of Occurrence 1 in 1,280,249,916

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-050

Case Number: 68554 - Continued

Date: 02/02/98

Frequency of Occurrence of Phenotype Obtained from Sample FB68555

Race: Black	Database Size # of Individuals	Frequency Of Occurrence
HLA DQA1	145	0.0735
LDLR	145	0.6022
GYPA	145	0.4991
HBGG	145	0.3012
D7S8	145	0.4740
GC	145	0.0391
CSF1PO	202	0.1400
THOX	202	0.0438
THO1	202	0.1647

Combined Frequency of Occurrence 1 in 8,029,316

Source of the databases: For HLA DQA1 and Polymarker loci, Journal of Forensic Sciences. Volume 40, pages 45 - 54, 1995. For the STR loci, Palm Beach Sheriff's Office, West Palm Beach, Florida.

IV. Conclusion

The phenotypes obtained by PCR DNA analysis from samples FI56384 and FI56386 from Lifecodes Case Number 56381 are consistent with originating from more than one individual which does not exclude FI56389 and FB68555 as contributors.

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051

Case Number: 68555 - Continued

Date: 02/02/98

The combined frequency of occurrence of the profile obtained by PCR DNA analysis from sample FB68555 is 1 in 1,280,249,916 in the Caucasian population and 1 in 8,029,316 in the Black population.

V. Disposition of Sample

The blood sample submitted for analysis will be returned at a later date pending notification of handling instructions.

The results and conclusions in this report were reviewed by:

Lauren Galbreath, M.S.
Senior Forensic Scientist

Michael L. Baird, Ph.D.
VP Laboratory Operations

LIFECODES CORPORATION
550 West Avenue
Stamford, Connecticut 06902
(203) 328-9500

052

CHAIN OF CUSTODY

THIS DOCUMENT MUST ACCOMPANY A SPECIMEN AT ALL TIMES

Lifecodes Case # 56381
Agency Reference # 96-14607

SAMPLE REGISTRATION

LIFECODES ACCESSION #	REFERENT AGENCY ID	SAMPLE DESCRIPTION	ADDITIONAL PKG. INFO.
FI-56382-60	1	GLASS SLIDE FROM VAGINAL SWAB (V) LILY BOYD	
FI-56383-61	1	SWAB LABELLED ORAL (V) LILLIE BOYD FROZEN IN SALINE	
FI-56384-62	1	SWAB LABELLED VAGINAL (V) LILLIE BOYD FROZEN IN SALINE	
FI-56385-63	1	SWAB LABELLED RECTAL (V) LILLIE BOYD FROZEN IN SALINE	
FI-56386-64	2	SWABS LABELLED LILLIE BELL BOYD (V) 96-14607 VAGINAL	
FI-56387-65	2	SWABS LABELLED LILLIE BELL BOYD (V) 96-14607 RECTAL	
FI-56388-66	2	SWABS LABELLED LILLIE BELL BOYD (V) 96-14607 ORAL	
FI-56389-67	1	SWATCH OF BLOOD LABELLED LILLY B. BOYD L96-11313/ 96-14607	
FI-56390-68	1	ENVELOPE LABELLED RT HAND FINGER NAIL SCAPPING 96-14607	
FI-56391-69	1	ENVELOPE LABELLED LEFT HAND FINGER NAIL SCRAPPING 96-14607	

CLIENT # 1026682 OTHER
CLIENT NAME CHIEF ROY WHITEHEAD/ MAJOR MIKE TURNER
300 WEST SECOND NORTH ST.
SUMMERVILLE SC 29483 803 851-4108 707
803-871-2463
CONTACT: ROY WHITEHEAD/ MIKE TURNER/ RON MANCHESTER

CHAIN OF CUSTODY RECORD

METHOD OF DELIVERY In Person
RECEIVED FROM Ronald Manchester TITLE Cpl. Detective
DATE 10-11-96 TIME 10:30 AM SIGNATURE
GIVEN TO [illegible] TITLE Sh. Dept. Sgt. Det. St.
DATE 10/17/96 (Possession) SIGNATURE
GIVEN TO Sgt. Det. (Ret.) M. Manchester TITLE S.C.L.E.D. Forensic Tech
DATE 1/31/97 TIME SIGNATURE
GIVEN TO TITLE
DATE TIME SIGNATURE
GIVEN TO TITLE
DATE TIME SIGNATURE

SAMPLES/MATERIALS RETURNED TO REFERENT
RECEIVED BY SIGNATURE

FOR EVIDENCE RECEIVED BY MAIL

I hereby certify that I received the specimens listed from Lifecodes facility, and that there is no evidence that the package has been opened
SIGNATURE DATE 2/11/96 TIME
PACKAGE TAPED (YES/NO) Y TAPE INTACT Y SIGNS OF TAMPERING N

LIFECODES CORPORATION
550 West Avenue
Stamford, Connecticut 06902
(203) 328-9500

~053

CHAIN OF CUSTODY

THIS DOCUMENT MUST ACCOMPANY A SPECIMEN AT ALL TIMES

Lifecodes Case # 56381
Agency Reference # 96-14607

SAMPLE REGISTRATION

LIFECODES ACCESSION #	REFERENT AGENCY ID	SAMPLE DESCRIPTION	ADDITIONAL PKG. INFO.
FB-62761-70	1 EDTA blood vial from suspect, Exantheras Nunn		

CLIENT # 1026682 OTHER
CLIENT NAME CHIEF ROY WHITEHEAD/ MAJOR MIKE TURNER
300 WEST SECOND NORTH ST.
SUMMERVILLE SC 29483
803-871-2463
Contact:ROY WHITEHEAD/ MIKE TURNER/ RON MANCHESTER

CHAIN OF CUSTODY RECORD

METHOD OF DELIVERY Fed Ex.
RECEIVED FROM R. Manchester TITLE
DATE 6/18/97 TIME SIGNATURE
GIVEN TO J. LASTELLA TITLE SR SCIENTIST
DATE 6/24/97 TIME SIGNATURE
GIVEN TO [illegible] TITLE [illegible]
DATE 7/8/97 TIME SIGNATURE
GIVEN TO [illegible] TITLE [illegible]
DATE 8/21/97 TIME SIGNATURE
GIVEN TO [illegible] TITLE
DATE TIME SIGNATURE

SAMPLES/MATERIALS RETURNED TO REFERENT
RECEIVED BY SIGNATURE

FOR EVIDENCE RECEIVED BY MAIL

I hereby certify that I received the specimens at the Lifecodes facility, and that there is no evidence that the package has been opened.

SIGNATURE J. Lastella DATE 6/24/97 TIME 1:00 P.
PACKAGE TAPED (YES/NO) Y TAPE INTACT Y SIGNS OF TAMPERING N

054

Summerville OCA #96-14607

Chain of Possession

Case Number FA96-0416

Item Description: Boyd, Lillie Bell. 1, Swab-Rectal, 2, Swab-Vaginal, 3- Swab-oral.

The item identified above was received

from: Freezer Date 10-8-96

by: Nicholas Asey Time 11:45 A.m.

Transfered to: Ronald Manchester of Summerville Police Dept Date 10-8-96 Time 1144 AM

Transfered to: Laurie Galbraith w/ Lab Results Date 10-11-96 Time 10:30 AM

Transfered to: Bob Marchant Date 1/6/99 Time _____

Transfered to: _____ Date _____ Time _____

Transfered to: _____ Date _____ Time _____

Transfered to: _____ Date _____ Time _____

Transfered to: _____ Date _____ Time _____

Transfered to: _____ Date _____ Time _____

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Transfered to: _____ Date _____ Time _____

Transfered to: _____ Date _____ Time _____

Transfered to: _____ Date _____ Time _____

055

LIFECODES CORPORATION
550 West Avenue
Stamford, CT 06902
203-328-9500

FACSIMILE TRANSMITTAL FORM

DATE: 1/13/99

TO: Walter Bailey

COMPANY: The State of South Carolina
843-871-2643

FROM: LAUREN CANE

FAX NUMBER: (203) 328-9599

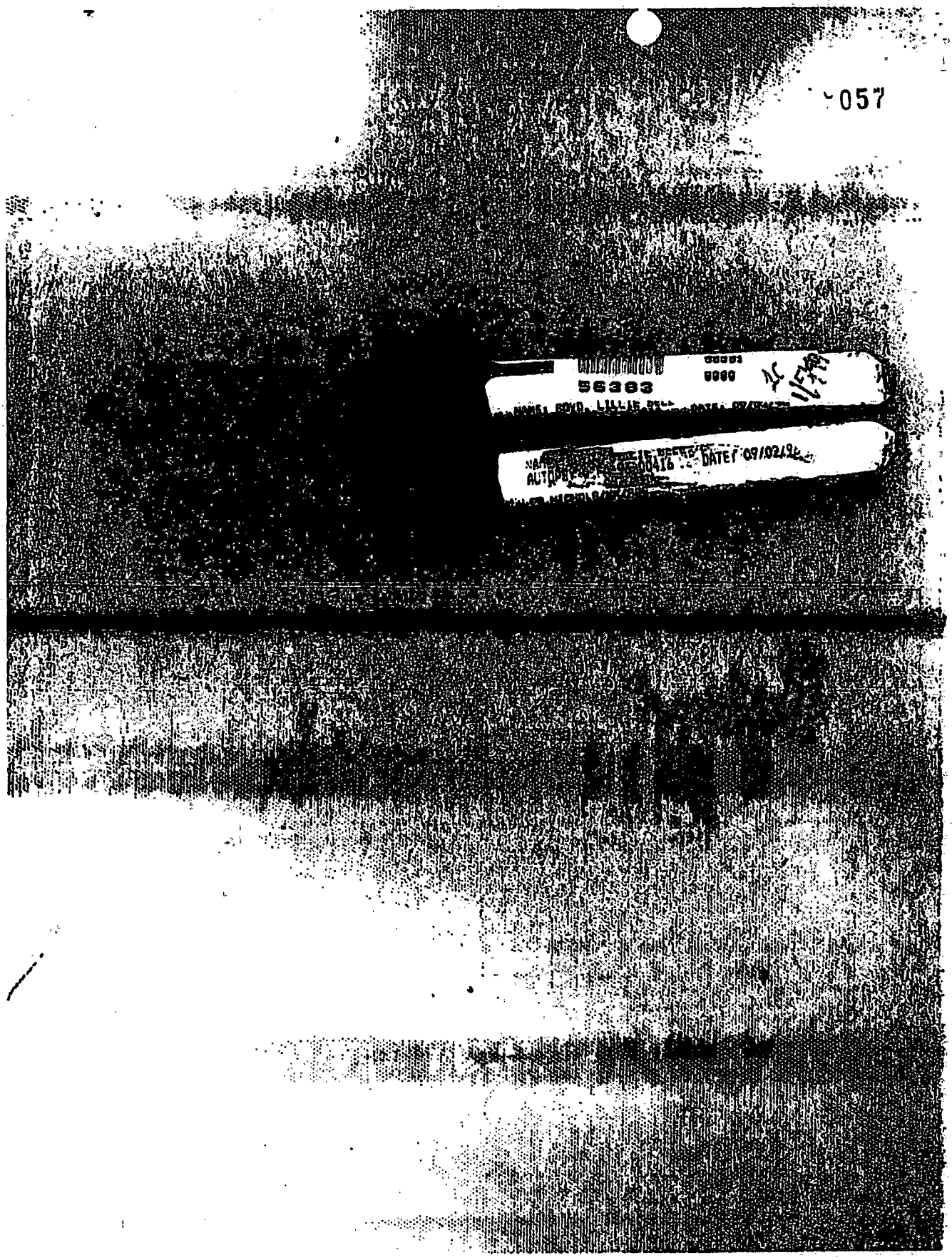
COMMENTS: if you have any other questions please call.

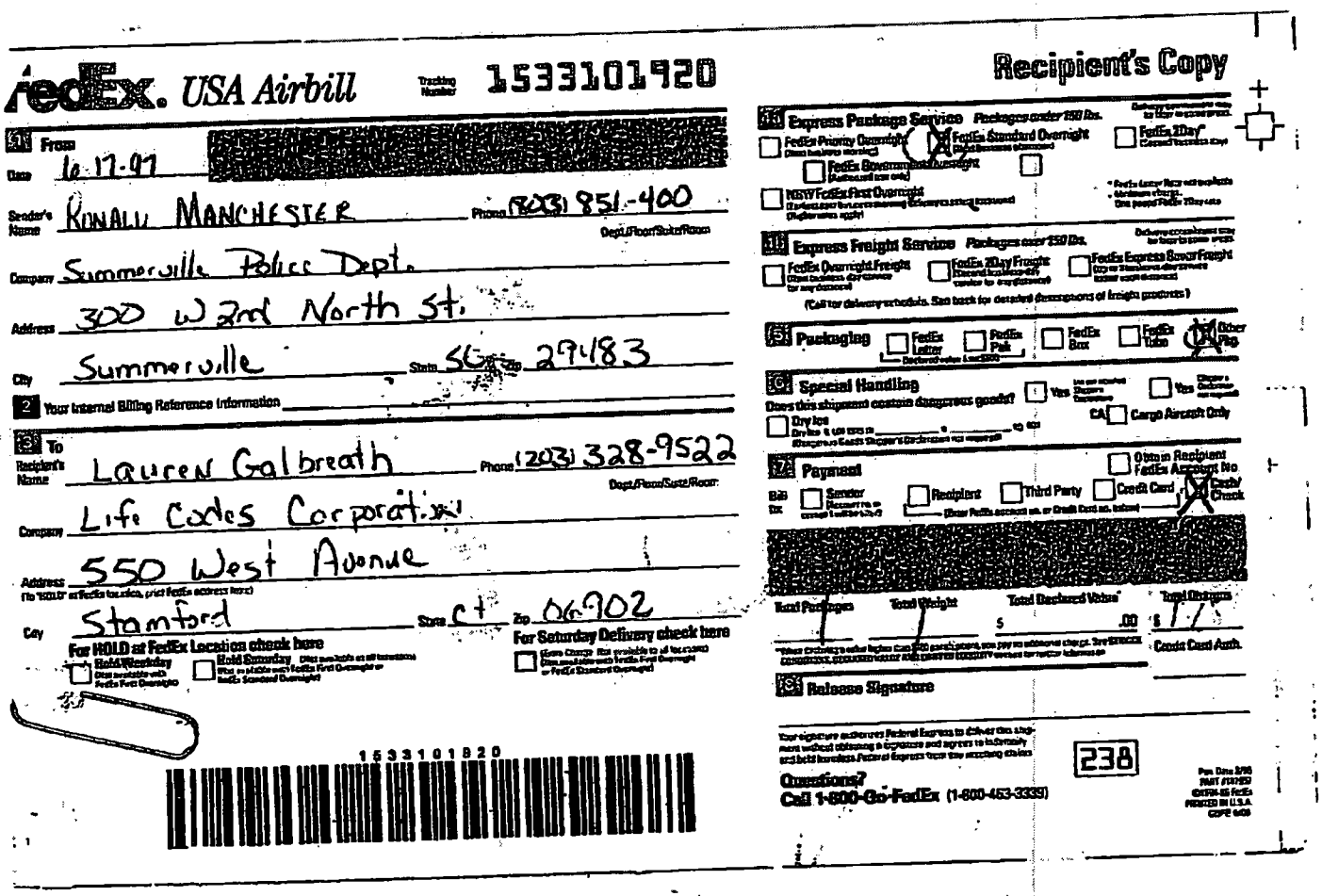
Lauren Cane

NUMBER OF PAGES (INCLUDING COVER PAGE): 2

IF THERE IS A PROBLEM WITH TRANSMISSION PLEASE CALL (203) 328-9515
↓
Use New Phone #


056
DR NICHOLS/KK/RDE
DR NICHOLS/KK/RDE


057
56383
DATE 09/02/94



FedEx. USA Airbill

Tracking Number 1533101920

Recipient's Copy

1 From

Date 10-17-97

Sender's Name RONALD MANCHESTER Phone (803) 851-400

Dept./Floor/Suite/Room

Company Summerville Police Dept.

Address 300 W 2nd North St.

City Summerville State SC Zip 29483

2 Your Internal Billing Reference Information

3 To

Recipient's Name Lauren Galbreath Phone (203) 328-9522

Dept./Floor/Suite/Room

Company Life Codes Corporation

Address 550 West Avenue

No "HOLD" at FedEx location, print FedEx address here

City Stamford State CT Zip 06902

For HOLD at FedEx Location check here

Hold Weekday Hold Saturday

For Saturday Delivery check here

4a Express Package Service Packages under 150 lbs.

FedEx Priority Overnight FedEx Standard Overnight FedEx 2Day

FedEx International Priority FedEx International Economy

NSW FedEx First Overnight

4b Express Freight Service Packages over 150 lbs.

FedEx Overnight Freight FedEx 2Day Freight FedEx Express Saver Freight

(Call for delivery schedule. See back for detailed descriptions of freight products.)

5 Packaging FedEx Letter FedEx Pak FedEx Box FedEx Tube X Other Pkg

6 Special Handling

Does this shipment contain dangerous goods? Yes Yes

Dry Ice Dry Ice, 9, UN 1845 kg

Shipper's Declaration not required CA Cargo Aircraft Only

7 Payment

Bill to: Sender Recipient Third Party Credit Card X Cash/Check

Obtain Recipient FedEx Account No

Total Packages Total Weight Total Declared Value* $ .00 Total Charges $ 17.

*Value Declared is either higher than $500 per package, you pay an additional charge. See SERVICE CONDITIONS, DECLARED VALUE AND LIMITED LIABILITY section for further information.

Credit Card Auth.

8 Release Signature

Your signature authorizes Federal Express to deliver this shipment without obtaining a signature and agrees to indemnify and hold harmless Federal Express from any resulting claims.

238

Questions? Call 1-800-Go-FedEx (1-800-453-3339)

Rev. Date 3/95 PART #151820 EDITION 95 FedEx PRINTED IN U.S.A. SCPE 1439

1533101820

South Carolina Law Enforcement Division
Forensic Services Laboratory

CHAIN OF CUSTODY

052

Summerville CA# 96-146C07

Laboratory Case Number L 96-11313

Agency of Origin Summerville PD

Container# (s) or Item # (s)	Notes (e.g. sub items)
E077451	items 7 (Vaginal) 8 (Oral) and 9 (Rectal)
	(These items Relinquished
	From E086110 on 10/9/96
	by Lisa Jeffcoat)

THE ABOVE EVIDENCE WAS TRANSFERRED

From:	To:	Date/Time:
Lisa Jeffcoat	Ronald Wanchuk	9:25 AM 10/9/96
Ronald Wanchuk	[illegible]	1030 AM 10/11/96

LAB FORM 186

-060

LIFECODES CORPORATION

550 West Avenue
Stamford, CT 06902
203-328-9500

FACSIMILE TRANSMITTAL FORM

DATE: 10/25/96

TO: Major Mike Turner 803-851-4108

COMPANY: Summerville PD

FROM: (Anne) Gallagher (Lifecodes Corp)

FAX NUMBER: 203-328-9599

COMMENTS: Hope this does the trick!
If you have any questions please
Call! Have a Great Weekend!

NUMBER OF PAGES (INCLUDING COVER PAGE): 2

IF THERE IS A PROBLEM WITH TRANSMISSION, PLEASE CALL: 203-328-9522

South Carolina Law Enforcement Division
Forensic Services Laboratory

CHAIN OF CUSTODY

061

Summerville LEA # 96-14607

Laboratory Case Number L 96-1131 S

Agency of Origin Summerville Police Dept

Container# (s) or Item # (s)	Notes (e.g. sub items)
E02807	1) Cutting from Carpet
	2) Sample Cloth
	3) Cutting from Carpet
	4) Sample Cloth

THE ABOVE EVIDENCE WAS TRANSFERRED

From:	To:	Date/Time:
[illegible]	[illegible]	[illegible]
J Sullivan	Evidence Room	10/7/96
Evidence Room	J Sullivan	10/11/96 10:30 AM

LAB FORM 186

South Carolina Law Enforcement Division
Forensic Services Laboratory

CHAIN OF CUSTODY

062

Summerville CR# 96-14607

Laboratory Case Number L 96-11313

Agency of Origin Summerville Police Dept

Container# (s) or Item # (s)	Notes (e.g. sub items)
E090499	Item # 32 (Arrears)

THE ABOVE EVIDENCE WAS TRANSFERRED

From:	To:	Date/Time:
DHHBOL	LSC	10/2/96
[signature]	Ronald Mantooth	10/7/96
Ronald Mantooth	[signature]	10/11/96 1030 AM

LAB FORM 186

SUMMERVILLE POLICE DEPARTMENT • 300 West 2nd North Street • Summerville, South Carolina 29483 • 803-851-4100

Roy B. Whitehead
Chief of Police

June 17, 1997

Lifecodes Corporation
550 West Avenue
Stamford, CT 06902

Attention: Lauren Galbreath

Reference: Summerville Police Department Case No. 96-14607
Lifecodes Case No. 56381

Dear Ms. Galbreath:

Please test the enclosed samples in reference to our September 1, 1996 murder of Lily Bell Boyd. Compare the DNA of the identified suspects with the unknown suspect sample. A list of the evidence is as follows:

1. A medical tube of blood from suspect kit belonging to Exantheras Nunn.

Sincerely,

Roy B. Whitehead, Chief

Service With Integrity

10/17/96.

Case 56381 -061-

56382 - one evidence envelope labelled L. Hancock 10/2/96 Case L96113 13 Containing one Brown Cardboard Slide Holder labelled BOYD, Lillie Bell FA 96-00416 Swabs - Cervical one Slide & Blue Stained material labelled Vaginal FA 96-416

56386 - one manila envelope labelled Swabs - Vaginal L96-11313 BOYD, Lillie Bell FA-96-00416 09/02/96 Containing 2 Swabs Tan red/Brown Stain.

56384 - one red top tube containing Tan/Reddish liquid labelled Swabs Vaginal BOYD Lillie Bell FA-96-00416. 09-02-96

56389 - one manila envelope labelled L96-11313 Lilly B. Boyd. II 96-14607 Containing one Small Swatch Tan red/Brown Stain

Process for Bld Std

56389 - DCB .07156A
ADK 07176B
SDS 12135F

Continued on Page

Read and Understood By

Signed 10/17/96 Date

Signed Date

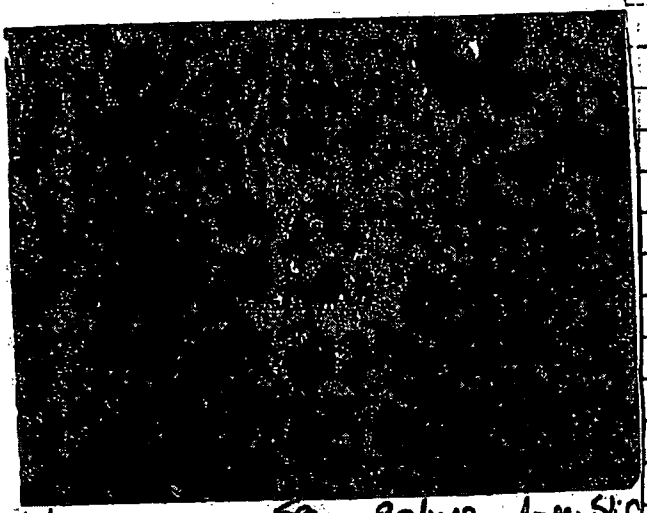
PROJECT

10/17/96

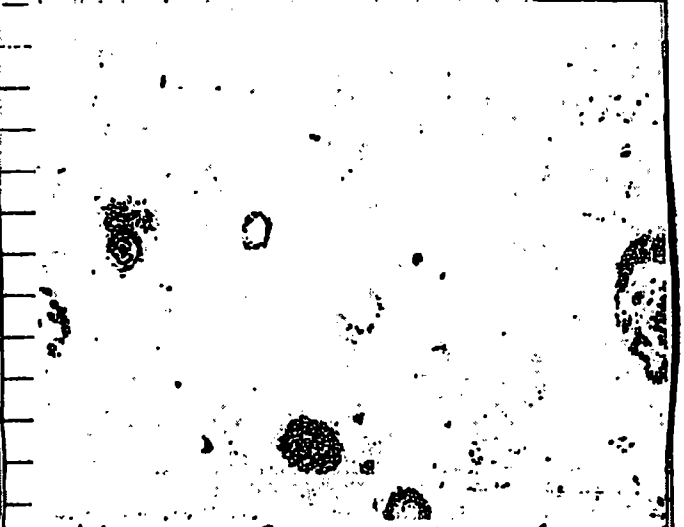
Process for Female LYSS: 065
56384 - PBS 01046A
56386 prot K 02176B
SDS 12135F

Process for Slide analysis Cadet method
56382 - Cadex Solution 09096
prot K 02176B

Sperm pictures



10/Sl.Ca Sperm Picture from Slide



10/Sl.Ca Sperm Picture from Slide

Continued on Page

Read and Understood By

Signed 10/17/96 Date

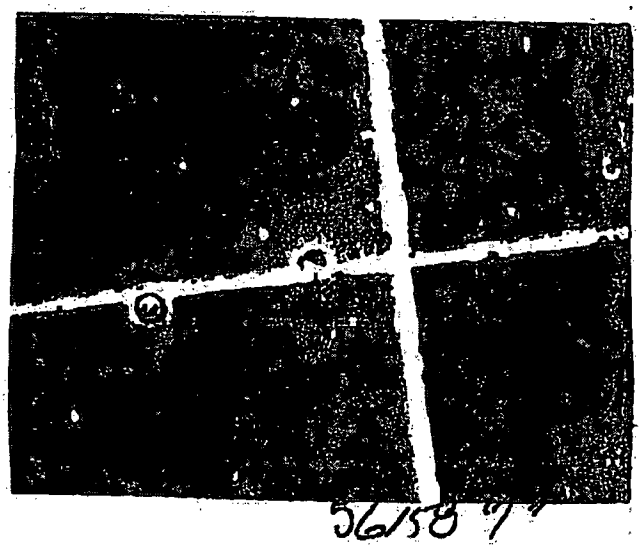
Signed Date

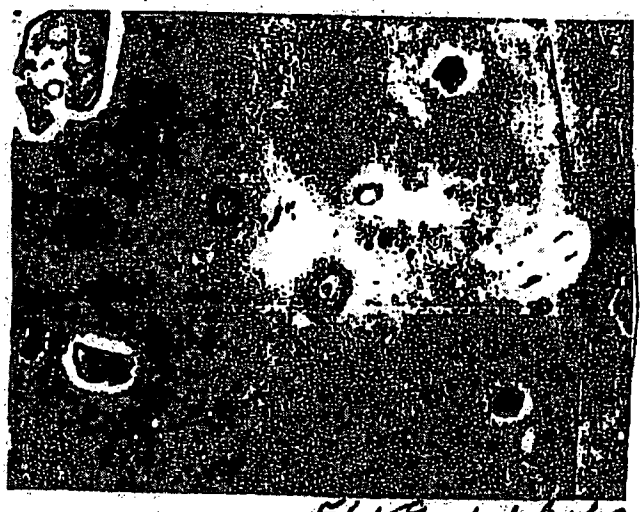
10/16/96

066









Continued on Page

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Signed

10/16/96
Date

Signed

Date

10/18/96 067
Sperm lysis

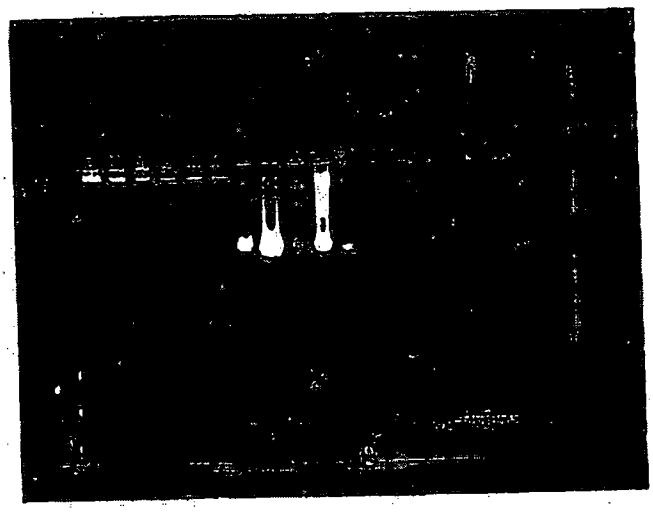
Sample → 56384 → PBS 01046A
56386 Prot K 07316B
SDS X 64274F
DTT 16205F
EDTA 01646F
NaCl 4 - 03046D

10/21/96

Extract ed samples Phenol 07316I
phenol/chl 07316J
Chloro 07316K

Sample	Clip #
56384	1.7/88
56384f	75/100
56386	74/84
56386f	62/321
56389	446/12

10/22/96
run yield gel
1 20
2 20
3 15
4 10
5 5
6 2.5
7 1.0
8 56384
9 56384f
10 56386
11 56386f
12 56389
13 - 14 +



Continued on Page

Read and Understood By

Signed 10/22/96 Date Signed Date

PROJECT _____ Continued from Page _____ 068

10/23/96

Sample	ul used	DNA/TOTAL	02686C Buffer	04026A Eg	TLV
56384	1000/800	~1ug / ~1ug	100	3	1000
56384P	1000/800	~2.5ug / ~2.5ug	100	3	1000
56386	850/800	~1ug / ~1ug	100	3	1000
56386P	1250/800	10ug / 12.5ug	50	3	500
56389	1000/800	<1ug / <1ug	100	3	1000

-refer to PCR Book for sample Cont. UV

Case - 56612

Sample - 56617 - are plastic tupperware containers containing several clear plastic bags of bone fragments
(A) Cranial
(B) Tibia.

Isolate DNA ☐ BLB - 07156A
PrtK - 07176B
SDCK - 04274F
NaClO4

Potentially Sample 56479-30

10/23/96
Sample Clyst

Phenol 07316F
phenol/chlor 07316J
chlor 07316K

56617 (A)	523/510
56617 (B)	514/524
56479-30	553/C1

Continued on Page

Read and Understood By

Signed 10/23/96 Date

Signed Date

10/23/96

sun diagnostic gel & test gel

069

Test gel

1 Hae III

2 —

3 56384

4 56384 f

5 56386

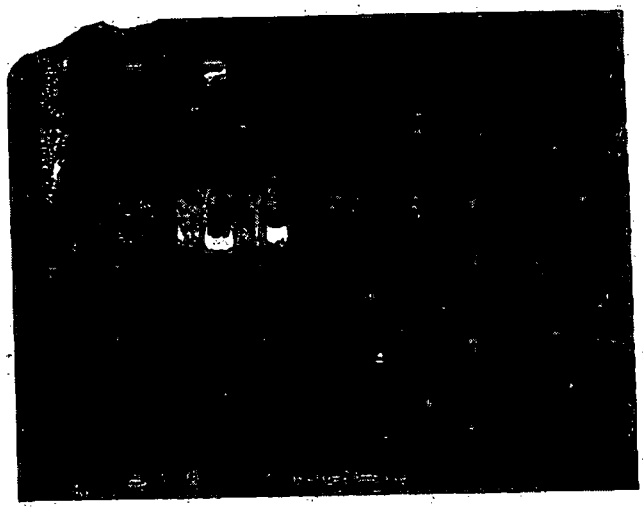
6 56386 f

7 56389

8

9

0



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10/23/96
Date

Signed

Notebo[illegible]lo. _____ 9

Continued From Page _____

PROJECT _____

10/23/96

070

mu diagnostic gel

Gel # H-422



1 MWM Lots 070266
2 –
3 56384 ♀
4 –
5 56384
6 –
7 56389
8 –
9 MWM
10 –
11 56386
12 –
13 56386 ♀
14 –
15 MW III 11113I
16 MWM Lots 102558
17 Lots

D: 090360
U: 09166D
T 090560
MSI: 101660

Continued on Page

Read and Understood By

Lisa Hyatt
Signed

10/23/96
Date

Signed

Date

PROJECT _____ Continued From Page _____ 071

10/22/96

Amplify for PM + DQA - Amplitype kit
lot # F2012 control date 8/31/97

Sample	ID	amt
56382	382	20ul
56384	384	5ul
56384?	3847	2ul
56386	386	5ul
56386?	3867	1ul
56389	389	10ul
56390		
55259	259	2ul
55260	260	2ul
55261	261	2ul
55262	262	2ul
55263	263	2ul
55259?	2597	2ul
+		20ul
-		20ul

Amplitype PM E5056
Primer set 9/30/97
Control DNA - E4096 8/31/97
DQA Strips - F2109 1/31/98
PM Strips - F0226 a/30/98
MCP-SA - E4099 8/31/97
Chromosr - F0230 3/31/98

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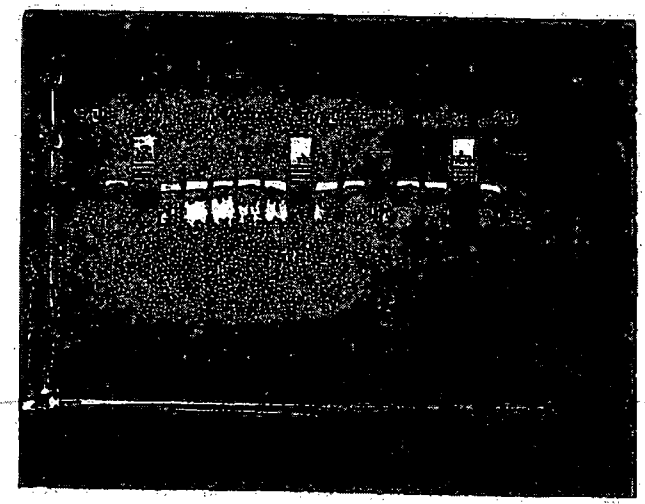
Signed _____ Date 10/22/96 Signed _____ Date _____

Continued From Page 072

10/23/96

Ann product gl

1 -
2 +
3 MWM
4 56 852
5 56 853
6 56384
7 56886
8 56869
9 MWM
10 56389
11 55259
12 55259
13 55260
14 55261
15 MWM
16 55262
17 55263



Continued on Page

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10/23/96
Date

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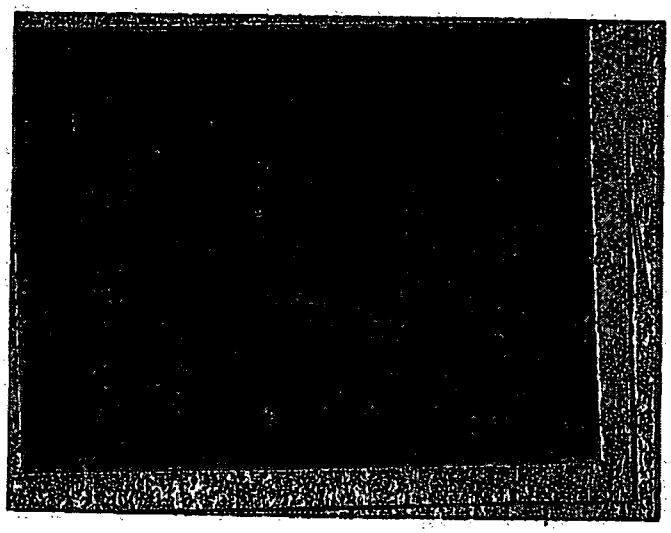
10/24/96
HYB PM + DQα

-073

Case 56391

PM HYB

Sample	LDL	GYFA	HSGG	DRS	GC
56382	AB	AB	AC	A	B
56384	AB	AB	AC	A(B)	B
56384?	AB	AB	AC	A	B
56386	AB	AB	AC	A(B)	B
56386?	AB	AB	AC	A	B
56389	AB	AB	AC	A	B



DQα HYB



Sample	Type
56382	2, 4.2, 4.3
56384	1.1, 4.2, 4.3, 2, (1.2)
56384?	2, 4.2, 4.3
56386	2, 4.2, 4.3, 1.1, (1.2)
56386?	2, 4.2, 4.3
56389	2, 4.2, 4.3

Continued on Page

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Signed: [signature] Date: 10/24/96

Signed Date

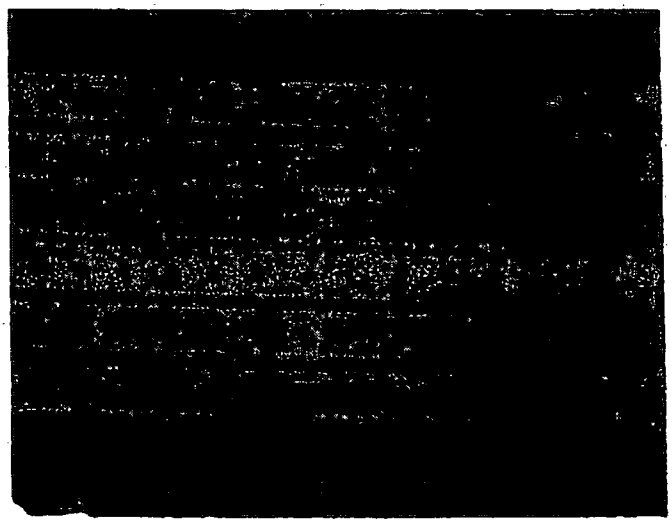
10/24/96

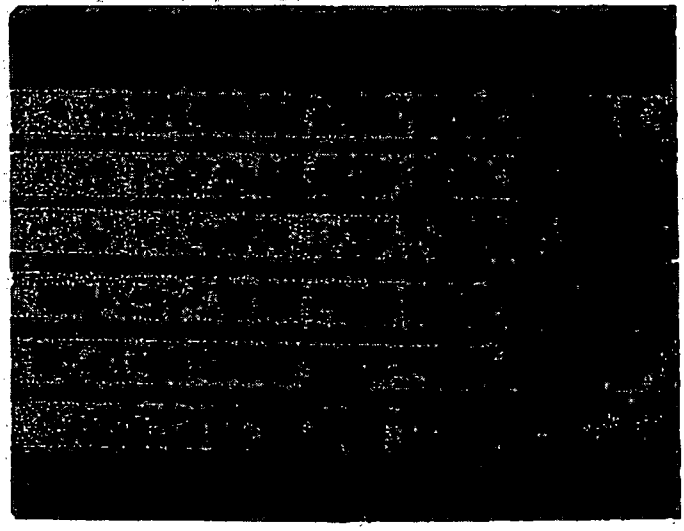
proficiency MyB

PM+DQa MyB

PM MyB

Sample	LOR	GPA	HBGC	DJSB	GC
55259	AB	AB	B	AB	AB
55260	AB	AB	AB	A	AC
55261	AB	AB	AB	B	BC
55262	AB	AB	B	AB	AB





PQa MyB

Sample	TyB
55259	3, 4, 1
55260	3, 4, 1
55261	2, 3
55262	3, 4, 1

Continued on Page

Read and Understood By

Signed

10/24/96

Date

Signed

11/1/96
Amplify for D1580

075

Sample	ID #	amt
56382	382 D1	35ul
56384	384 D1	10ul + 25ul dH2O
56384 f	384 f D1	5ul + 30ul dH2O
56386	386 D1	10ul + 25ul dH2O
56386 f	386 f D1	2ul + 23ul dH2O
56389	389 D1	20ul + 15ul dH2O
56617A (E)	617A (E)	35 ul
56617B (E)	617B (E)	35 ul
56617A (W)	617A (W)	35 ul
56617B (E)	617B (W)	20 ul + 15ul dH2O
+ positive	+	20ul + 15ul dH2O
− negative	−	35 dH2O

D1580 Primer 4X 04 IC
10X dNTP - 04186
10X PCR Buffer 0424
Taq 143094
positive control 10

11/4/96
Amplify for DQ2 x PM

Sample	ID	amt
56617B (C)	617B (C)	10ul
56617A (E)	617A (E)	20ul
56617B (E)	617B (E)	20ul

Continued on Pa

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11/1/96
Date

Signed

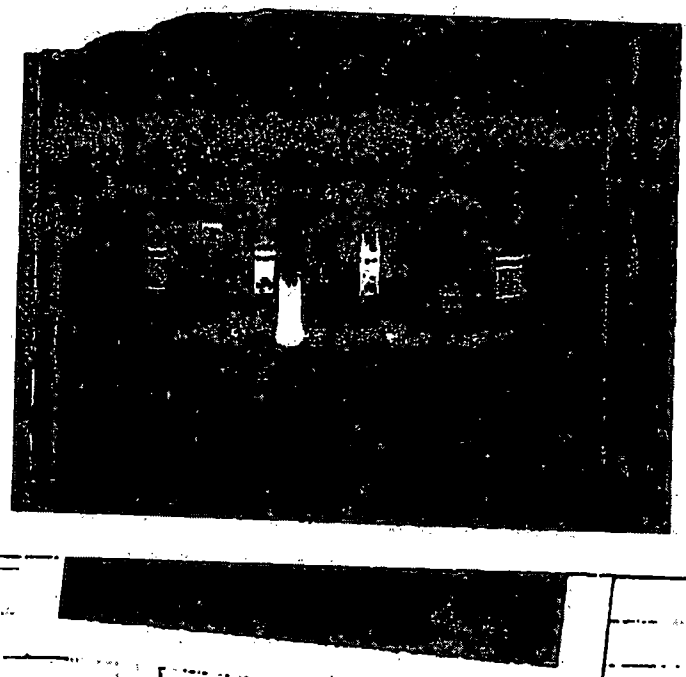
Continued from Page

11/8/96

run product Sel D1580

076

1 Positive
2 Negative
3 MWM
4 617.A E
5 617.B E
6 617.A C
7 MWM
8 617.B C
9 56382 D1
10 56384 D1
11 MWM
12 56384 F D1
13 56386 D1
14 56386F D1
15 56389 D1
16 MWM
17



Continued on Page

Read and Understood By

Signed

11/8/96
Date

Signed

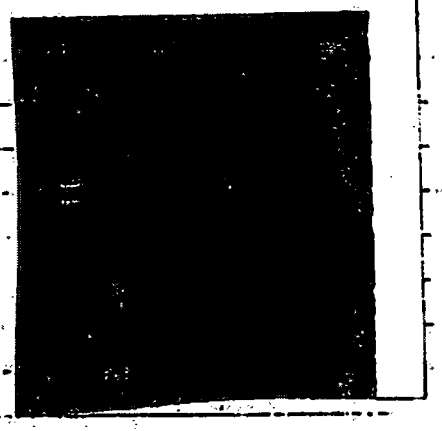
Date

PROJECT _____ Continued From Page _____

11/4/96
Product gel for PM & DQ α

-077

1 MWM
2 56617 B(C)
3 56617 A(E)
4 56617 B(E)



PM & DQ α

11/7/96
amplify for DQ α & PM — amplify for D1S80

Sample	ID	amt	Sample	ID	amt
56617 A(E3)	617A(E3)	2ul	56526	526	1ul
56617 B(E3)	617B(E3)	2ul	56527	527	1ul
56617 A(E3I)	617A(E3I)	2ul	56528	528	1ul
56617 B(E3I)	617B(E3I)	2ul	56529	529	1ul
			56530	530	1ul
56822	822	1ul	56531	531	1ul
56823	823	1ul			
56824	824	1ul	5.747-10	747-10	1ul
56825	825	1ul	-20	-20	1ul
56826	826	1ul	-30	30	1ul
56827	827	1ul			
56828	828	1ul			

Continued on Page

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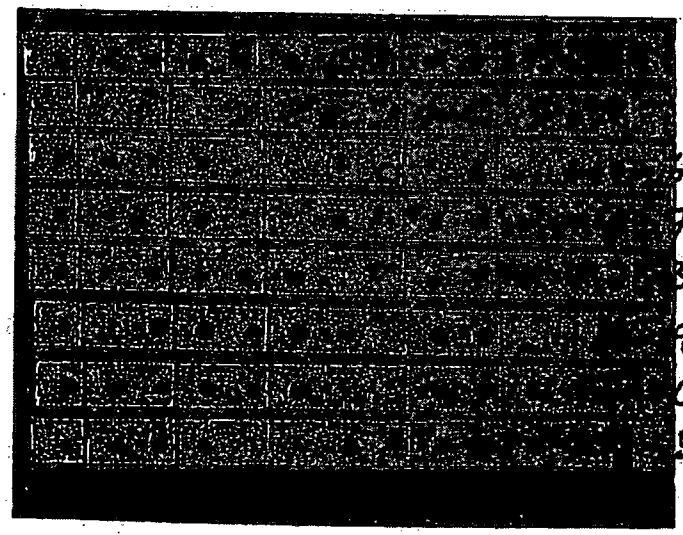
Signed _____ Date 11/7/96 — Signed _____ Date _____

11/11/96
HLA PM & DQ
Proficency set

078

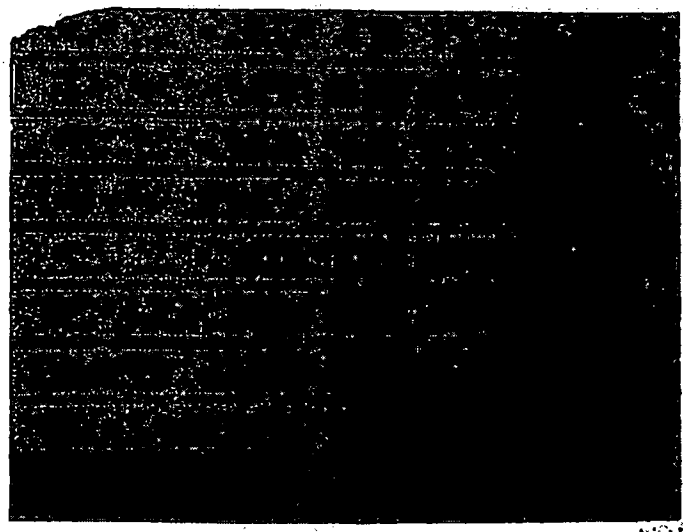
PM

Sample	LDLR	GYPA	HBGG	D7S8	GC
56526	AB	A	AB	A	C
56527	A	A	B	AB	AC
56528	AB	AB	A	A	C
56529	B	AB	AB	AB	C
56530	AB	AB	A	AB	AC
56531	AB	A	B	AB	B



DQ

Sample	Type
56526	1.2, 4.1
56527	1.1, 2
56528	1.3, 4.1
56529	2, 2
56530	1.2, 4.1
56531	2, 3



Continued on Page

Read and Understood By

Signed

11/11/96
Date

Signed

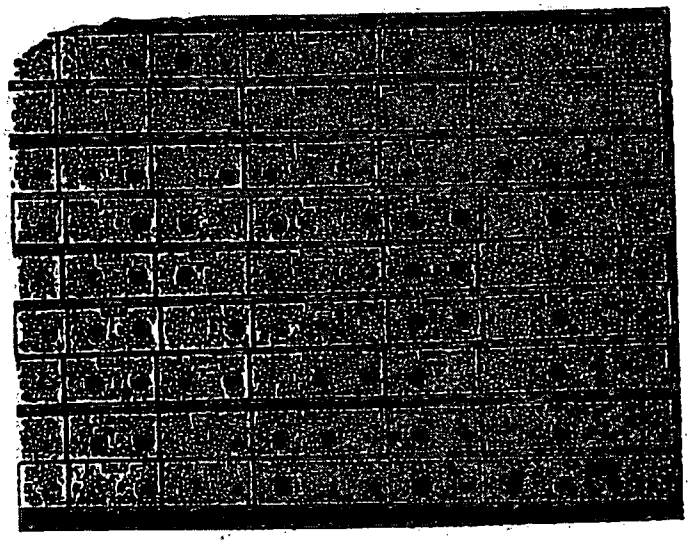
Date

PROJECT _____ (continued From Page _____

10/11/96
LHB PM4 DO2
Case-5682.1 cont of 56381
PN

079

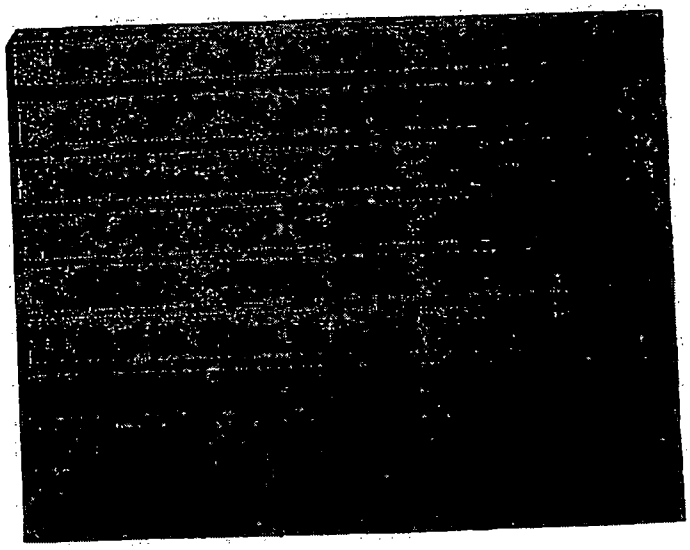
Sample	LDL	G/PA	HDGG	DTS	GE
56822	AB	B	AC	A	AB
56823	B	A	AC	AB	B
56824	AB	A	AC	AB	C
56825	AB	B	AB	AB	B
56826	AB	AB	BC	A	B
56827	AB	B	AB	AB	B
56828	B	B	AC	AB	BC

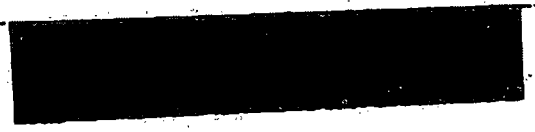




DL

Sample	Type
56822	1.1, 1.2
56823	1.1, 2
56824	1.1, 4.1
56825	1.2, 2
56826	1.2, 4.2 4.3
56827	1.2, 4.1
56828	1.1, 1.2





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(Continued From Page _____)

11/4/96

Case 56381 (cont'd)

Case 56821

080

56822 - one white envelope labelled Terry M. Edge Dr. Williams, F. Comax, 09-04-96, 01:30 pm containing one EDTA Blood vial labelled Terry M. Edge 09-04-96

56823 - one white envelope labelled Terry Dobbs Dr. Wemberly 2:15 pm, 10-28-96 collected 10:25 pm containing one EDTA tube of Blood labelled 10/28/96 Terry Dobbs

56824 - one white envelope labelled Anthony Dunckney Dr. C-W. Wemberly 9-4-96 2:15 pm labelled Anthony Dunckney 9/4/96 1:15 p contained one EDTA Blood vial

56825 - one white envelope labelled David Green Dr C-W. Wemberly 9-5-96, 9-45 am containing one EDTA Blood vial labelled David Green 9-5-96

56826 - one white envelope labelled Charles Hawes D. Edward Marsden L.A. 2:15. 9.4.96 2:15 pm containing one EDTA Blood vial labelled Hawes, Charles 10-28-96 & one ACD Blood vial labelled Hawes Charles 10-28-96

Continued on Page

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14
PROJECT

081

11/4/96

Case 56821 (cont)

56827 - one white envelope labelled Varner Alton CW Wimberly 9-4-96 0:15 am containing one EDTA blood vial labelled Valenzo Varner 10-28-96

5682[illegible] - one white envelope labelled Felder [illegible] 9/16/96 11:20 am [illegible] one EDTA blood vial labelled Felder Boss 9/16/96 labelled Felder Kedo one EDTA blood vial 9/16/96

11/6/96

Process samples whole blood

56822	CLB 04296A	Phenol 07316I
56823	DLB 07156A	phenol/chloro 07316J
56824	RONK 07176B	chloro 07316K
56825	BDS 12135F	
56826	NACLQ4 08226D	
56827		
56828		

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Date

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11/6/96

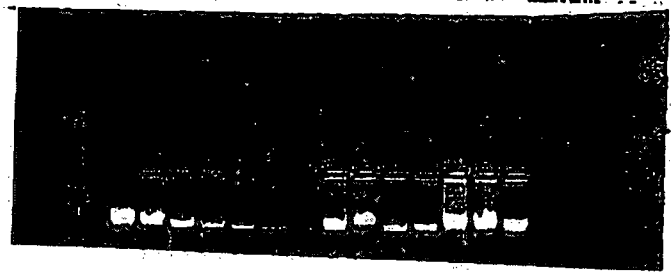
-082

Sample	Clone
56822	115/92
56823	414/480
56824	60/98
56825	559/114
56826	516/91
56827	585/89
56828	76/553

11/7/96

run 1% gel

1	30
2	25
3	15
4	10
5	8.5
6	2.0
7	1.0
8	56822
9	56823
10	56824
11	56825
12	56826
13	56827
14	56828
15	
16	
17	



PCR analysis

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PROJECT _____ Continued From Page _____ ~083

11/30/96

Comparative Study : Gigger & Organic procedure

sample	Clip #
Sample 1	455/52
Sample 2	541/74
Sample 3	444/44
Sample 4	53/568

11/21/96

Case 56821 (cont) cont of case 56381

Sample 57005 - one red & white evidence package labelled evidence SNOW MARYCK. containing another red & white envelope. Labelled SNICKEN MARYCK W.L. LOMAX M.D. 11/13/96, 11:55 - containing one EDTA Blood vial labelled W.L. Lomax 11:55 11/13/96.

type	SAMPLE	Clip #
DLB 07156A		
CLB 04296A		
PHENL 07176B	57005	93/74
SDS 12135F		
phenol 07316I		
phenol/chloro 07316J		
chloro 07316K		

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2/3/97
Case 58665 cont of 56381

One large evidence pouch labelled Summerville PD 96-14605 ; BOYD Lilly
Blood Cloth w/ Name Darryl Brown
Tube of Blood w/ Name "Charles Ferguson"
Tube of Blood w/ Name "Frank Dubery"
Tube of Blood w/Name "Desmond Johnson"

Sample 58666 - one white pouch envelope labelled: Charles Ferguson CW Wimberly MD 12-5-96 11:45 am. Containing One EDTA Blood vial labelled Charles Ferguson.

58667 - one white envelope labelled Frank Dubery CW Wimberly 1/20/97 11:30 AM. Containing One EDTA Blood vial labelled. Frank Dubery.

58668 - One white envelope labelled Desmond Johnson CW Wimberly MD, 1/2/97 11:45 Containing one EDTA Blood vial labelled. D. Johnson 1/2/97

58669 - one manila envelope labelled L95-7396 Darryl Brown STD containing blood Swabbed CW/Brown Stand

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2/3/97

PROJECT 085

2/3/97
Preparing

Samples Item #- one Switch Red/Green Stained
Item 2 - one Switch Red/Brown Stained
Item 3 - one Switch Red/Brown Stained
Item 4 - one Switch Red/Brown Stained

Process for White Block

Samples 58666 > CLB 11116E
58667 DLB 07156A
58663 PROTL 112667
58662 SDS 12135F
NUCLCH 05226D

Process for Red Silk

Samples 58669 > DLB 07156A
58661 PROTL 112667
58663A SDS 12135F
58663B NUCLCH 05226D
58663C
58663D
58664
1
2
3
4

Continued on Page

Read and Understood By

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PROJECT _____ Notebook No. _____ Continued From Page _____ 086

2/9/97

Extract all samples.

Plant 09106
Pulp/Mill 109
Well 05

Sample	Collect
58662	89/446
58666	201/565
58667	51/524
58668	26/6
58661	20/12
58663A	98/519
58663B	473/80
58663C	80/404
58663D	200/100
58664	556/95
58669	96/70
1	39/28
2	A/407
3	CK/113
4	Sed/109

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0/5 A7
Neck Yeild gel

087

1	30
2	20
3	15
4	10
5	5
6	2.5
7	1.0
8	58661
9	58662
10	58663A
11	58663B
12	58663C
13	58663D
14	58664
15	58665
16	58667
17	58668



1	58669
2	1
3	2
4	3
5	4
6	—
7	
8	
9	
10	
11	
12	
13	
14	
15	

Continued on Page

Read and Understood By

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11/5/97
Date

Signed

Date

PROJECT 3/10/97 — Continued from Page — 088

Case (56837-381 reference) 59711

59712 - one white envelope labelled James Prinkins C.W Wimberly 2/24/97 11:00 AM Containing one EDTA Blood vial labelled James Prinkins 2/24/97

59713 - one white envelope labelled Evark Flowers W.R Lomax MD ; 2/11/97 AM 0945 - Containing one EDTA Blood vial

59714 - one white envelope labelled De wayne Diggins C.W Wimberly 2/12/97 10:30 AM . Containing one EDTA Blood vial . labelled Dewayne Diggins

59715 - one white envelope labelled Ronald Suggs C.W Wimberly 1/30/97 4:00 PM. containing one EDTA Blood vial labelled Ronald Suggs.

59716 - one white envelope labelled Adam Swinton C.W Wimberly 2/18/97 1330 PM . Containing one EDTA Blood vial labelled Adam Swinton 2/18/97

59717 - one manila envelope labelled Blood sample from Steel Pipe taken by Sgt. As bell Known Sample from subject. George Given. 1 x 2 Containing 2 cotton swabs treated. Blank Stained.

Process per Whole Blood CLB 11116E
DLB 12036J
PROTC 12667
SDS 12135C
NCCIOY 08226D

59712 59717
59713
59714
59715
59716

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3/18/97

PROJECT _____ Continued From Page _____ 089

3/19/98

Extract - dialysis

Sample	Clip #
59700	559/545
59701	701/33
59702	28/5F
59703	479/91

Sample	Clip #
59708	347/89
59713	476/532
59714	1191/344
59715	528/119
59716	81/509
59717	114/444

Extracted 2.

Control - I
Bead - 10246C
Bead/Chloro - 10296F
Chloro - 10306C
3/20/97

DISEQ Amplification

Sample	const	chloro	DISEQ Primer	PCR	dNTPs	Taq
59339	3ul	3ul	5ul	5ul	5ul	.25ul

Lane	Yield	Gel
1	30	
2	20	
3	15	
4	10	
5	5	
6	25	
7	1.0	
8	59700	
9	59701	
10	59702	
11	59703	
12	59712	
13	59713	
14	59714	
15	59715	
16	59716	
17	59717	



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Read and Understood By

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5/19/97
Case 61583 ref 56381

Sample 61584 - 1 EDTA BKD ucl from Melvin Fults. SS# 247-06-2578

61585 - 1 EDTA BKD ucl from Wilbert Mazyck. 4/25/97

Case 61399

Sample 61399 - one brown paper bag containing cuttings from White umbilicus & yellowish stained glove AP+

61400 - one brown paper bag containing cuttings from floral pan of plants & yellowish stained AP+

Process for whole BKD

61584 > CUB 11116E SDS 12135F
61585 > DUB 12036 NACIOU 02137A
PADXL 11267

Process for 9 DUSs

61399 > PADS 03136
61400 > PADXS 11267
SDS 12135F
NACIOU 02137A

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Read and Understood By

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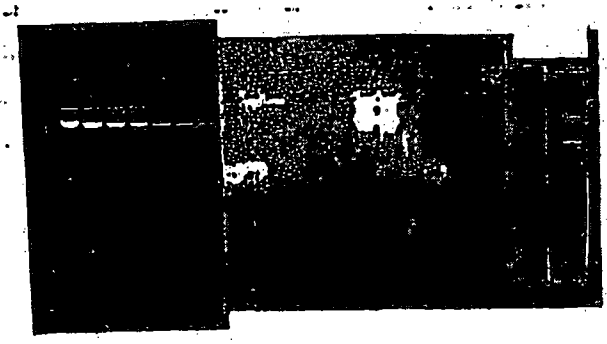
PROJECT

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5/21/97

and yield gel

1 30
2 20
3 10
4 10
5 6
6 25
7 1.0
8
9 61399
10 61406
11 59280
12 59281
13 59282
14 61585
15 61580
16 59280
17 59281
59282



1 59603
2 —
3 N/A
4 1.7 ↓

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Read and Understood By

Signed

5/21/97
Date

Signed

Date

PROJECT

·092

7/15/97

Case 62336

Sample - 62337 - one manila envelope labelled 1 Whole Blood of Juan Diego Lucero PPT # 90298 containing one EDTA Blood vial labelled Juan Diego Lucero

62338 - one manila envelope labelled U01097003 Sg - #1 whole blood control (1) (2.5 x 2.5 cm) Buttons 4/29/97 containing one small swatch & red/brown stains.

Case 56391 (cont)

Sample - 62761 - 1 EDTA Blood vial labelled. Ester Thomas (NM) Juan 6/16/97

Case 62984

Sample - 4 vials of Tissue - 1 tooth / vial. 62985

62986 - 2 vials w/ EDTA Blood Vanita / Mark DB 8-28-64

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7/15/97
Date

Signed

Date

PROJECT _____ Continued From Page _____ 093

7/15/97

Case 62614

62615 – One large cutting from a pair of white mens "Hanes" underwear & yellow stain Applicant

Case 63064

63065 - One pair of Mens "Fruit of the Loom" underwear & Brown stains

Process for Whole Blood

SAMPLE:		
	62961	CLB 11116E
	62962	DLB 12636J
	62337	PROK 11266B
	62761	SDS 04247A
	62986	NaCl04 02137A

Process for Blood SID

Sample	
	DLB 12036J
62338	PROK 11266B
63065	SDS 04247A
	NaCl04 02137A

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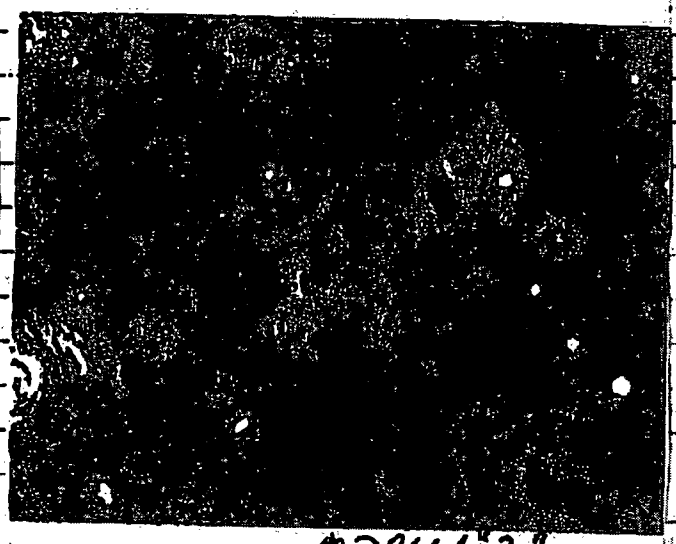
PROJECT _____ Continued From Page _____ 094

7/16/97

Spindle pictures (cont.)



62963 "1"



62964 "3"

Nuclei lysis - samples

62963
62964
63065
62615

PBS - 03178
Pro K 11266
SARK 10036F
EDTA 01046F
DTT 10205F
NaCl 04 - 02137A

Extract all samples

Bucket 1 Sample	Clip #	Bucket 1 Sample	Clip #	Bucket 2 Sample	Clip #
62963	2/15			62961	501/106
62964	125/66	62815?	114/12	62962	20/104
63065?	76/6	63065?	4601/100	62337	583/5
62615	118/22	Bucket 2	Clip #	62761	34/19?
62963?	93/81	62339	K/C15	62986	361/4
62964?	560/15	62818?	558/321		

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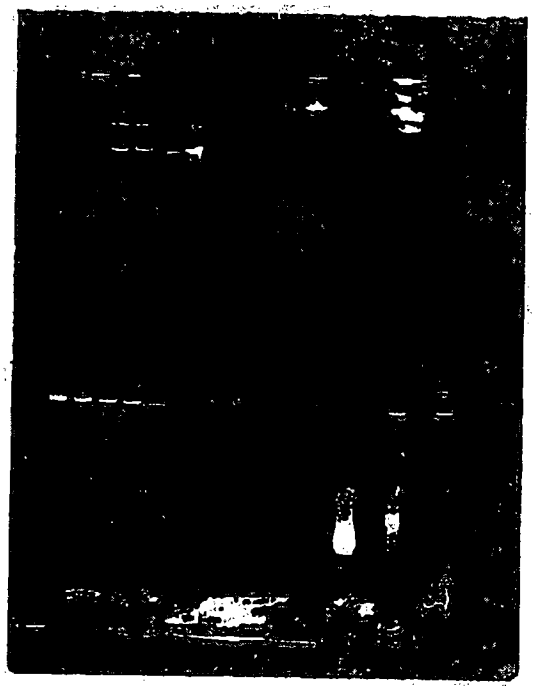
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7/18/97

Nitrate Yellow Soil

1 30	1 62333
2 20	2 62961
3 15	3 62962
4 10	4 62986
5 5	5 62332
6 25	6
7 10	7-17 —
8 62963	
9 62964	
10 62615	
11 63065	
12 62963F	
13 62964F	
14 62615F	
15 63065F	
16 62984	
17 62761	



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7/29/97

-096

Case 63636 cont of 56381

- 63637 - One white envelope labelled General Chem & Hyland L.P.N. 7-16-97 10:60 1m. Containing one EDTA Blood vial labelled General Chem 7-16-97

63638 - one white envelope labelled John Smalls Jr. C. Hyland C/W 6-19-97 10:30. Containing John Smalls JR 249-00-4593 6-19-97 1 EDTA Blood vial

62639 - One white envelope labelled Derek Duggins & Hyland 2DR 6-17-97. Containing one EDTA Blood vial Derek Duggins 246-27-1522 6-17-97

Prepared for Whole Blood

		Sample	Client
6337	CLB 1116E		
63638	CLB 1203J	6337	16/16
63639	PCR 11267	63638	73/28
	SDS CH247A	63639	57/65
	NaCl 04		

Amplify for PM + DQ2 See PCR Book

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9/18/97

-097

Case 64974

64975- one pair of White "Hanes Her Way" panties & yellowish stain.
AP +

Case 64989

64990 - One manila envelope labelled R97-2350 Kenosha S.D. 97-41302, 9-3-97.
A- swab B- std from pedal C- std from kneecap.
Containing smaller manila envelope labeled Blood Sample or Q-tip swab from Coach Board R97-2350 A SUS 8-25-97
Containing one swab & Black/Brown stain.

Case 64982

64983- 1 EDTA tube of Blood labelled 2nd Term 250-34-4120, 8-14-97 1315

64984 - 1 EDTA Tube of Blood labelled Derek Lemon 250-33-3537 Drawn 8-8-97 1030

64985- 1 EDTA Tube of Blood labelled McClent Dunehouse 8-23-97 1300

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9/18/97

-098

Ferrate lysis of 6495 - and FBS 03117B
PREK 01027L
SDS 04243A

Old Stk lysis 6498 → DLB 07153B
PREK 01027L
SDS 04243A

White Ctl lysis 6493
6496
6495 > CLB 11116E
DLB 07143B
PREK 01027L
SDS 04243A



6497 5 ?

CONFIDENTIAL

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3 40
F PROJECT

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9/19/97

Make lysis Sample 63768 - PBS 03117B
PMSF 01027C
SALL 10036F
EDTA 01046F
DTT 10176N

Extraction of Samples

Samples	Qty #
64903	346/C10
64904	17/325
64905	8/19
64990 - Bucket	18/A
037687 "	777/12

9/22/97

Make lysis of case 64974

64975 - PBS 03117B
PMSF 01027C
SALL 10036F
DTT 10176N
EDTA 01046F

Extraction → NaCl04
PMSF 01027F
Phenol/Chloro 3/12A19 64975 20/24
CHCl3-05137C

Sample	Qty #
64975	20/24

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11/4/97

Case 66572 + 66558 (cont) & 56381)

66560 - one Brown Paper bag labelled 96-14607 C/S Both, 9-1-96; Rear Back DOOR (Trail around Back) 1/2 Smoked; R. Manchester. Boyd. Containg (1) 1/4 Smoked "Marlboro" cigarette

66573 - one manila envelope labelled Serology DNA/ L96-11313 17.1 containing Terrycloth Cuttings & red-sh/brown stains ap-

66577 - one Brown Paper Bag labelled L96-11313 Item # 13) containing 1 coat type dress & red/Blood stains NO other visible stains under UV light detector.

66578 - one Brown paper bag labelled Coat+Wht L96-11313 #10) containing 1 green + White dress & red/Brown stains NO other visible stains under UV light detected

66579 - one Brown Paper Bag labelled White pantees (L96-11315) th ll containing white pantees crotch missing ~~NO other~~ visible stains under UV light very small (Ap+ very weak)

66580 - one Brown Paper bag labelled L96-11313 # 17.3 containing 2 towels & red/Brown stains difficult to detect staining under UV light detector

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11/4/97

Case 66572 (cont)

66581 - 1 Brown paper bag labelled Paper towel & bandage L96-11313 Item 14 & 15 - difficult to detect UV Stains (AP -)

66582 - 1 Brown Paper Bag labelled L96-11313 B/B containing 1 grey dress/Skirt & red/Brown Stains NO U.S.B.E Stains under UV light.

11/5/97

Case 66311 cases (18662 ext)

66311 - one Styrofoam box labelled Property # 32106 Report # 96-46019 Item # 64 Officer Connelly 134 DATE 9/10/97 contains one tube of blood labelled Joe Banks SDD 1.7 x 12.45

Types of Blood Sample
CLB 08167E
66311 - DLB 67147B
PADK 61027L
SDS 04247A
PACIQ 07147J

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11/6/97

Lysis of Cigarette Butt (66560) with Chelex 5% Boil. Follow procedures from FBI protocol as per M. Ike Bench.

Lysis of BLOOD STD for Case 65328 Ref:

65329
65330
65331
65332

> DNB 07 14 7B
PROTK 01027C
SDS 0404 7A

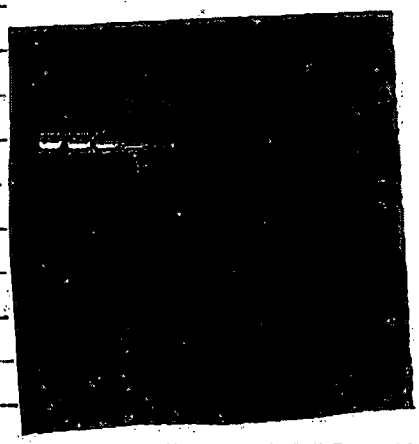
11/5/97

Case 66201

66200- CM piece of Bright Pink Reflective paper
C- Untreated Control Stain
AP- NO Florescence under UV Light

Make Yield Gel

1 30
2 20
3 15
4 5
5 2.5
6 1.0
7 66560



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12/18/97

Case 58660 (cont)

67818 - One manila envelope containing one red top + one EDTA blood vial labelled Neil Rasheed

Case 68064

68065 - One pair of navy blue white striped underwear & yellowish stains on the crotch (not very)

Case 68390

68391 - One manila envelope containing one blue top Cardiac.

Case 68554

68555 - 1 EDTA Blood vial labelled Kenneth Simmons

~~10~~ Case 67623

~~67624 one~~

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12/29/97

Isolated for Whole Blood + BD STN Std (AM)

SAMPLE: 67555 CLB 07187E
67818 DLB 07147B
67517 PROMC ~~07027C~~ 11267C
SDS 04247A
67174 NaClO4 07147J
67175

Oxlate for BD STN

67176 DLB 07147B
67177 PROMC ~~07027C~~ 11267C
67178 SDS 04247A
67179 NaClO4 07147D

Isolate for Sperm (female lys.s)

68391 PBS 03117B
69065 PROMC ~~07027C~~ 11267C
67518 SDS 04247A
67519 (NP) NaClO4 07147D
67520
67521 (NP)
67522
67523 (NP)

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12/30/97

Extraction of samples

Bucket 1

Sample	Clip #
67174	423/67
67175	460/66
67517	13/5
67518	93/C8
68391	555/104
68555	160/595

Phenol: 08297A
phenol/chloro. 08297B
chloro. 05137C

Bucket 2

Sample	Clip #
67176	490/9
67177	7/8
67178	80/63
67179	93/469
67518BI	546/500
67518BII	C10/25
67520	1/98
67522	53/26
68065	C21/76
67518BF	28/C22
67520F	23/2
68065F	C15/X
68391F	13/55
67522F	500/C

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9/13/96

new test gel

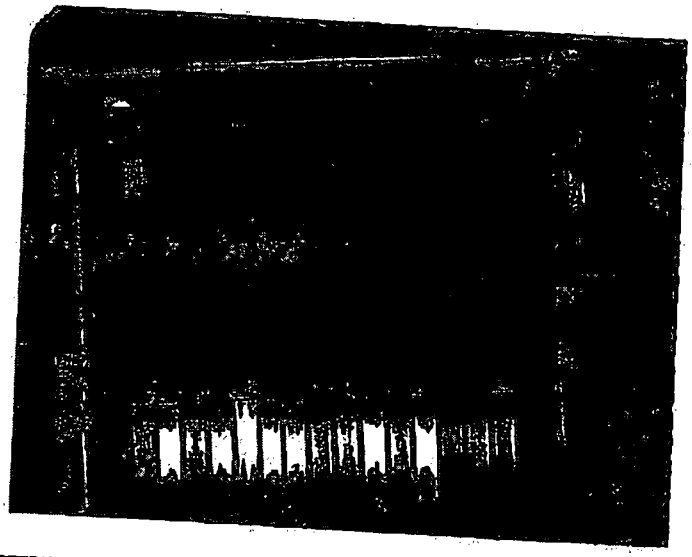
-106

1-16 55552 N/A

17 55552

1-2 N/A

3 55553



PCL Analysis See PCL BOOK III page 55

9/16/96

Profiler's from Cellmark.

55259 - 1 Swab labelled 641. Crime Scene Swabs.

55260 - 1 Stain card labelled 642 Suspect 1

55261 - 1 Stain card labelled 643 Suspect 2

55262 - 1 Stain card labelled 644 Suspect 3

55263 - 1 control Swab -

Female LYSIS PBSU 1046A BIDSTN LYSIS DL60756.

PDXC 0716B RBHL 07176

SDS 12135E SDS 12135E

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Project

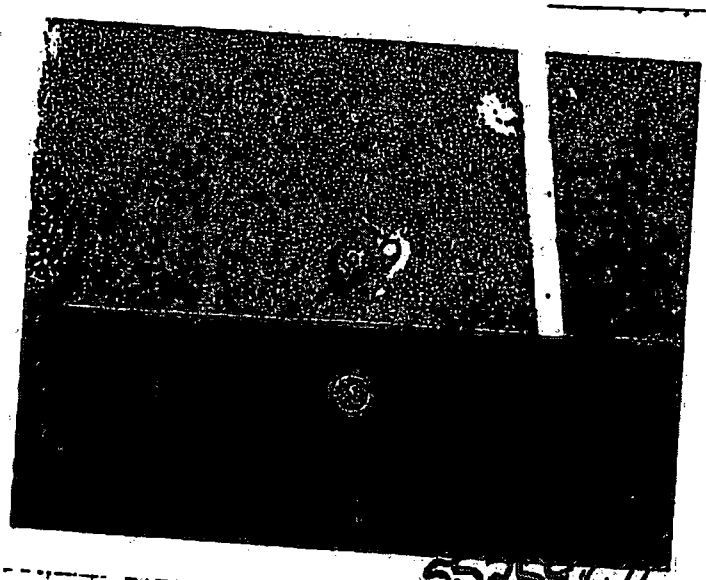
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4/17/96

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Sample	Clone
55260	400/559
55261	A7/496
55262	731424
26 (Low)	118/514
26 (Dup)	3/87
26 (Head)	98/63
55259	C14/C5
55259	414/83
55263	98/104
55263	118/407

Plate 05316A
Plate 1 CA 0 0604G/0736E
CA 0 0604G



55257 "1"

Male Lysis

PBS 0.1046A
Mg++ 0.1763B
SDS 0.0374F
DTT 1025F
EDTA 0.1046E
NaCl 0.3046D

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4/17/96
Date

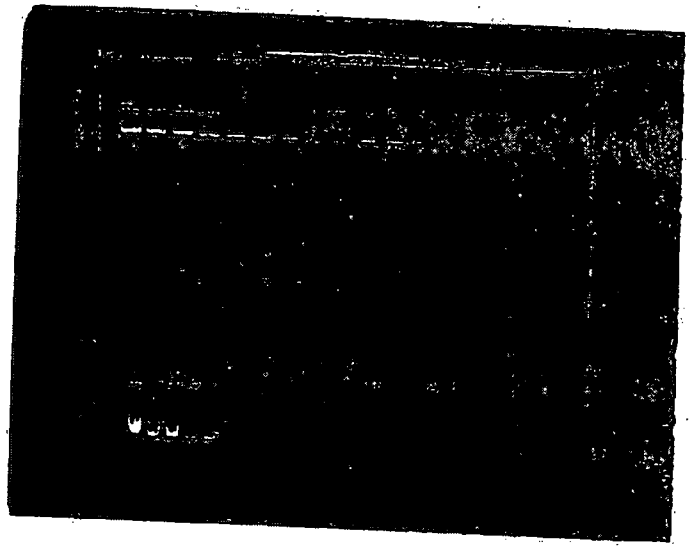
Signed

9/18/96

-10 N

run 1% gel

1 30
2 20
3 15
4 10
5 5
6 2.5
7 1.0
8 55259
9 55259 f
10 55260
11 55261
12 55262
13 55263
14 55263 f
15 Lb (Rapid)
16 Lb (D.P)
17 Lb (Hepa)



Digestions

Sample	Vol/used	DNA/total	0206C Buffer	0402A Enz	T.V
55259	1500/1100	1 / 1.5ug	120	3	1200
55259 f	1200/1000	<1 / <1ug	120	3	1200
55260	1600/1100	2.5 / 3.75ug	120	3	1200
55261	1200/1000	2.5 /	120	3	1200
55262	1200/1000	1 / 1.25ug	120	3	1200
55263	1200/1000	<1 / <1ug	120	3	1200
55263 f	1100/1000	<1 / <1ug	120	3	1200

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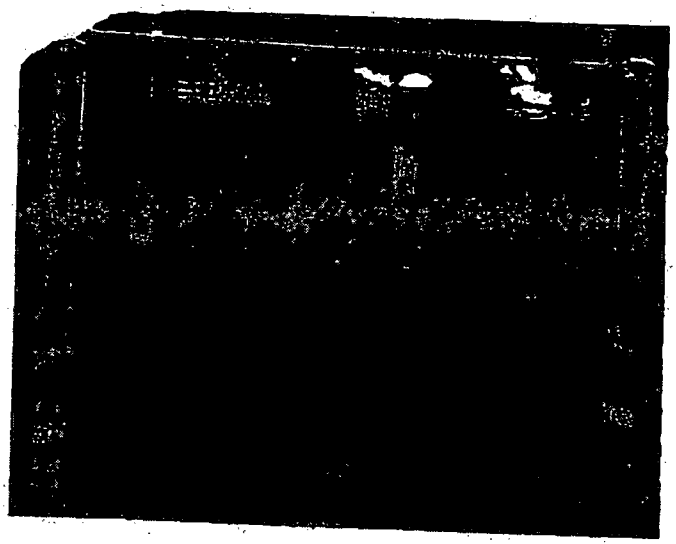
9/18/96

9/20/96

Continued From Page

109

1 —
2 HCO III
3 55260
4 55261
5 55263
6 55259
7 55259-2
8 55239
9 55262
10 +
11 20 (PSH)
12 46 (D.P)
13 46 (UPROAR)
14 46 (HEAD)
15 40 (PSH)
16
17



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9/20/96
Date

Signed

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Continued From Page _____

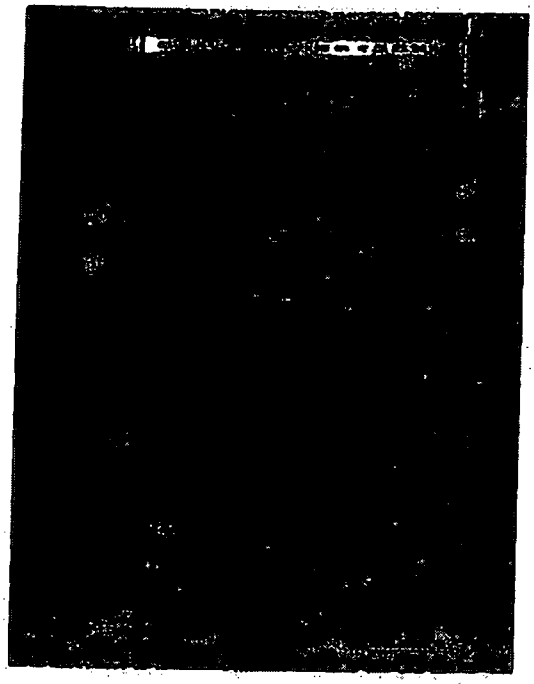
9/25/96

need diagnostic gels

110

Gel #MR1

1 MWM 10kb
2 —
3 55260(S)
4 =
5 55259(E)
6 =
7 55259(E)
8 MWM
9 55261(S)
10 —
11 55262(S)
12 —
13 55263(C)
14 —
15 Mrc III
16 MWM 10kb
17 10kb



D090362
M 060362
I 090566
MSI 061762

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PROJECT

11/1/96

Amplify for D1580 111

Sample	ID #	amt
56382	382 D1	35ul
56384	384 D1	10ul + 25ul dH2O
56384 f	384 f D1	5ul + 30ul dH2O
56386	386 D1	10ul + 25 ul dH2O
56386 f	386 f D1	2ul + 23ul dH2O
56389	389 D1	20ul + 15ul dH2O
56617A (E)	617A (E)	35 ul
56617B (E)	617B (E)	35ul
56617A (W)	617A (W)	35ul
56617B (E)	617B (W)	20ul + 15ul dH2O
+ positive	+	20ul + 15ul dH2O
− Negative	−	35 dH2O

D1580 Sense Mix: 04 10ul
10x dNTP - 06186C
10x AC Buffer 04246F
Taq 143094
positive control 10016

11/4/96

Amplify for DQα x PM

Sample	ID	amt
56617B (C)	617B (C)	10ul
56617A (E)	617A (E)	20ul
56617B (E)	617B (E)	20ul

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Date

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11/8/96

mini product Sel D1580

1 Positive
2 Negative
3 MWM
4 617 A E
5 617 B E
6 617 A C
7 MWM
8 617 B C
9 56382 D1
10 56384 D1
11 MWM
12 56384 F D1
13 56386 D1
14 56386 F D1
15 56385 D1
16 MWM
17



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11/22/96

Amplify for D12

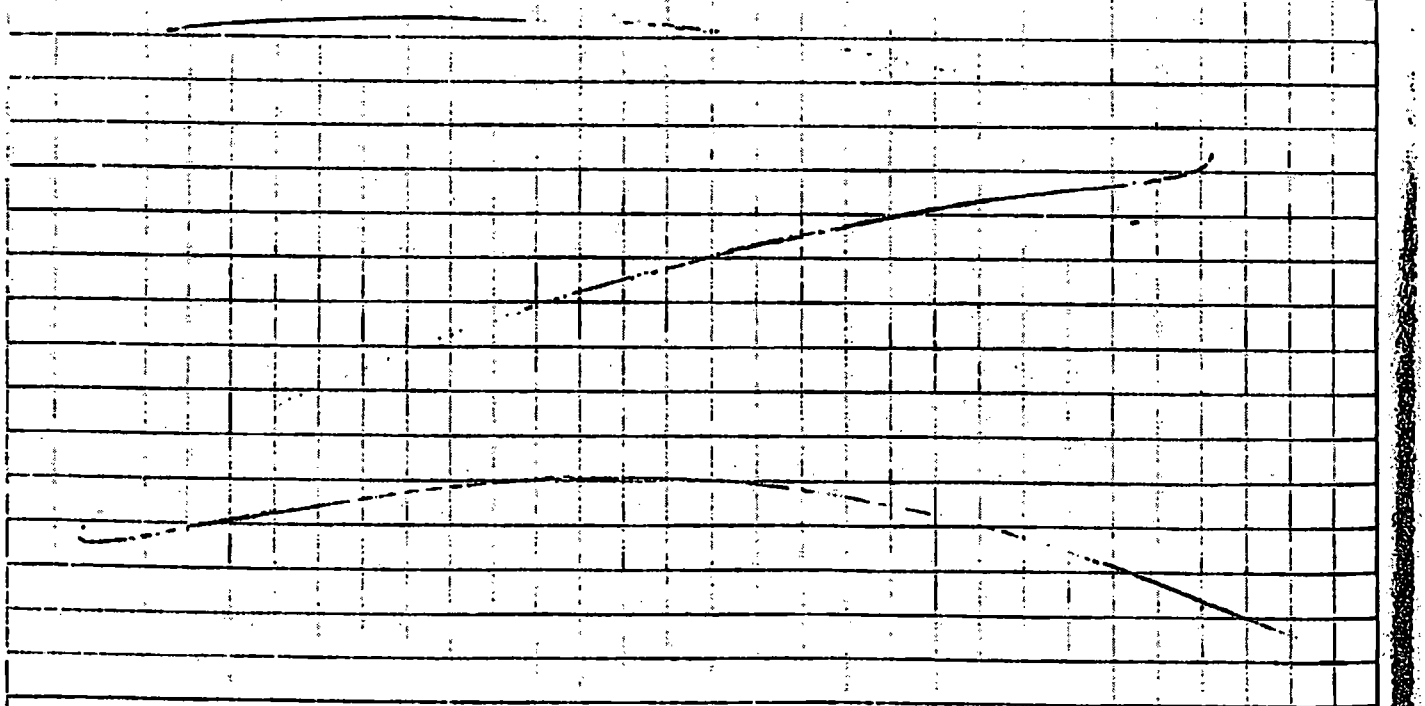
for Multiplex dNTPs

Sample ID	amt	dH2O	Buffer	—	Primer	Taq
5638U	384M 20 ul	50	10		10	10	.25
5638UF	384FM 20 ul	50	10		10	10	.25
5638G	386M 20 ul	50	10		10	10	.25
5638GF	386FM 20 ul	50	10		10	10	.25

11/25/96

Amplify for PM + DQ2

Sample ID	amt
5720S	25 1 ul



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PROJECT _____ Continued From Page _____ 1-14

11/22/96 (en)

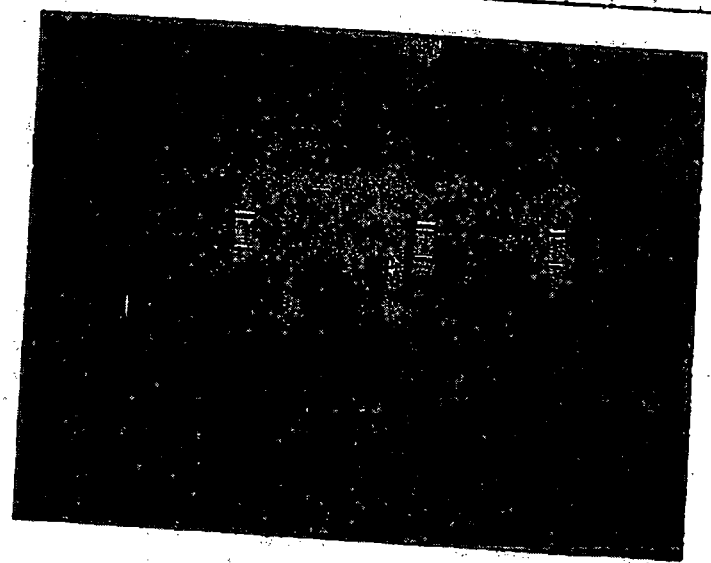
Multiplex D12

Sample ID	cmt	10x Multiplex Buffer	primer D12	dNTPS	TAQ	cl.
5.617AC	617ACM2	20ul	10ul	10ul	10ul	.5
5b612BC	612BCM2	20ul	10ul	10ul	10ul	.5
56612AE3	612AE3M2	20ul	10ul	10ul	10ul	.5
56612BE3	612BE3M2	20ul	10ul	10ul	10ul	.5
5617AE3	617AE3M2	20ul	10ul	10ul	10ul	.5
5617BE3	617BE3M2	20ul	10ul	10ul	10ul	.5

11/25/96

new Product Gel.

1 + D12
2 –
3 MWM
4 563B4 @12
5 563B4
6 563B6 → 563B6
7 56617 AM
8 56617 BCM
9 56617 A3M
10 MWM
11 56617 B3M
12 56617 A3IM
13 56617 B3IM
14 ↓
15 MWM
16 +
17 –



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8/9/98

Amplify for Analogenx

Sample ID	Amt
67520	67520A 5ul
67518	67518A 5ul
67522	67522A 5ul
67520F	67520FA 5ul
67518F	67518FA 5ul
67522F	67522FA 5ul
56386	56386A 5ul
563869	563869A 5ul
563847	563847A 5ul
68065	68065A 5ul
69391	69391A 5ul
40196	40196A 5ul
40197	40197A 5ul

Amplify for Pathogen CT

Sample	ID	Amt
40194	40194CT	5ul
40195	40195CT	5ul
40196	40196CT	5ul
40197	40197CT	5ul

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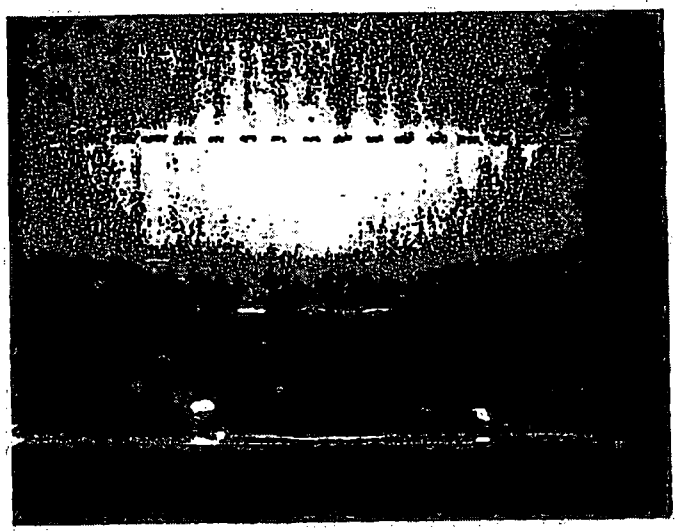
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2/9/98

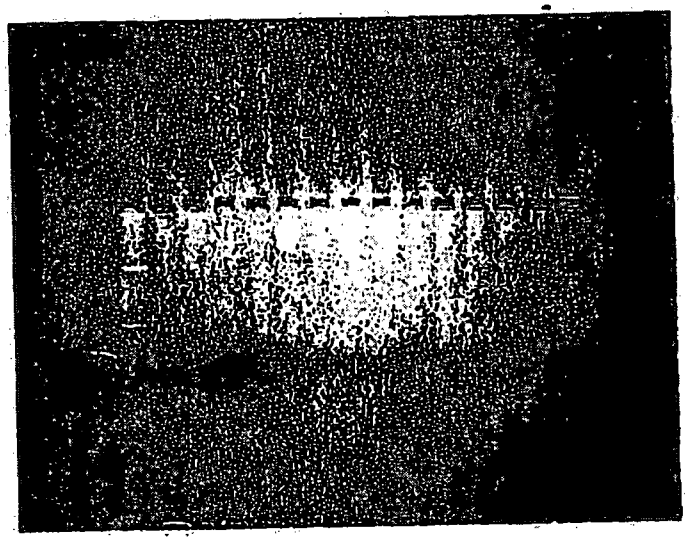
new product gel Autologous

1 Mol.
2 + Anode
3 (-) Anode
4 BP100
5 67522A
6 67519
7 67522
8 67519F
9 67520F
10 56386
11 56387
12 96304
13 67522 F
14 40196
15 40197
16 68065
17 68391



new Product gel for CTT

1 (-) CTT
2 (+) CTT
3 BP100
4 40194
5 40195
6 40197
7 40196
8
9
10 17 -



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2/10/93

Gate

1 — 40'

2 +

3 MWM

4 40194

5 40195

1 MWM

7 40196

8 40192

9 MWM

10 —

11 +

12 Male

13 MWM

14 67519

15 67520

16 67522

17 ~~MWM~~ 675205 Gate

18 56386 40'

19 563869

20 563847

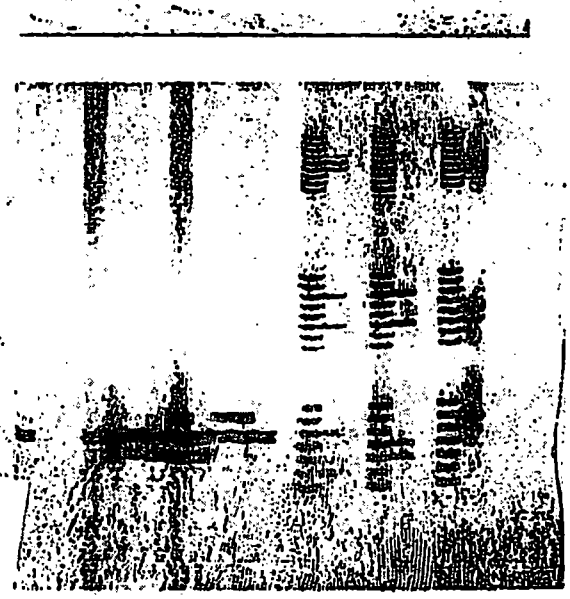
~~Gate~~

21. MWM 10'

22. 40186

23 40197

24 MWM



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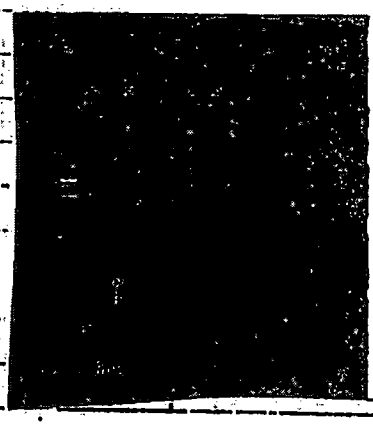
PROJECT

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11/4/96

Product gel for PM+DQ2

1 MWM
2 56617 B(C)
3 56617 A(E)
4 56617 B(E)



11/7/96

PM+DQ2

Amplify for DQ2 & PM

Amplify for D1S80

Sample	I.D	amt
56617 A(E3)	617A(E3)	2ul
56617 B(E3)	617B(E3)	2ul
56617 A(E3I)	617A(E3I)	2ul
56617 B(E3I)	617B(E3I)	2ul
56822	822	1ul
56823	823	1ul
56824	824	1ul
56825	825	1ul
56826	826	1ul
56827	827	1ul
56828	829	1ul

Sample	I.D	amt
56526	526	1ul
56527	527	1ul
56528	528	1ul
56529	529	1ul
56530	530	1ul
56531	531	1ul
5.747-10	747-10	1ul
-20	-20	1ul
-30	-30	1ul

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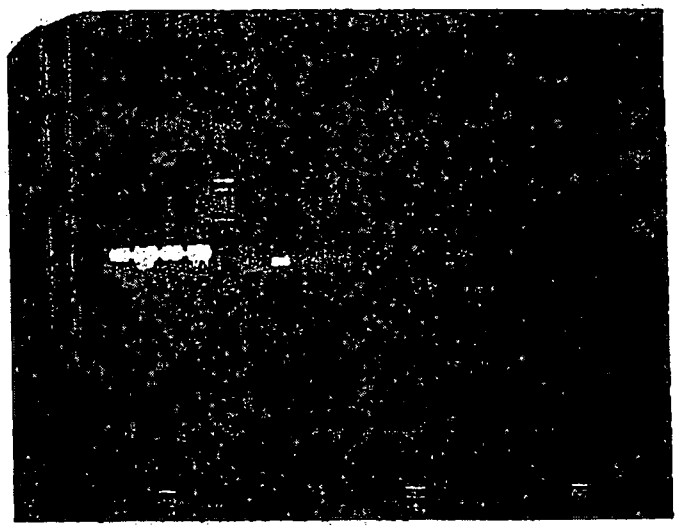
11/13/96

used product gel PMY DQ2

1 +
2 -
3 MWM
4 56747-10
5 -20
6 -30
7 56822
8 56823
9 56824 (0.4)
10 56825
11 56826
12 MWM
13 56827
14 56828
0 56526
16 56527
17 56528
18 MWM



1 56529
2 56530
3 56531
4 56824
5 MWM
6 56617A E3
7 56617B E3
8 56617A E3I
9 56617B E3I





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10/3/96

PROJECT

11/11/96

WB PM + DOA

Case 5682 1 cent of 56381

PM

Sample LOC GMA HOG DSC GA

56822	AB	B	AC	A	A
56823	B	A	AC	AB	B
56824	AB	A	AC	AB	C
56825	AB	B	AB	AB	B
56826	AB	AB	BC	A	B
56827	AB	B	AB	AB	B
56828	B	B	AC	AB	B

[redacted]

DX

Sample	Type
56822	1.1, 1.2
56823	1.1, 2
56824	1.1, 4.1
56825	1.2, 2
56826	1.2, 4.2 4.3
56827	1.2, 4.1
56828	1.1, 1.2

[redacted]

[redacted]

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10/11/96

Date

Signed

Date

PROJECT _____ Cont'd from page _____

11/22/96

Case 57204 (cont) (AM)

Amplify for PM & DQ2

Sample ID amt

57205 57205AM 1ul

11/22/96 (PM)

Amplify for DIS80

Sample ID	Amt	dH2O	10X PCR Buffer	Taq	Primer DIS80	dNTPs
56822	56822 D1	1ul	19ul	5ul	0.25	5ul
56823	56823 D1	1ul	19ul	5ul	0.25	5ul
56824	56824 D1	1ul	19ul	5ul	0.25	5ul
56825	56825 D1	1ul	19ul	5ul	0.25	5ul
56826	56826 D1	1ul	19ul	5ul	0.25	5ul
56827	56827 D1	1ul	19ul	5ul	0.25	5ul
56828	56828 D1	1ul	19ul	5ul	.25	5ul
56631	56631 D12	1ul	19ul	5ul	.25	5ul
56747-30	747-30 D12	1ul	19ul	5ul	.25	5ul

Sample ID	amt	10X Buffer Gold	Taq Gold	Primer DIS80	dNTPs
56617AC	617ACDIG	20ul	5ul	.25	5ul	5ul
56617BC	617BCDIG	20ul	5ul	.25	5ul	5ul
56617AE3	617AE3DIG	20ul	5ul	.25	5ul	5ul
56617BE3	617BE3DIG	20ul	5ul	.25	5ul	5ul
56617AE3I	617AE3IDIG	20ul	5ul	.25	5ul	5ul
56617BE3I	617BE3IDIG	20ul	5ul	.25	5ul	5ul

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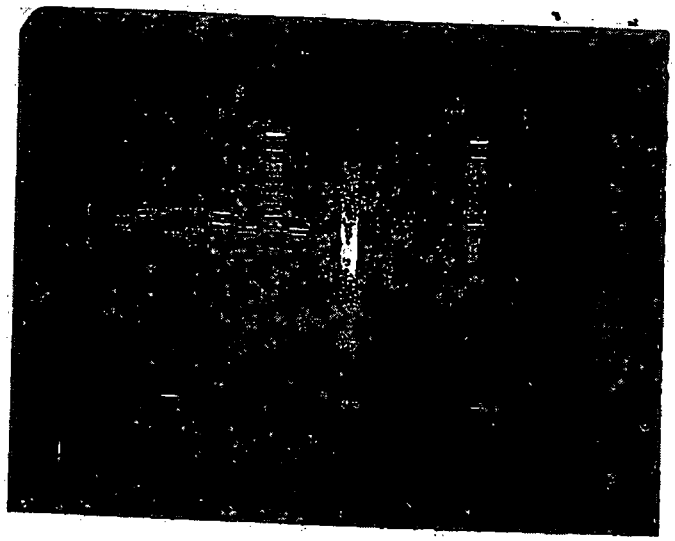
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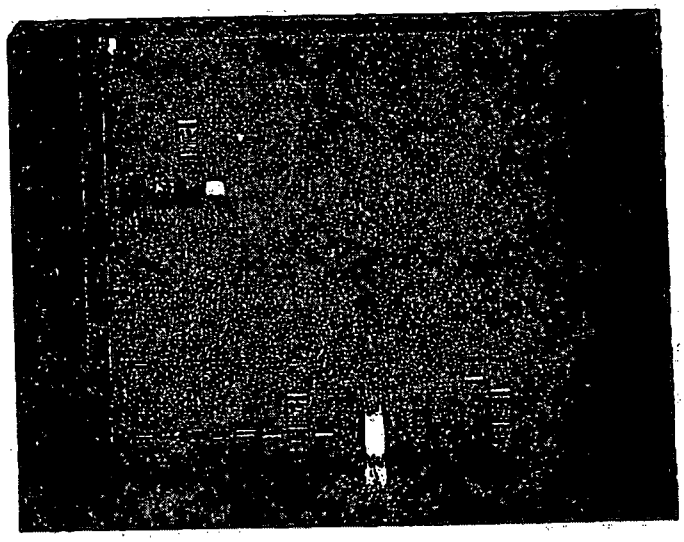
PROJECT _____ Cor 1 From Page _____ 122

11/25/96

1 56822
2 56823
3 56824
4 56825
5 56826
6 56827
7 MWM
8 56829
9 56617AC DIG
10 56617BCG
11 56617AE3G
12 56617BF3G
13 56617AE3G
14 56617BE3G
15 MWM
16
17



1 -
2 +
3 MWM
4 57205



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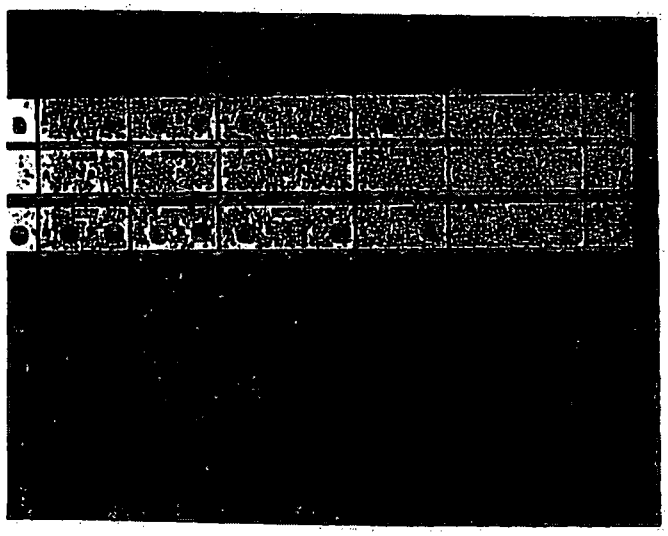
11/25/96

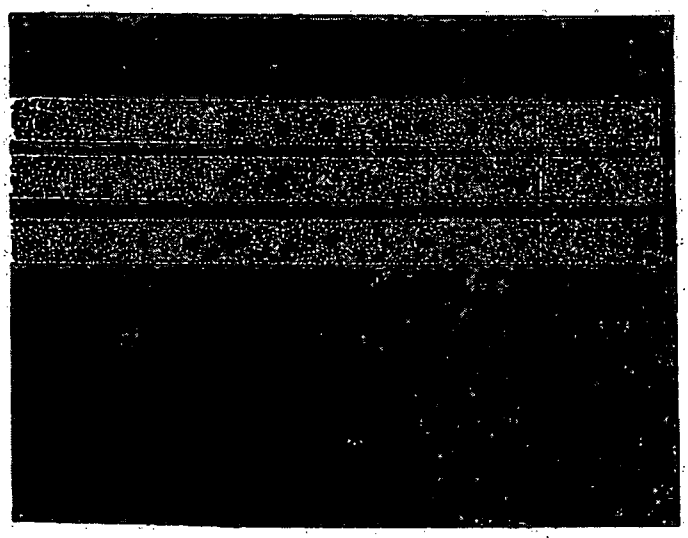
MVB PM & DQ & Case 56801 (cont) & Case 56381

PM Result

sample 2X2 6VPs HPGG DXC QC

57205 AB AB AC B





DQs result

Sample	Type
57205	3, 4, 2 4, 3

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PROJECT _____ Continued From Page _____

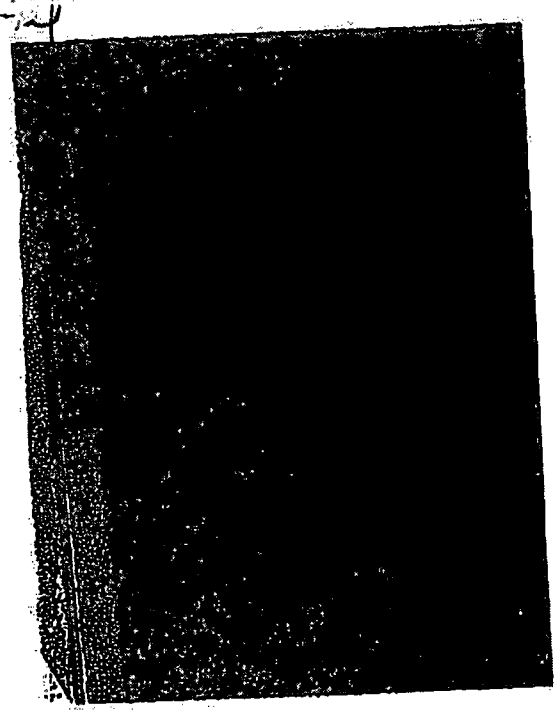
2/6/97
Buy pkg. for Acrylic Lot # F2651
ME E50S9
Sample ID Count Control E4056
Pos. E5856

57663	662	Neg
57664	666	Pos
57667	667	Neg
57668	668	Neg
57669	669	Neg

2/5/97

Russ Multiplex Acrylamide

1 NC
2 positive
3 Marker
4 57619
5 57620
6 Marker
7 57621
8 57622
9 Marker



Continued on Page

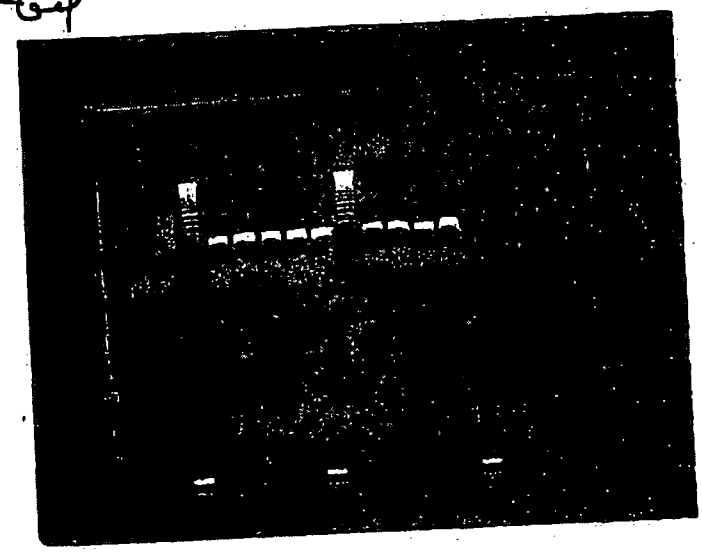
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PROJECT _____ Continued From Page _____

2/8/97

Final Product Gel



1 Neg
2 Positive
3 MWM
4 58662
5 58666
6 58667
7 58668
8 58669
9 MWM
10 RxC
11
12
13
14
15
16
17
18

2/8/97

Multiplex PCR PM+BD

Samples	I.D.	Amt
8211	16211 BD	20 ul
8211 B	16211 BD	20 ul
58661	58661 PM	20 ul
58663A	58663A PD	20 ul
58663B	58663B PD	20 ul
58663C	58663C PD	20 ul
58663D	58663D PD	20 ul
1 Pool	#	5
2 Pool	2	5
3 Pool	3	5
4 Pool	4	5
53351	53351	1 ul

Kitt E2651
Ctrl E5639
Control E4096
Primer E5066

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Signed _____

PROJECT 2/7/97

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Results

Sample	DDR	GVPA	HBGDFS	G
SB666	B	AB	B	A	C
SB667	B	B	BC	B	B
SB668	AB	AB	AB	A	B
SB669	B	AB	A	A	B

DDR HyB

Sample	Type
SB666	1,2,2
SB667	1,1,1,2
SB669	1,2,3
SB669	1,1,1

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2/7/97
Date

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7/18/97

Complete for PM+DD2

Sample	Amt
62963	2ul
62964	2ul
62965	2ul
62963	2ul
62964	2ul
63065	2ul
62985	2ul
62761	1ul
62986	1ul

7/21/97

read product gel

1 +
2 -
3 MWM
4 62963
5 62964
6 63065
7 62963
8 62964
9 62065
10 63985
11 62761
12 62986
13
14
15
16
17



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ROJECT

Continued from Page

7/22/97
Case 56381 (Cont.)
PM result
Sample 62761

LDLR A B

GYPA A

HBGG C

D7S8 A B

GC B

[redacted]

[redacted]

[redacted]

DQ2 result

Sample	Type
62761	1,2,4.1

[redacted]

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7/22/97
Date

Signed

Date

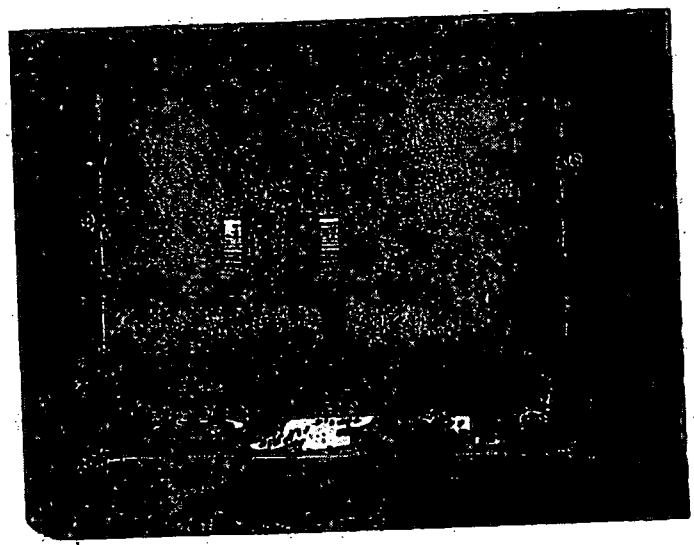
PROJECT _____ Continued From Page _____

3/26/97

1 N/A
2 "
3 "
4 -
5 NO
6 RS
7 MWM
8 59712
9 59713
10 59714
11 59715
12 59716
13 59717
14 59700
15 59701
16 59702
17 59703

1 59712
2 59713
3 59714
4 59715
5 MWM
6 59716
7 59717
8 59700
9 MWM
10 59701
11 59702
12 59703
13 59717





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Read and Understood By

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3/24/97

Amplify for PBL + DQα

Sample	Vol	BSA
59702	1ul	–
59703	1ul	–
59704	1ul	–
59705	1ul	–
59706	1ul	–
56212	2ul	.8ul
59700	2ul	.8ul
59701	2ul	.8ul
59702	2ul	.8ul
59703	2ul	.8ul

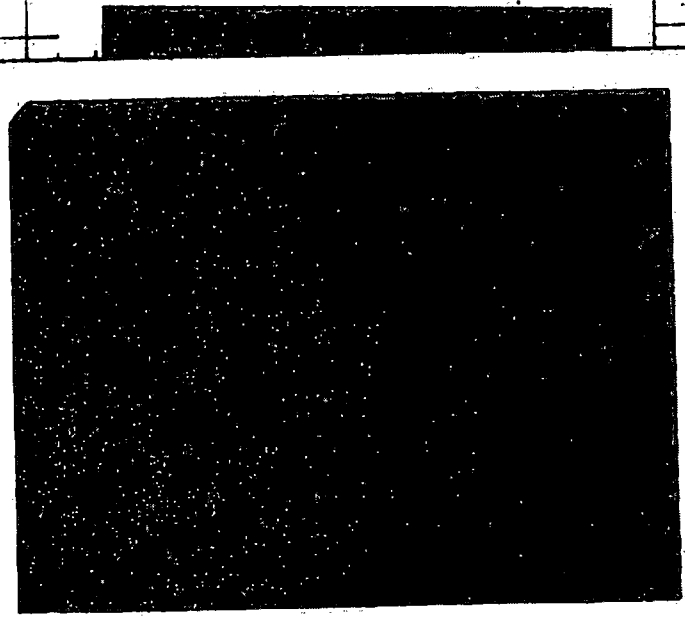
3/21/97

run DISBD gel

Look. MADE 1X TBE
instead of .5 X TBE

results were interpretable

see page 42



Continued on Page

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3/24/97
Date

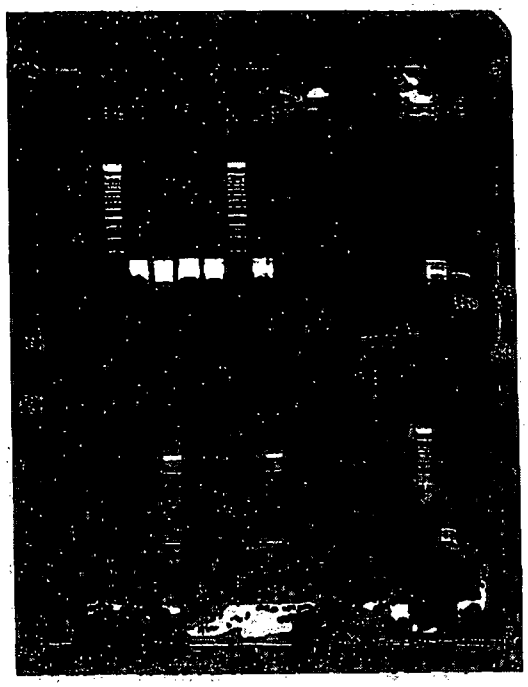
Signed

Date

PROJECT _____ Continued From Page _____

3/24/97
Lead Protocol Grid

1 NTC
2 Post
3 MW1A
4 SS712
5 SS713
6 SS714
7 SS715
8 MW1A
9 SS716
10 SS717
11 SS700
12 SS701
13 SS702
14 SS703
15 RTC
16 do
17



Continued on Page

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Signed _____ Date _____

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Continued From Page _____

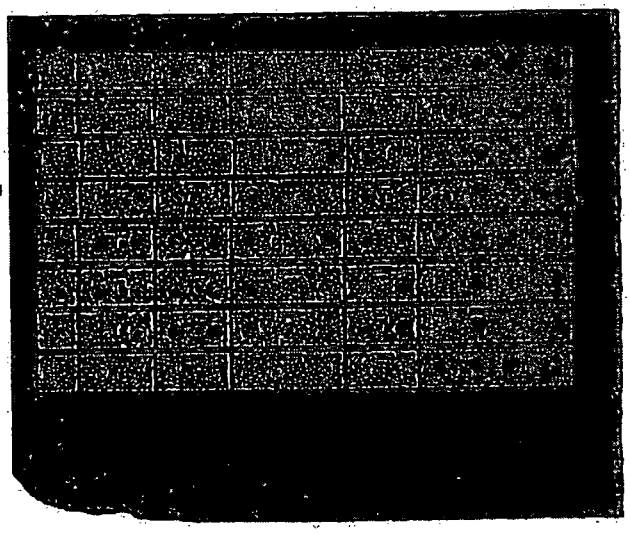
3/27/97

Wells AM DD2

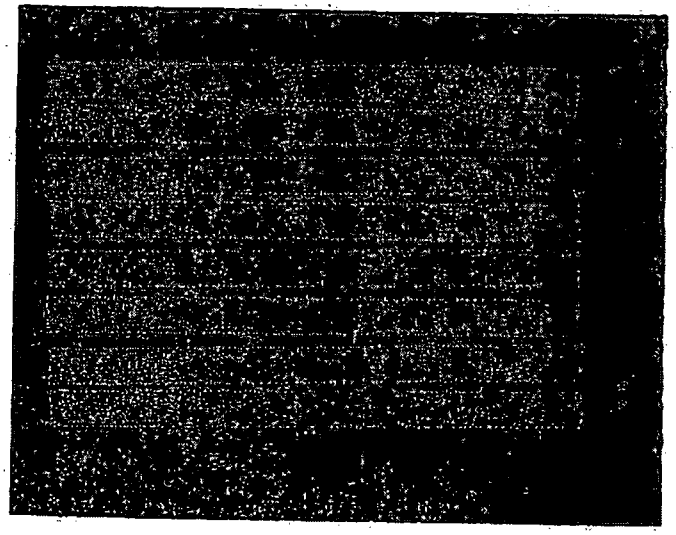
Case 59711 Cont 1

Case 56891 1

Sample	5971 2	5971 3	5971 4	5971 5	5971 6
LLC	B	B	AB	AB	B
GVFA	AB	A	AB	AB	AB
HRLC	B	A	AC	AB	AB
DJSB	A	AB	AB	B	AB
GL	b	B	AB	B	B



Sample	Type
59712	4.1, 4.2 4.3
59713	3, 4.2 4.3
59714	1.2, 1.2
59715	2, 4.1
59716	1.1, 1.1
59717	NR



Continued on Page _____

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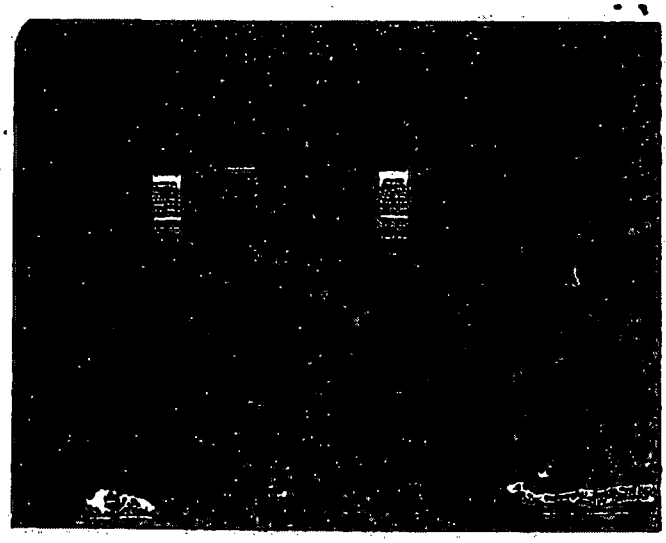
Signed _____ Date 3/27/97

Signed _____ Date _____

NOTEBOOK NO. _____

PROJECT _____ (Continued From Page _____)

4/2/97
Re-Amplify Core 59700 + new Produced Gel
+ Core 59711



1 Neg
2 Positive
3 MWM
4 59700
5 59701
6 59702
7 59703
8 59717
9 MWA
10

Sample	ID	Cont
59700	59700N	20ml
59701	59701N	20ml
59702	59702N	20ml
59703	59703N	20ml
59717	59717N	20ml

Placed 10
Placed Pellets @ 20
Placed 3 @ 20

4/10/97
Amplify for RM + DOE

Sample	Vol	ID	BSA
59700IF	5ml	59700IF Rep	.6
59701IF	5ml	59701IF Rep	.6
59702IF	5ml	59702IF Rep	.6
59703IF	5ml	59703IF Rep	.6
59708	1ml	59708 Rep	.6
59709	2ml	59709 Rep	.6
59710	20ml	59710 Rep	.6

Sample	Vol	ID	BSA
59710F	20ml	59710IF Rep	.6

Continued on Page

Read and Understood By

Signed _____ Date 4/2/97

Signed _____ Date _____

PROJECT _____ Continued From Page _____

5/20/97

Std amplification.

Sample	ID	cont	10X Multi Pipet	Multip Primer	DNTP	Gold Fog
61145	61145M.	17.3	2.5	2.5	2.5	.25
61145♀	61145♀M.	17.3	2.5	2.5	2.5	.25
61146	61146M.	17.3	2.5	2.5	2.5	.25
61146♀	61146♀M.	17.3	2.5	2.5	2.5	.25
610557	610557M.	17.3	2.5	2.5	2.5	.25
61055	61055CM.	17.3	2.5	2.5	2.5	.25
61055	610553M.	3ul	2.5	2.5	2.5	.25

Amplify for PM+DOJ

Sample	ID	Amt
61145	61145RD	2ul
61145♀	61145♀RD	2ul
61146	61146 RD	2ul
61146♀	61146♀ RD	2ul
1	1	2ul
2	2	2ul
3	3	2ul
4	4	2ul

"PM" Amplification of PM+DOJ

Sample	Amt	ID
61584	2ul	61584RD
61585	2ul	61585RD

Continued on Page

Read and Understood By

Signed _____ Date 5/20/97 Signed _____ Date _____

PROJECT

Notebook

Contd. From Page

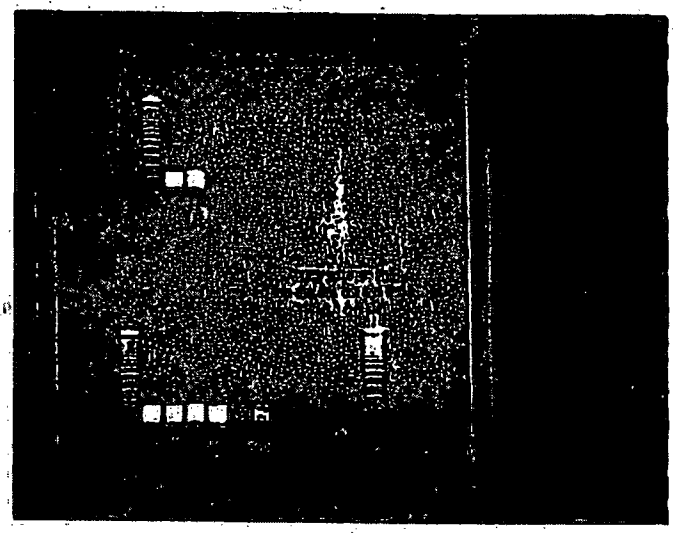
-135-

5/20/97

mM Product gel

1 Positive
2 Negative
3 MWM
4 1
5 2
6 3
7 4
8 61145
9 61145 ♀
10 61146
11 61146 ♀
12 ♀ M1
13 ♀ M1
14 MWM
15 61145 M1
16 61145 ♀ M1
17 61146 M1

1 61146 ♀ M1
2 60587
3 61033C
4 MWM
5 6184
6 6585



Continued on Page

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5/21/97

Date

Signed

Date

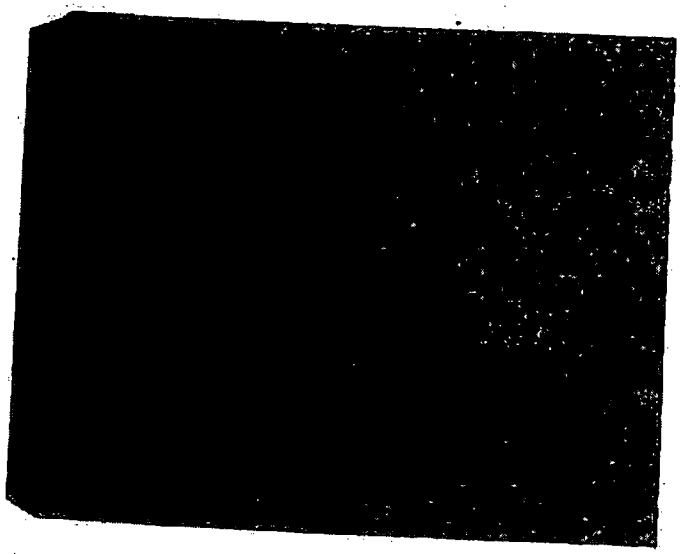
Continued From Page

6/6/97

Core 61583 out of 52381

UVB PM + DQ2

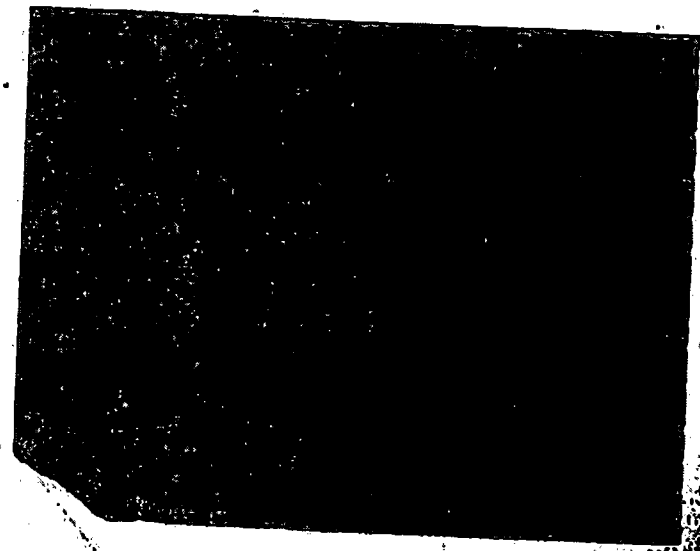
DQ 4/5



Sample	Type
61584	1, 1.1
61585	2, 2.2, 2.3

PM + UV:

Samples:	61584	61585
DR	B	AB
YPA	B	AB
1B6G	C	AC
DR8	AB	A
1	B	B



Continued on Page

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Date

Signed

Date

8/14/97
AMPLIFY for PM DQ2
Sample Amt Id

68637 1ml 68637 AMD
63638 1ml 63638 AMD
63639 1ml 63639 AMD

8/14/97

Mult diagnostic gel

1 Positive
2 Neg
3 MWM
4 63637
5 63638
6 63639
7 17



Continued on Page

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Signed _____ Date 8/14/97

Signed _____ Date _____

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PROJECT

Continued From Page

8/6/97
Hyb for PM+DQ2
Case 63636 Cont of 56381



Sample	TYPE
63637	1.2, 1.2
63638	1.3, 4.1
63639	4.1 c1.1

Sample	63637	63638	63639
LDLR	B	A	AB
GYPA	AB	A	B
HBGG	AC	B	A
D7S8	AB	AB	AB
GC	B	C	B



Continued on Page

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8/6/97
Date

Signed

Date

Continued From Page

9/23/97

samples for PM+DXDs

Sample	ID	Cost
64983	64983RD	2wd
64984	64984RD	2wd
64985	64985RD	2wd
64990	64990RD	2wd
63268	63268RD	2wd
62615	62615RD	2wd

Awaiting case results





Continued on Page

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9/23/97

Date

PROJECT _____ Notebook No. _____ Continued From Page _____ 140

9/25/97
new product gel

1 Acetate
2 Wes
3 MWM
4 64983
5 64984
6 64985
7 64990
8 63768
9 62650
10 MWM
11 acetate + Amelogenin
12 Wes A
13 MWM
14 positive
15 64975
16 64505
17 62615

1 63768
2 64990
3 MWM
4 - Anti
5 + anti
6 MWM
7 64990
8 64505
9. 17

9/26/97

Amelogenin for A Medlogenin

Sample	ID	Amt	TOTAL
63768	63768 AI	5ul	5ul
62615	62615 AI	5ul	
64990	64990 AI	5ul	
64505	64505 AI	5ul	
64975	64975	5ul	

dH2O	5 ul
Multiple Buffer	5 ul
Amelogenin primer	5 ul
Taq	.25 ul

Continued on Page

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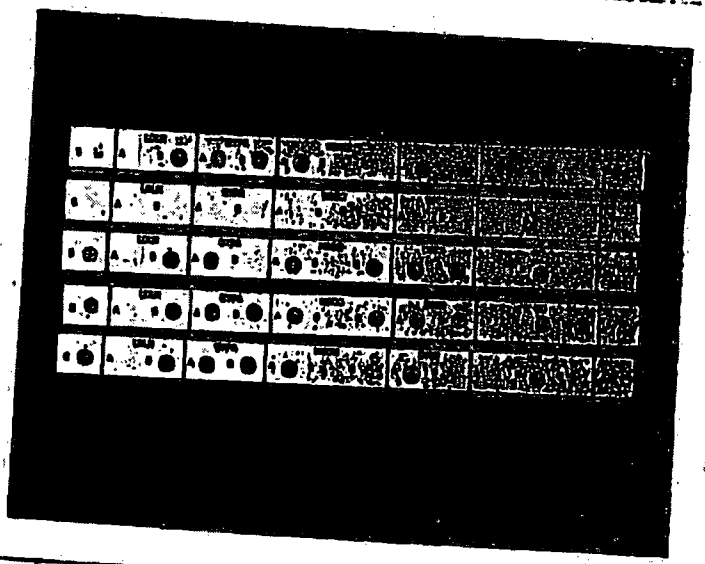
Signed _____ Date 9/26/97 _____ Signed

VANTICO

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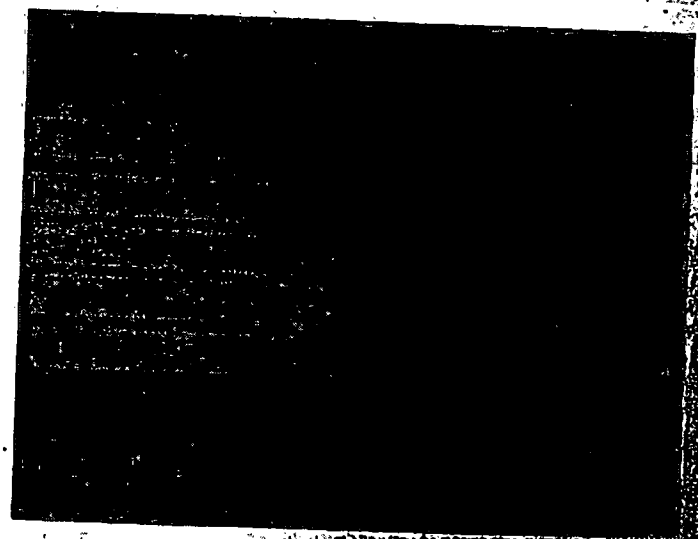
10/2/97
HLB Rubella IgG
Case 64983 cont of 56391 PM Result

Sample	LDLE	GYPA	HBGG	DZSO
64983	B	A	AC	AB
64984	B	AB	AC	AB
64985	B	AB	A	A



DD2 Result

Sample	Type
64983	1.2, 1.2
64984	4.1, 4.1
64985	1.2, 4.1



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10/2/97
Date

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PROJECT: NOTEBOOK NO. 142 11

Continued From Page

10/3/97

Amplify for RM + DD2

Sample	ID	amt
66639	66639 RD	1 ml
66640	66640 RD	1 ml
66641	66641 RD	1 ml
66642	66642 RD	1 ml
66643	66643 RD	1 ml
66644	66644 RD	1 ml
63768	63768 RD	2 ml

10/6/97

Amplify for RM & DD2

Sample	ID	amt.
63768 DD2		
66560	66560 RD	2 ml

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11/4/97

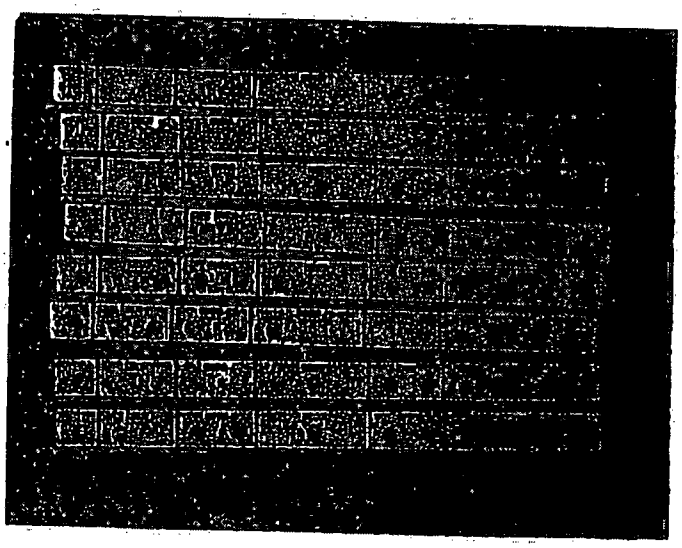
Re Empty Case Sample 66560 for PM + BOS

1 BP100
2 Rec
3 POS, V. C.
4 66560



11/5/97
HYB for Prof DYS PM

SAMPLE	LDLR	BYPA	HBGL	37	GC
66639	A	AB	B	AB	AC
66640	B	AB	AB	AB	AC
66641	AB	A	A	B	AC
66642	B	AB	A	AB	C
66643	B	AB	AB	AB	A
66644	O	A	B	AB	C





Signed _____ 11/5/97 Date _____

Signed _____ Date _____

11/5/97

Amplify for multiplex (AM)

Sample	Amt	ID
23051	10ul	23051 M
23053	10ul	23053 M
23054	10ul	23054 M

Amplify for Amelogenin (AM)

Sample	Amt	ID
23051	10ul	23051 A
23053	10ul	23053 A
23054	10ul	23054 A
66560	10ul	66560 A

Amplify for HUMTH01 dbl + New (PM)

Sample	Amt	ID
66639	1ul	639 HTN
66640	1ul	640 HTN
66641	1ul	641 HTN
66643	1ul	643 HTN
66643	1ul	643 HTN
66644	1ul	644 HTN
66639	1ul	639 HT
66640	1ul	640 HT
66641	1ul	641 HT
66642	1ul	642 HT
66643	1ul	643 HT
66644	1ul	644 HT

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Read and Understood By

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11/5/97

Amplify for CTH (PM)

Sample	cut	ID
66639	1 W	639 CT
66640	1 W	640 CT
66641	1 W	641 CT
66642	1 W	642 CT
66643	1 W	643 CT
66644	1 W	644 CT

run products gel

1 Multiplex (+)
2 " (+)
3 BP 100
4 23051 M
5 23053 M
6 23054 M
7 Amelogenin (+)
8 (+)
9 23051 A
10 23053 A
11 23054 A
12 66560 A
13 BP 100
14 Human DNA (+)
15 (+)
16 66639 MTH
17 66640 MTH



1 66641 MTH
2 66642 M
3 66643 M
4 66644 M
5 CTH (-)
6 CTH (+)
7 66639 C
8 66640 C
9 66641 C
10 66642 C
11 66643 C
12 66644 C
13 MTH (+)
14 (+)
15 66639 TH
16 66640 C
17 66642 C

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Signed _____ Date _____

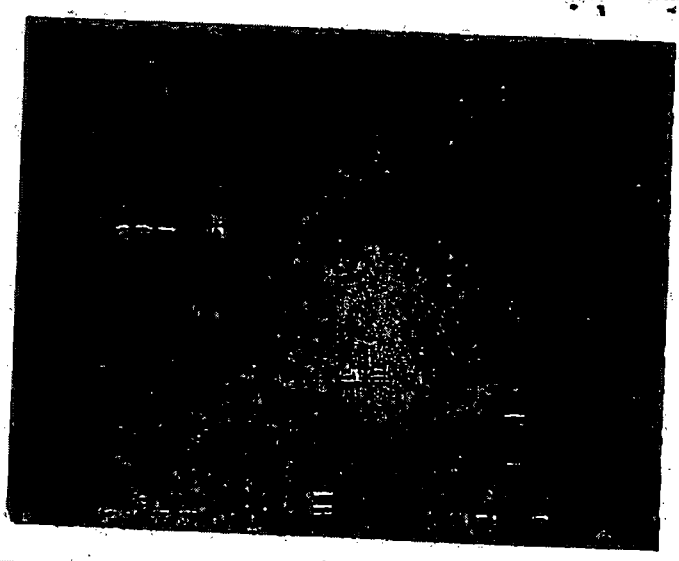
PROJECT _____ Notebook No. _____

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11/6/97

Product gel (cont)

1 66641
2 66642
3 66643
4 BP100
5 63768 + PM4DQ
6 66560



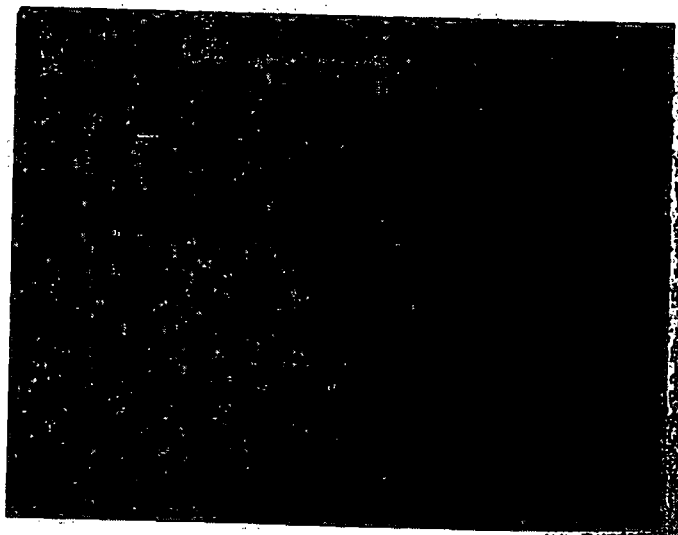
12/15/97

Amplify for PM4DQ.

Sample	Count	ID
66085-20	20-1	66085-20 RTD

Product gel

1 NBS
2 DOST
3 MWM BP100
4 66085-20
5 66560



Continued on Page _____

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Signed _____ Date _____

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1/7/98

PM + DD2 amplify (AM)

Sample	Circuit	DD
67624	20uF	67624 RD
67625	20uF	67625 RD
67819	1uF	67812 RD
67517	1uF	67512 RD
67134	20uF	67171 RD
67175	1uF	67155 RD
66555	1uF	66555 RD
66508-30	1uF	66508-30 RD
66508-10	1uF	66508-10 RD (AM)

STL Amplification & CTT (Process A) (AM)

Sample	Circuit	STL Buffer	STL Power	dH20	TOP	TW
67624	5uF	5uF	5uF	35uF	.25uF	50u
67625	5uF	5uF	5uF	35uF	.25uF	50u
66508-20	5uF	5uF	5uF	35uF	.25uF	50u
-30	1uF	5uF	5uF	35uF	.25uF	50u

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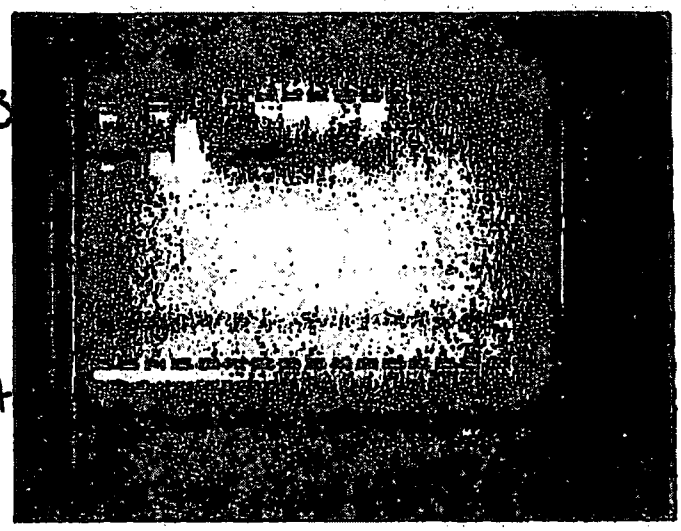
Signed _____ Date 1/7/98

Signed _____ Date _____

01/5/98

mut yield gel.

	A	B
1	30	1 67520F
2	20	2 68065F
3	15	3 65391F
4	10	4 67522F
5	5	5 —
6	25	6 67174
7	110	7 67175
8	67176	8 67517
9	67177	9 67819
10	67173	10 69391
11	67179	11 69555
12	67513BI	12
13	67518BII	13
14	67520	14
15	67522	15
16	68065	16
17	67518F	17



PT Sample 40 conc DNA = 3M NH4OAc + ETOH

67176

67177 Amp 2ml

67178

67179

67513BI

67518BII

67520

67522

68065

67518F

69565F

Continued on Page

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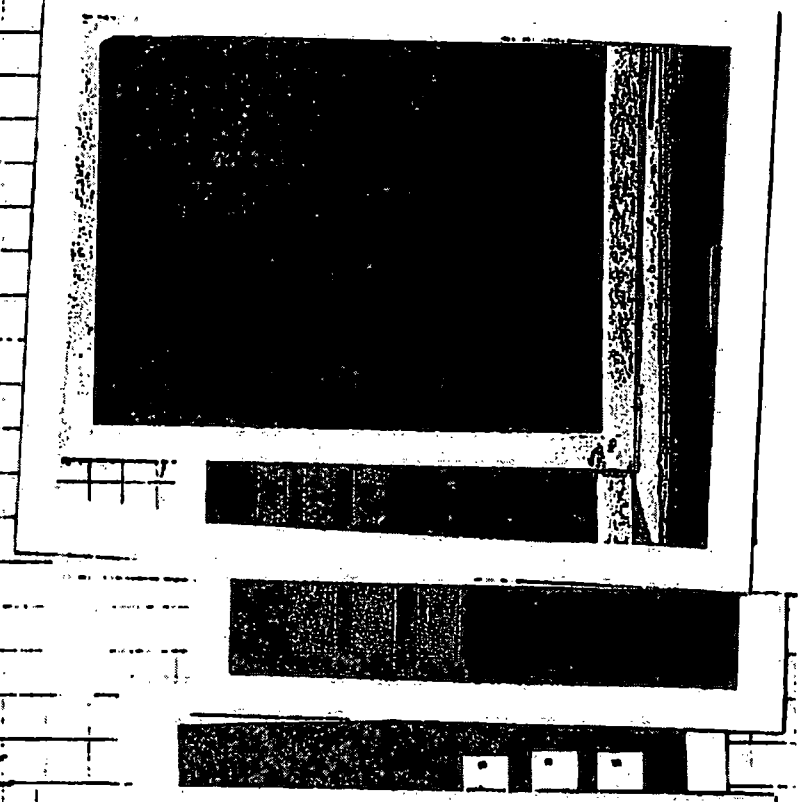
Signed _____ Date _____

PROJECT _____ Notebook No. _____ 25

Continued From Page _____

1/8/98
Myco PM + DOd
Case 56381 (Cont) 68554
Sample Result

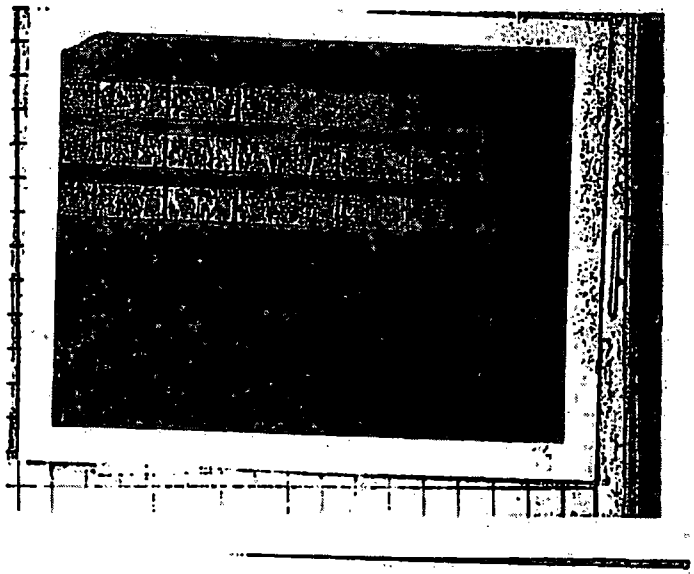
68555 1,1,12



PM results

LOLL GYPA HB66 DX8' GC

68555 B AB AC AB AC



Continued on Page

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PROJECT _____ Continued From Page _____

1/15/99

Amplify for CIT Promega STRS

tag-04208K

Dillon & Imbib

Sample	VOL	I.D	TOTAL VOL	CIT Buffer	Amp	dH2O
67176	5ul	6716CITP	50ul	5	5	35
67177	5ul	6717CITP	50ul	5	5	35ul
67179	5ul	6717BCITP	50ul	5	5	
67179	5ul	6717FCITP	50ul	5	5	
67518BI	5ul	67518BICIT	50ul	5	5	
67518BI	5ul	5181BICITP	50ul	5	5	
67522	5ul	6752[illegible]	50ul	5	5	
67522	5ul	6752[illegible]	50ul	5	5	
68065	5ul	6806SCITP	50ul	5	5	
67515F	5ul	6751SFCITP	50ul	5	5	
68025F	5ul	6802SFCITP	50ul	5	5	
68391F	5ul	6839IFCITP	50ul	5	5	
67520F	5ul	6752OFCITP	50ul	5	5	
67520F	5ul	6752OFCITP	50ul	5	5	
68391	5ul	6839ICITP	50ul	5	5	
67624	5ul	6762ACITP	50ul	5	5	
67605	5ul	6760SCITP	50ul	5	5	
56384	5ul	5638[illegible]CITP	50ul	5	5	
56386	5ul	5638[illegible]CITP	50ul	5	5	
563869	5ul	56386[illegible]CITP	50ul	5	5	

Note: No Sample 56384 left

DO a PM Amp

Sample	VOL
67624	20ul
67625	20ul

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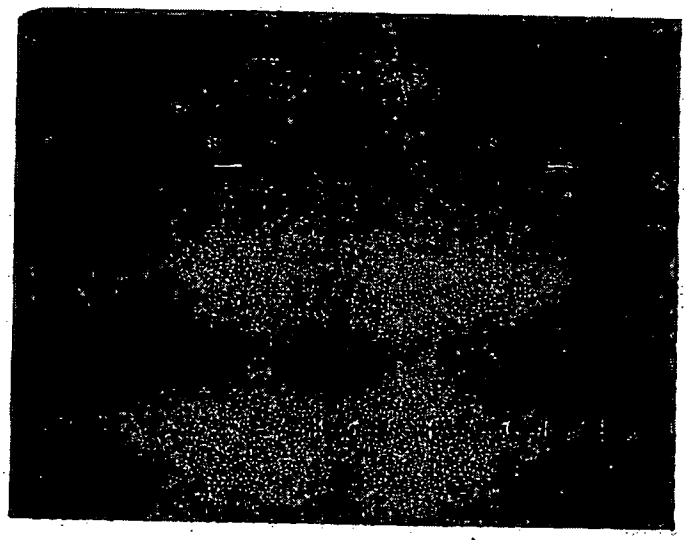
PROJECT

Continued From Page 151

1/16/98

Non Product Gel

1 +
2 -
3 67176
4 67177
5 67178
6 MWM
7 67179
8 67518BI
9 67518BII
10 67520
11 67522
12 68065
13 67518F
14 68095F
15 MWM
16 68391
17 67520F



1 67527F
2 68391E
3 67624
4 67625
5 563849
6
7 MWM
8 563886
9 563869
10 MWM
11 MWM
12 4
13 -
14 67624
15 67625
16
17



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1/16/98
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PROJECT

Continued From Page

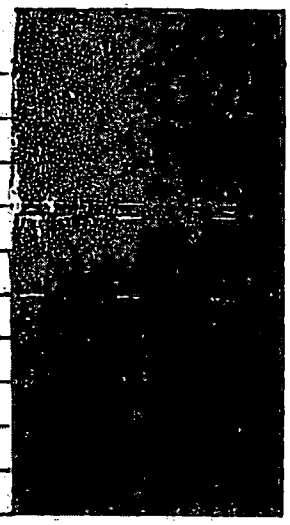
1/27/98

Conc Sample 56386 for 100-1 to 20-1 amplify for 5ul (1 rxn)

5+L CIT amplification

Sample	VOL	ID
56386	5ul	56386 II
56389	5ul	56389

1/29/98
Product gel



1 BP100
2 (+) S+R
3 (-) S+R
4 BP100
5 56386 II
6 56389
7 BP100

Continued on Page

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1/28/98
Date

Signed

Date

PROJECT _____ Cor ____ d From Page _____

1/29/99

Re-run Silk gel CTT primer KH

Gel result.

Gel #

1 –

2 +

3 MWM

4 56386

5 56386 +

6 56386 –

7 MWM

8 68555

9 –

10 56389

11 MWM

12

13 67518B

14 MWM

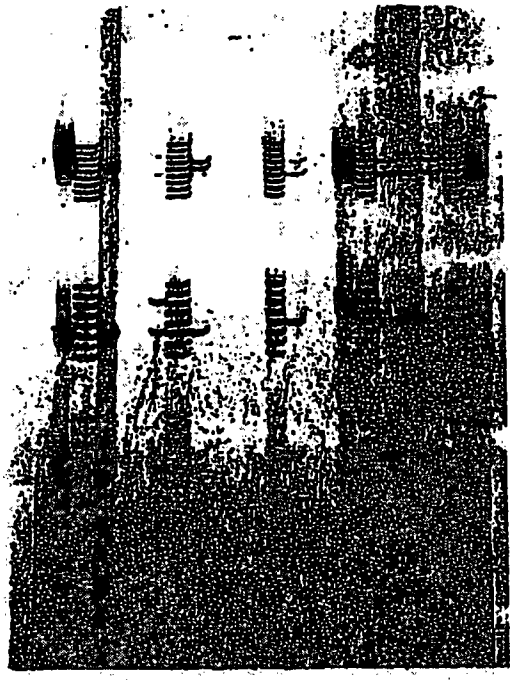
15 67520

16 –

17 67502

18 MWM

19 67517



Continued on Page

Read and Understood By

Signed _____ Date 1/29/99

Signed _____ Date _____

154

The State of South Carolina

OFFICE OF SOLICITOR
First Judicial Circuit

140 North Main Street
Suite 102
Summerville, SC 29483
(843) 871-2640
FAX (843) 871-2643
PTI (843) 873-7842

Courthouse, Amelia Street
Post Office Box 1525
Orangeburg, SC 29116
(803) 533-6252
FAX (803) 533-6004
PTI (803) 533-6137

WALTER BAILEY
Solicitor

FAX COVER SHEET

DATE: JANUARY 20, 1999

TO: LAUREN GALBREATH CRANE, M.S. and DR. MICHAEL BAIRD

LIFECODES CORPORATION

FAX NUMBER: 1-203-328-9599

IN RE: STATE OF SOUTH CAROLINA VS. KENNETH SIMMONS

COMMENTS: PLEASE SEE THE ATTACHED LETTER.

NO. OF PAGES (THIS INCLUDED): 2

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE TELEPHONE THE SUMMERVILLE OFFICE AT THE ABOVE NUMBER AS SOON AS POSSIBLE.

TRANSMITTER: JODI FOR SOLICITOR WALTER BAILEY, JR.

-155

The State of South Carolina

OFFICE OF SOLICITOR
First Judicial Circuit

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PTI (803) 533-6137

WALTER BAILEY
Solicitor

20 JANUARY 1999

VIA FAX 1-203-328-9599

Lauren Galbreath Crane, M.S.
Senior Forensic Scientist
LifeCodes Corporation
550 West Avenue
Stamford, Connecticut 06902

Michael L. Baird, Ph.D.
VP Laboratory Operations
LifeCodes Corporation
550 West Avenue
Stamford, Connecticut 06902

IN RE: STATE OF SOUTH CAROLINA VS. KENNETH SIMMONS
LIFECODES CASE # 56381 / AGENCY REFERENCE # 96-14607

Dear Ms. Crane and Dr. Baird:

Since I am going to need to introduce all of the labels at trial prior to either or you actually testifying, I would greatly appreciate your mailing them to me at your earliest convenience. In addition, I would like to discuss the proposed testimony which was previously forwarded to both of you. Please contact me at your convenience.

Finally, my secretary, Jodi, plans to make flight arrangements soon whereby both of you will fly out of LaGuardia Airport on Thursday, February 25, 1999, and return on Saturday, February 27, 1999. The return flight is, of course, subject to change depending on the pace of the trial. Please let her know if there will be a problem with these arrangements.

Please do not hesitate to contact me with any questions or concerns.

Thank you for your assistance and cooperation in this matter.

Sincerely,

Walter M. Bailey, Jr.

Walter M. Bailey, Jr.
Solicitor

WMB,JR:jgh

STATE OF SOUTH CAROLINA VS. KENNETH SIMMONS

PROPOSED TESTIMONY - DR. MICHAEL L. BAIRD, PH.D. #1

NAME

WHERE ARE YOU EMPLOYED?

WHAT IS YOUR POSITION WITH LIFECODES CORPORATION?

WHAT IS LIFECODES?

IS LIFECODES LICENSED?

WHEN WAS LIFECODES CREATED?

HOW LONG HAVE YOU BEEN EMPLOYED WITH LIFECODES?

WHAT ARE YOUR DUTIES AND RESPONSIBILITIES WITH LIFECODES?

EDUCATIONAL BACKGROUND.

EMPLOYMENT BACKGROUND.

STATE WHETHER OR NOT YOU HAVE PUBLISHED IN THE FIELD OF DNA ANALYSIS.

STATE WHETHER OR NOT YOU HAVE PRESENTED PAPERS OR LECTURED IN THE FIELD OF DNA ANALYSIS.

STATE WHETHER OR NOT YOU ARE A MEMBER OF ANY PROFESSIONAL ORGANIZATIONS.

STATE WHETHER OR NOT YOU HAVE TESTIFIED IN THE PAST IN COURT AS AN EXPERT IN DNA ANALYSIS AND STATISTICAL PROBABILITIES.

HOW MANY TIMES?

(MOVE TO QUALIFY AS A EXPERT IN DNA ANALYSIS AND STATISTICAL ANALYSIS)

BRIEFLY IN LAYMAN'S TERMS, WHAT IS DNA?

DOES EACH CELL IN A HUMAN BODY HAVE DNA?

IS THE DNA IN EACH CELL IN A PARTICULAR PERSON'S BODY IDENTICAL?

IS THE DNA IN A MAN'S (RED) white BLOOD CELLS IDENTICAL TO HIS SEMEN?

WITH THE EXCEPTION OF IDENTICAL TWINS, DOES EACH INDIVIDUAL HAVE A UNIQUE DNA PRINT?

WHAT TYPE OF ANALYSIS DOES LIFECODES DO WITH REGARD TO DNA?

WHAT IS PCR?

WHAT ARE THE STEPS IN THE PCR PROCESS?

WHAT IS A ~~PROBE~~ Primer?

WHAT ~~PROBES~~ Primers ARE USED AT LIFECODES?

WHAT TYPES OF FORENSIC SAMPLES ARE TESTED AT LIFECODES?

WHEN DOES A DNA MATCH OCCUR?

WHAT DOES IT MEAN TO FIND A MATCH?

HOW IS LIFECODES ORGANIZED?

HOW ARE THE TECHNICIANS SUPERVISED AT LIFECODES?

HOW ARE THE DNA ANALYSTS TESTED?

WHAT WERE THE RESULTS OF THE PROFICIENCY TEST?

DO OTHER LABS BESIDES LIFECODES DO PCR TESTING USING THE SAME METHODS YOU DESCRIBE?

IS PCR ANALYSIS USED BY SCIENTISTS OUTSIDE THE LEGAL FIELD?

WHAT TYPE OF SCIENTISTS USE PCR ANALYSIS?

HAS PCR ANALYSIS AS YOU HAVE DESCRIBED BEEN ACCEPTED IN THE SCIENTIFIC COMMUNITY?

DOES LIFECODES HAVE A QUALITY CONTROL PROGRAM IN PLACE TO INSURE THE RELIABILITY OF PROCEDURES THAT YOU JUST DESCRIBED AND THAT TESTS CONDUCTED BY THE LAB ARE DONE IN A MANNER CONSISTENT WITH THE LAWS OF GENETICS?

DESCRIBE THE QUALITY CONTROL PROGRAM.

WHAT PROCEDURES ARE IN PLACE TO INSURE THE CHAIN OF CUSTODY OF SAMPLES IS MAINTAINED?

STATE WHETHER OR NOT LIFECODES WAS REQUESTED TO DO PCR ANALYSIS IN THIS CASE.

WHO WAS ASSIGNED BY YOU TO CONDUCT THE ANALYSIS OF THE EVIDENCE?

STATE WHETHER OR NOT DR. CRANE WAS SUPERVISED BY YOU.

(RESERVE RIGHT TO RECALL)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

)

COUNTY OF DORCHESTER)

Kenneth Simmons,) C/A No.: 2005-CP-18-1368

) (Capital PCR)

Applicant,)

v.) AFFIDAVIT OF Joan L.Gulliksen

)

Gary Maynard, Commissioner,)

S.C. Department of Corrections,)

)

Respondent.)

Joan L. Gulliksen affirms under penalty of perjury, that the following is true and correct:

1. I am a Customer Liaison for the Orchid Cellmark facility in Dallas, Texas and am the Discovery Coordinator.

2. I provided a copy of the entire LifeCodes case file (#56381) to Det. John Rodgers on July 2, 2009, in response to his request. As I understand it, several copies are poor quality due to the fact that the originals are of poor quality. In addition, on December 30, 2009, at the request of Ms. Emily Paavola, I also supplied full color scans of the original films (a-j) which were in the case file.

Joan L. Gulliksen

Sworn before me this
5 day of JAN, 2012

Notary Public

TRACIE FLANARY
Notary Public,
State of Texas
Comm. Exp. 02-07-12

PENGAD 800-631-6989 2.1.10 APPLICANT'S (10) 05-CP-18-1368

RVB

5 days:	5 wk	67302 cm	
	5 wk	68391 cm	50 x
	4 wk	67624 cm	
	4 wk	67625 cm	
	5 wk	56320 cm	50 x
56386	5 wk	56386 cm	50 x
56387	5 wk	56387 cm	50 x

Note: No sample 56384 left

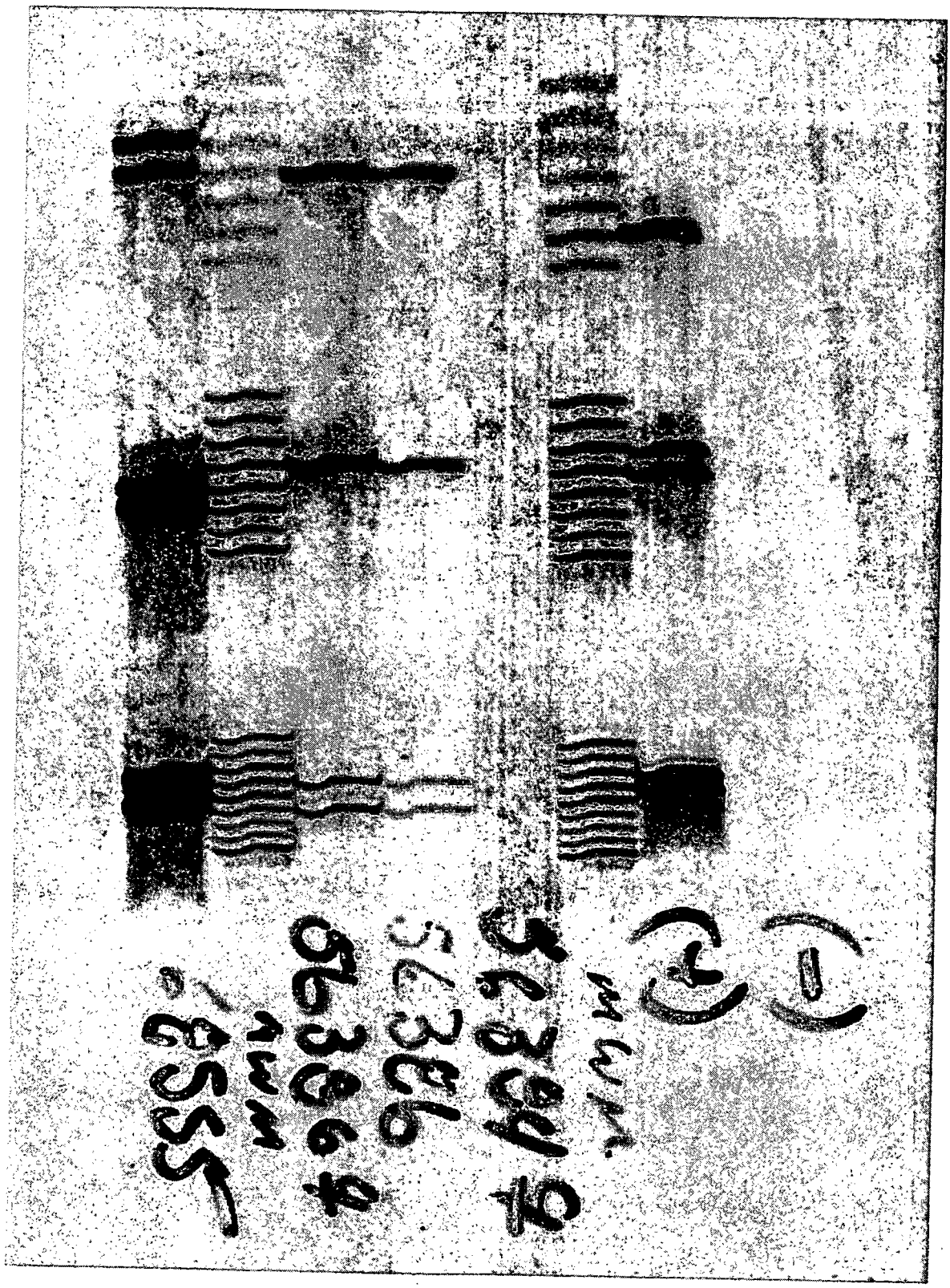
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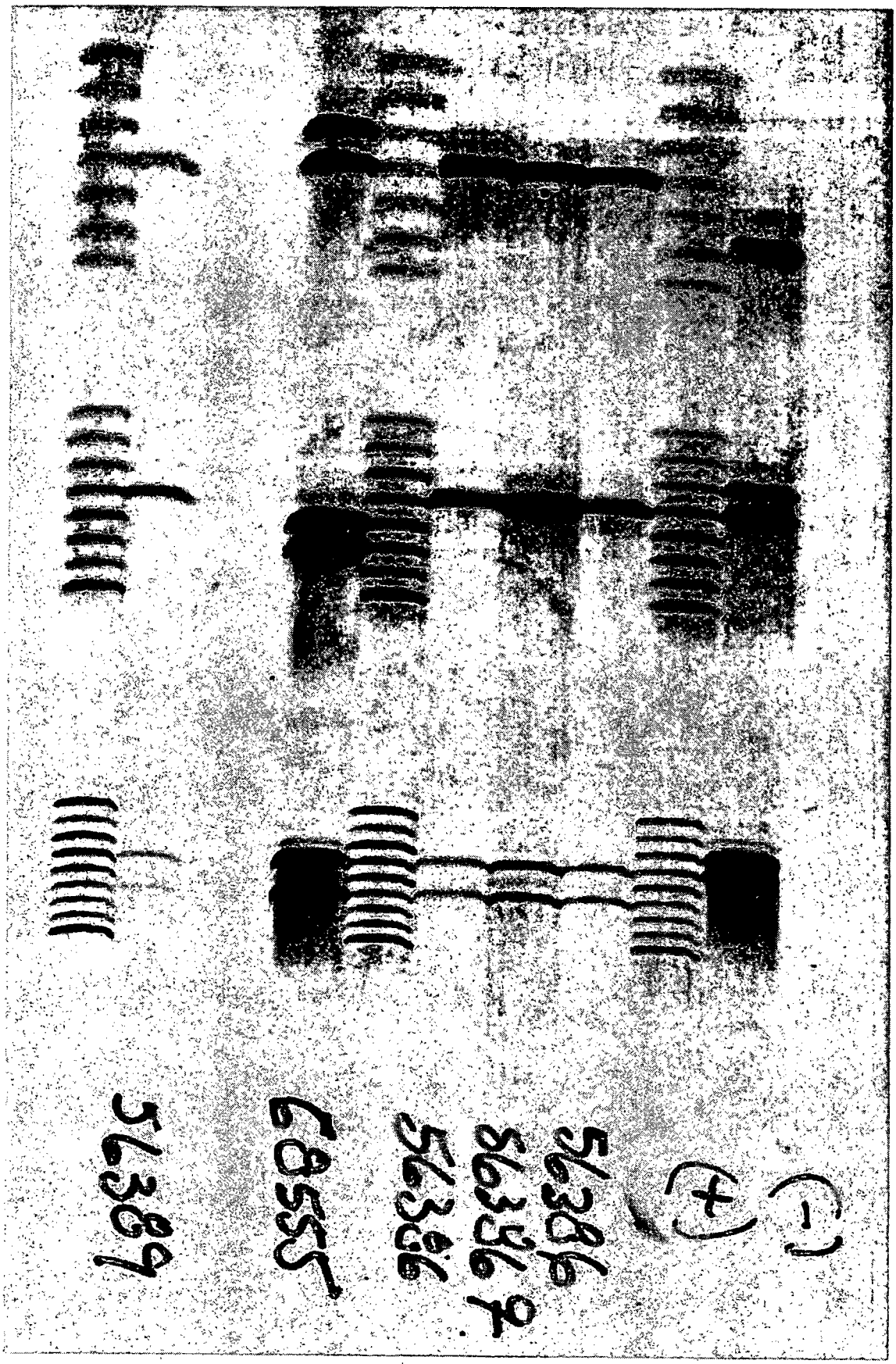
Sample vol

4 ml

3 ml

Affiant (13)
05-08-18:13:48

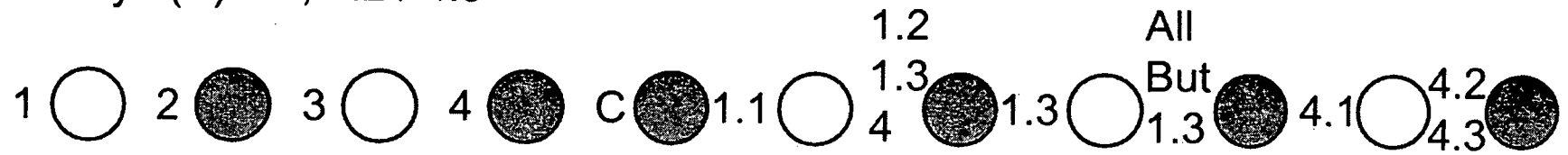

23130
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5'3'86
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5'3'89

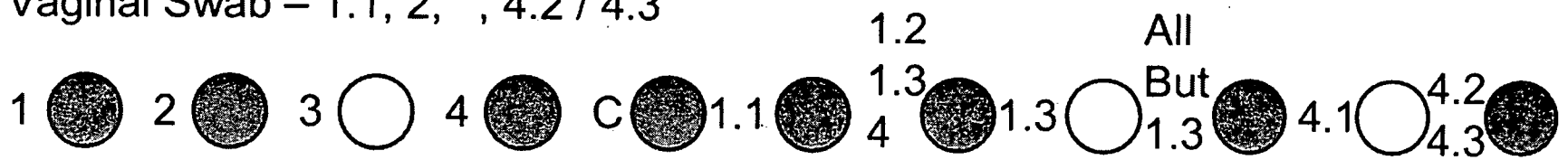
SAMPLE	GENETIC LOCUS									Overall Frequency
	LDLR	GYPA	HBGG	D7S8	GC	DQA1	CSF1PO	TPOX	THO1	
Vaginal Swab Alleles	AB	AB	AC	A(B)	B(AC)	1.1,2,*,4.2/4.3				
Victim's Genotypes	AB	AB	AC	AA	BB	2, 4.2/4.3				
Kenneth Simmon's Genotypes	BB	AB	AC	AB	AC	1.1,1.2	10,12	10,11	7,8	
Single-source RMP's (frequency of Simmon's genotype) among Caucasians/ Blacks	.2992/ .6022	.4859/ .4991	.0066/ .3012	.4736/ .4740	.2935/ .0391	.0429/ .0735	.1415/ .1400	.0356/ .0438	.0271/ .1647	1 in 1.28 billion/ 8 million
Genotypes not excluded from vaginal swab	AA, BB, AB	AA, BB, AB	AA, AC, CC	AB, BB	AC	1.1,1.1 1.1,1.2 1.1,2 1.1,4.2/4.3				
Mixture RMPs (frequency of non-excluded genotypes) among Caucasians/ Blacks	1.0/1.0	1.0/1.0	.228/ .646	.622/ .623	.2935/ .0391	.135/ .125 .139/ .151				1 in 178/ 508 172/ 419

DQA1 Results

L. Boyd (V) – 2, 4.2 / 4.3



Vaginal Swab – 1.1, 2, *, 4.2 / 4.3

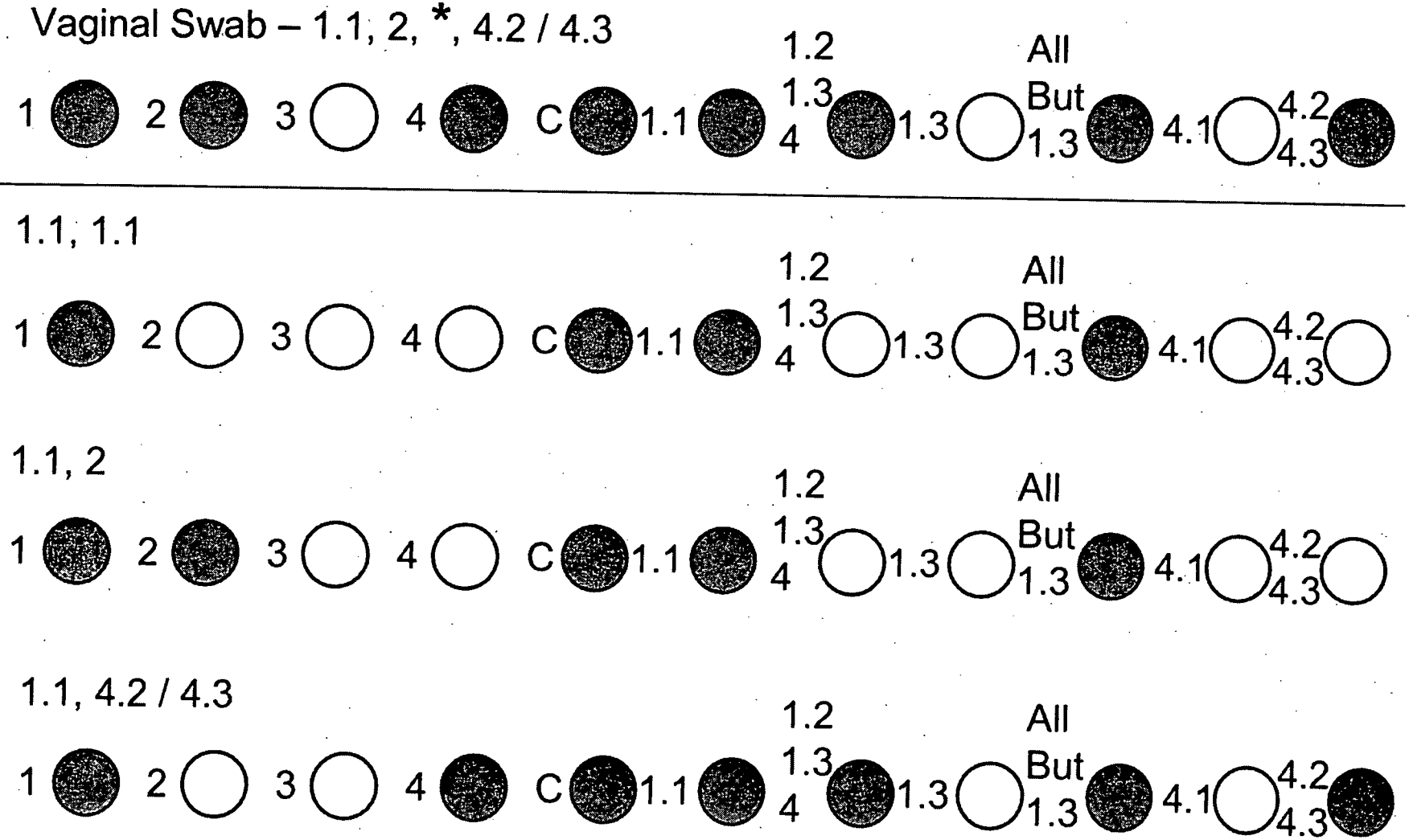


Kenneth Simmons – 1.1, 1.2



AFFIANT (15)
DS-CE-18-1368

DQA1 – Other possible types consistent with the evidence



Polymarker Results

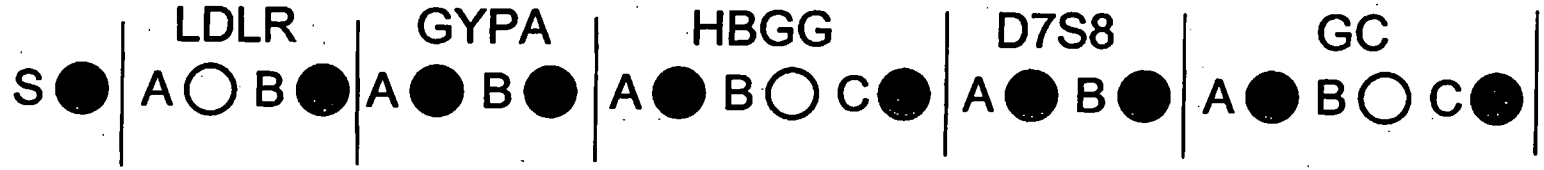
L. Boyd (V)



Vaginal Swab



Kenneth Simmons



ITEM	LDLR	GYPA	HBGG	D7S8	GC	HLADQA1	CSF1PO	TPOX	THO1
LILLY BELL BOYD BLOOD FI56389	A, B	A, B	A, C	A	B	2, 4.2 / 4.3			
KENNETH SIMMONS BLOOD FB68555-60	B	A, B	A, C	AB	AC	1.1, 1.2	10, 11	10, 11	7, 8
VAGINAL SWAB IN SALINE FROM MUSC - MALE FRACTION FI56384	A, B	A, B	A, C	A, (B)	B, (AC)	1.1, 2, * 4.2 / 4.3	10, 11	10, 11	7, 8
VAGINAL SWAB IN SALINE FROM MUSC - FEMALE FRACTION FI56384F	A, B	A, B	A, C	A	B	2 4.2 , 4.3			
2 VAGINAL SWABS FROM SLED - MALE FRACTION FI56386	A, B	A, B	A, C	A, (B)	B, (AC)	1.1, 2,* 4.2 / 4.3	10, 11	10, 11	7, 8
2 VAGINAL SWABS FROM SLED - FEMALE FRACTION FI56386F	A, B	A, B	A, C	A	B	2, 4.2 / 4.3			

* indicates that a 1.2 allele may be present

( ) indicates allele of lesser intensity

FENGAD 800-631-6989
2-1-10 AFFIANT (16)
05 CR 18-1368

LIFECODES CORPORATION
550 West Avenue
Stamford, CT 06902
203-328-9500

February 4, 1999

Walter M. Bailey, Jr.
Office of the Solicitor
140 North Main Street, Suite 102
Summerville, SC 29483

Re: **STATE OF SOUTH CAROLINA VS. KENNETH SIMMONS**
LIFECODES CASE # 56381 / AGENCY REFERENCE # 96-14607

Dear Mr. Bailey:

Enclosed are two articles and 5 book chapters related to forensic DNA analysis. These should be helpful by providing some background information about forensic DNA analysis in preparation for trial in the above captioned case. The chapter from chapter 4 of the NRC report entitle "Population Genetics" discusses the slight modification suggested to take into account population substructure (equation 4.4a on page 102). I will recalculate the one locus effected by this and have it available.

I hope this material is helpful. Please do not hesitate to contact me if you have questions or need additional information.

Sincerely,

Michael L. Baird, Ph.D.
VP Laboratory Operations

Enclosure

AFFIDAVIT (18)
05-CP-18-1368

LIFECODES CORPORATION
550 West Avenue
Stamford, CT 06902
203-328-9500

Date: January 23, 1998

Chief Roy Whitehead
300 West Second North Street
Summerville, SC 29483

Case Number: 68554

I. Evidence Receipt

The following evidence sample was received by hand from Ron Manchester on December 17, 1997 in a sealed container:

Accession #	Sample
FB68555-60	1 EDTA blood vial from Kenneth Simmons

II. Summary of Results

The HLA DQA1 and Polymarker profiles from the male fraction of the vaginal swabs frozen in saline and the vaginal swabs from Lillie Boyd submitted for analysis with Lifecodes Case Number 56381 are indicative of a mixture of DNAs from more than one individual which does not exclude Lillie Boyd and Kenneth Simmons as contributors. Additional genetic analysis will be performed to further characterize the samples.

PERIGAD 800-631-6989
2.1.98
STATE'S EXHIBIT
1
05-CP-18-1368

LIFECODES CORPORATION
550 West Avenue
Stamford, CT 06902
203-328-9500

Case Number: 68554 - Continued

Date: 01/23/98

III. Results

Phenotypes Obtained from PCR Analysis from Sample FB68555

	HLA DQA1	LDLR	GYPA	HBGG	D7S8	GC
68555	1.1,1.2	B	A,B	A,C	A,B	A,C

Testing was performed using an AmpliType Kit manufactured and supplied by Perkin-Elmer. Phenotypes reflect the typing obtained on test strips processed according to protocol supplied by the manufacturer.

Frequency of Occurrence of Phenotype Obtained from Sample FB6855

Race: Caucasian	Database Size # of Individuals	Frequency of Occurrence
HLA DQA1	148	0.0429
LDLR	148	0.2992
GYPA	148	0.4859
HBGG	148	0.0066
D7S8	148	0.4736
GC	148	0.2935

Combined Frequency of Occurrence **1 in 175,439**

LIFECODES CORPORATION
550 West Avenue
Stamford, CT 06902
203-328-9500

Case Number: 68554 - Continued

Date: 01/23/98

Frequency of Occurrence of Phenotype Obtained from Sample FB68554

Race: Black	Database Size # of Individuals	Frequency Of Occurrence
HLA DQA1	145	0.0735
LDLR	145	0.6022
GYPA	145	0.4991
HBGG	145	0.3012
D7S8	145	0.4740
GC	145	0.0391

Combined Frequency of Occurrence **1 in 81,103**

Source of the databases: Journal of Forensic Sciences. Volume 40, pages 45 - 54, 1995.

IV. Conclusion

The phenotypes obtained by PCR DNA analysis from samples FI56384 and FI56386 from Lifecodes Case Number 56381 are consistent with originating from more than one individual which does not exclude FI56389 and FB68555 as contributors.

Case Number: 68555 - Continued

Date: 01/23/98

V. Disposition of Sample

The blood sample submitted for analysis will be returned at a later date pending notification of handling instructions.

The results and conclusions in this report were reviewed by:

Lauren Galbreath, M.S.
Senior Forensic Scientist

Michael L. Baird, Ph.D.
VP Laboratory Operations

LIFECODES CORPORATION
550 West Avenue
Stamford, CT 06902
203-328-9500

Date: February 2, 1998

Chief Roy Whitehead
300 West Second North Street
Summerville, SC 29483

Case Number: 68554 ADDITIONAL REPORT

I. Evidence Receipt

The following evidence sample was received by hand from Ron Manchester on December 17, 1997 in a sealed container:

Accession #	Sample
FB68555-60	1 EDTA blood vial from Kenneth Simmons

II. Summary of Results

The HLA DQA1 and Polymarker profiles from the male fraction of the vaginal swabs frozen in saline and the vaginal swabs from Lillie Boyd submitted for analysis with Lifecodes Case Number 56381 are indicative of a mixture of DNAs from more than one individual which does not exclude Lillie Boyd and Kenneth Simmons as contributors.

PENGAD 800-631-6989
2-1-10
STATE'S EXHIBIT (2)
05-CP-18-1368

LIFECODES CORPORATION
550 West Avenue
Stamford, CT 06902
203-328-9500

Case Number: 68554 - Continued

Date: 02/02/98

III. Results

Phenotypes Obtained from PCR Analysis from Sample FB68555

	HLA DQA1	LDLR	GYPA	HBGG	D7S8	GC
68555	1.1,1.2	B	A,B	A,C	A,B	A,C

Testing was performed using an AmpliType Kit manufactured and supplied by Perkin-Elmer. Phenotypes reflect the typing obtained on test strips processed according to protocol supplied by the manufacturer.

	CSF1PO	TPOX	THO1
68555	10,12	10,11	7,8

Testing was performed using a CTT Multiplex Kit manufactured and supplied by Promega. Phenotypes reflect the typing obtained following the protocol supplied by the manufacturer from silver stained gels .

LIFECODES CORPORATION
550 West Avenue
Stamford, CT 06902
203-328-9500

Case Number: 68554 - Continued

Date: 02/02/98

Frequency of Occurrence of Phenotype Obtained from Sample FB6855

Race: Caucasian	Database Size # of Individuals	Frequency of Occurrence
HLA DQA1	148	0.0429
LDLR	148	0.2992
GYPA	148	0.4859
HBGG	148	0.0066
D7S8	148	0.4736
GC	148	0.2935
CSF1PO	236	0.1415
TPOX	236	0.0356
THO1	236	0.0271

Combined Frequency of Occurrence **1 in 1,280,249,916**

LIFECODES CORPORATION
550 West Avenue
Stamford, CT 06902
203-328-9500

Case Number: 68554 - Continued

Date: 02/02/98

Frequency of Occurrence of Phenotype Obtained from Sample FB68555

Race: Black	Database Size # of Individuals	Frequency Of Occurrence
HLA DQA1	145	0.0735
LDLR	145	0.6022
GYPA	145	0.4991
HBGG	145	0.3012
D7S8	145	0.4740
GC	145	0.0391
CSF1PO	202	0.1400
THOX	202	0.0438
THO1	202	0.1647

Combined Frequency of Occurrence **1 in 8,029,316**

Source of the databases: For HLA DQA1 and Polymarker loci, Journal of Forensic Sciences. Volume 40, pages 45 - 54, 1995. For the STR loci, Palm Beach Sheriff's Office, West Palm Beach, Florida.

IV. Conclusion

The phenotypes obtained by PCR DNA analysis from samples FI56384 and FI56386 from Lifecodes Case Number 56381 are consistent with originating from more than one individual which does not exclude FI56389 and FB68555 as contributors.

LIFECODES CORPORATION
550 West Avenue
Stamford, CT 06902
203-328-9500

Case Number: 68554 - Continued Date: 02/02/98

The combined frequency of occurrence of the profile obtained by PCR DNA analysis from sample FB68555 is 1 in 1,280,249,916 in the Caucasian population and 1 in 8,029,316 in the Black population.

V. Disposition of Sample

The blood sample submitted for analysis will be returned at a later date pending notification of handling instructions.

The results and conclusions in this report were reviewed by:

Lauren Galbreath, M.S.
Senior Forensic Scientist

Michael L. Baird, Ph.D.
VP Laboratory Operations

LIFECODES CORPORATION
550 West Avenue
Stamford, CT 06902
203-328-9500

October 22, 1998

Walter M. Bailey, Jr.
Office of Solicitor
140 North Main Street, Suite 102
Summerville, SC 29483

Re: STATE OF SOUTH CAROLINA VS. KENNETH SIMMONS
LIFECODES CASE # 56381, 56821, 58665, 59711, 61583, 63636, 64982, 66558, and 68554
AGENCY REFERENCE # 96-14607

Dear Mr. Bailey:

This is in response to your letter dated September 14, 1998, requesting discovery material for the above captioned case. The following was requested and is enclosed:

1. Copy of the DNA case file including autoradiograms.

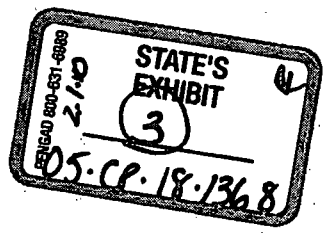
The case files from the nine (9) above captioned Lifecodes Cases are enclosed including the Chain of Custody forms, correspondence, laboratory notes, and autorads.

2. Statement regarding the type of proficiency testing program SLED participates in and its performance.

I am unsure of the proficiency programs SLED participates in. Lifecodes participates in the CAP (College of American Pathologists) Forensic Proficiency Program. To date, Lifecodes has reported values and conclusions consistent with consensus.

3. Copy of the database used in frequency calculations, preferably on computer disk.

The databases utilized by Lifecodes in the calculation of the frequency of occurrence are enclosed. The databases used for the Polymarker and HLQ DQA1 allele frequencies are from the article in the *Journal of Forensic Sciences*, Volume 40, 1995, pages 45-54. A copy of the article is enclosed. The databases used for the THO1, TPOX, and CSF1PO allele frequencies are from Perkin Elmer. A copy of the databases are included with the Perkin Elmer protocol for these tests (see response to number 6 below).



LIFECODES CORPORATION
550 West Avenue
Stamford, CT 06902
203-328-9500

4. Copy of any report by outside experts who have analyzed the database, including Lifecodes.

See the response to number 3 above.

5. Copy of the match window validation report.

The match window is involved with the declaration of a match of DNA fragments generated by RFLP analysis. Since there was an insufficient amount of high molecular weight DNA isolated from the evidentiary samples from the victim for RFLP analysis, no match criteria were utilized in declaring matches. DNA profiles generated by PCR analysis match if they have the same alleles present or if an individual can not be excluded from a mixed sample.

6. Copy of the DNA protocol used in this case.

A copies of the protocols are enclosed.

7. Copy of the Quality Assurance/Quality Control manual used in this case.

A copy of the manual is enclosed (see response to number 6 above).

8. Copy of the Chain of Custody with regard to the DNA evidence (for SLED and for Lifecodes).

The Chain of Custody forms from the nine (9) Lifecodes Cases are enclosed with materials provided in response to number 1 above.

9. Curriculum Vitae of the individual(s) who worked this case.

The curriculum vitae from Lauren Galbreath and myself are enclosed.

10. Underlying data (and statements if not previously provided) of SLED's open and blind proficiency tests.

I am unsure of the SLED proficiency program. Lifecodes participates in the CAP Forensic Proficiency Program which is an open program. Lifecodes does not participate in any blind proficiency programs.

11. Copy of autorads, sizing sheets, and laboratory notes as well as final reports generated by SLED and/or Lifecodes for these RFLP proficiency tests.

Copies of the CAP proficiency results are enclosed showing results of PCR testing. There are no autorads or sizing sheets from PCR analysis of DQA1 or Polymarker.

LIFECODES CORPORATION
550 West Avenue
Stamford, CT 06902
203-328-9500

12. Copy of any results and any keys to those results prepared by the testing agencies (Lifecodes) and reported back to SLED via letter, booklet or report.

Copies or the following reports are enclosed:

Case Number 56381	-	October 25, 1996 November 18, 1996 August 11, 1997
Case Number 56821	-	November 18, 1996
Case Number 58665	-	February 18, 1997
Case Number 59711	-	May 6, 1997
Case Number 61583	-	June 17, 1997
Case Number 63636	-	August 12, 1997
Case Number 64982	-	November 3, 1997
Case Number 68554	-	January 23, 1998 February 2, 1998
Case Number 66558	-	December 16, 1997

13. A statement of the ID number assigned to SLED which would apply in this case.

This information should be available from SLED.

I hope this material is sufficient to comply with the Defense's Motion for Inspection. Please contact me if you have any questions or need additional information.

Sincerely yours,

Michael L. Baird, Ph.D.
VP Laboratory Operations

Enclosure

Leslie N. Sandler, Ed.D.

State Level Forensic Psychological Examiner
South Carolina Department of Disabilities and Special Needs
3440 Harden Street Extension
Columbia, South Carolina 29203



Current Licensure

Pennsylvania License for Professional Practice of Psychology, 1976

Current Specialty Board Certification

Diplomate American College of Forensic Psychology, 1984
Fellow American College of Forensic Psychology, 1982

Current Proficiency Certification

Certificate of Proficiency in the Treatment of Alcohol and Other Psychoactive Substance Use Disorders
American Psychological Association College of Professional Psychology, 1996

Current Professional Membership

American Psychological Association, Associate 1973; Member 1981
Mental Retardation and Developmental Disabilities (Division 33)
American Psychology - Law Society (Division 41)
Clinical Neuropsychology (Division 40)
Psychopharmacology and Substance Abuse (Division 28)
American Association of Mental Retardation, 1998
Pennsylvania Psychological Association, Member 1976; Fellow 1985
Florida Psychological Association, Associate, 1997
National Academy of Neuropsychologists, 1983
American Orthopsychiatric Association, Member 1982; Fellow 1987
International Academy of Behavioral Medicine, Counseling and Psychotherapy, 1987
American Academy of Experts in Traumatic Stress, 1997

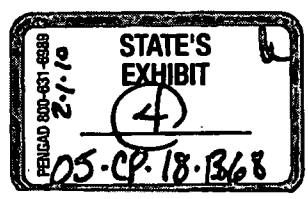
Education

Ed.D. in Psychoeducational Processes, 1980, Temple University
Jungian Personality Type, Interpersonal Needs and Intimacy: An Empirical Study of Four Instruments (Unpublished Doctoral Dissertation)
Internship in Clinical Psychology, 1971-1972, Philadelphia General Hospital
M.Ed. in Educational Psychology/Group Dynamics, 1970, Temple University
B.S. in Secondary Education/Social Studies, 1968, Temple University

Current Employment

State Level Forensic Psychological Examiner
State of South Carolina Department of Disabilities and Special Needs
March, 1998 to present

Provide lead position for forensic psychological competency evaluations of individuals who have been judicially ordered for the determination of competence to stand trial, criminal responsibility, and capacity to conform to law, due to mental retardation and/or related mental disorders. Provide forensic training for other psychologists, as well as quality and oversight for all forensic psychological matters for the South Carolina Department of Disabilities and Special Needs.



Prior Employment

Senior Psychologist
Director, Mental Health Intake Department
Director, Psychotherapy Clinic
Department of Corrections, North Florida Reception and Medical Center, October 1996 - March 1998
Lake Butler, Florida

Supervised and administered clinical services provided by Masters level psychological specialists, psychometricians, and a psychiatrist at a regional correctional facility for the initial evaluation of all inmates prior to their assignment to permanent correctional facilities in Florida (north of Orlando). Determined appropriate psychological assessment procedures and needs directly following the inmates' screening, testing and scoring. Provided all departments within the Reception and Medical Center with specialized forensic assessments. Initiated and maintained a forensic neuropsychology laboratory with activities including initial proposal, training, and ongoing direct clinical services. Collected and monitored all regulations and Hospital Service Bulletins for compliance by staff psychologists.

Clinical Psychologist
Dr. Leslie N. Sandler 1993-1997
Dr. Leslie N. Sandler, P.C. 1983-1993
Lansdale Counseling Associates, Ltd. 1976-1983
Lansdale, Pennsylvania

Originated and managed an independent psychological practice, providing a wide range of clinical assessment, consultation and treatment services to individuals, families, and organizations. As the principal of the practice, administrative responsibilities included devising a business/financial plan and developing budgets; writing effective advertising strategies; and marketing the practice to establish and maintain a referral network. Clinical responsibility was for direct clinical psychological practice including the selection, administration, scoring and interpretation of psychological testing; assessment and treatment of substance abuse; assessing clinical effectiveness of counseling modalities; assessing patient progress; diagnosing psychological problems and providing the most efficacious treatment.

President
Universal Peer Review Services 1992 - 1998
Lansdale, Pennsylvania and Neptune Beach, Florida
Universal Psychological Review Services 1990 - 1992
Lansdale, Pennsylvania

Conceived and developed a (PA Department of Insurance-approved) peer review organization, providing review of treatment of patients by board-certified physicians and licensed psychologists. As the director, prepared periodic technical reports to the appropriate regulatory agencies and insurance departments; maintained knowledge of workers compensation/disability regulations and disseminated the information to all medical specialists; reviewed and edited technical reports written by others; and maintained compliance with ethical standards of review.

Director
Rehabilitation for Addicts in Distress, Inc. 1972-1975
Philadelphia, Pennsylvania

Restructured and directed counseling/psychological/psychiatric, medical, nursing, pharmacy, and security functions of the only private federally-approved methadone maintenance clinic in PA. Salvaged a program which was on probationary status with governmental agencies and facing hostility from the neighborhood, to complying with all regulatory statutes and achieving community support. Accelerated rates of detoxification from all substances (including methadone); reduced recidivism; achieved lowest dose methadone maintenance program in Pennsylvania; developed liquid methadone placebo and established its implementation for terminal phase of detoxification. Conceived, planned, and carried out a pilot research project for the complete detoxification of methadone maintenance patients through acupuncture and presented findings at an international conference. Taught issues on substance abuse to professional counselors, physicians and others. Interfaced with significant members of the state legislature, judiciary, probation departments, and police in matters of polysubstance dependence and rehabilitation.

Prior employment (continued)

Clinical Instructor of Psychiatry/Psychological Consultant
Department of Psychiatry
Temple University Hospital Medical School 1971-1972
Community Mental Health/Mental Retardation Center
Philadelphia, Pennsylvania

Performed psychological consultation and supervision to all phases of a community mental health and mental retardation center which included direct clinical services, training, and supervision of other psychologists, social workers, medical school students, and mental health workers. Assisted in the implemented of multi-satellite community model of CMH/MR service delivery to catchment area. Assessed clinical effectiveness of psychological services. Liaison between administration, medical, psychological staff, and consumers.

Staff Psychologist
Northeast Community Mental Health Center 1970-1973 (part-time)
Philadelphia, Pennsylvania

Performed intake diagnostic evaluations, psychological testing, crisis interventions, interacted with medical and psychological professionals, and provided individual and group psychotherapy in community mental health center for weekday evening shift.

Instructor, Clinical and Developmental Psychology
Psychology Department, Montgomery County Community College 1972 (part-time)
Blue Bell, Pennsylvania

Clinical Psychological Intern
Philadelphia General Hospital
Eastern Mental Health Reception Center 1971-1972
Philadelphia, Pennsylvania

Reception Center at Mills Neurological Building, Philadelphia General Hospital
Completed all requirements for a Pennsylvania Department of Welfare-approved Clinical Psychological Internship including forensic assessment and evaluation of adults. Performed emergency testing and presented technical forensic evaluations at commitment hearings. Attended psychiatric and neurological daily rounds. Provided short-term crisis stabilization treatment under supervision.

Psychological Examiner
Pennsylvania Bureau of Vocational Rehabilitation
Disability Determination Section 1970-1980 (part-time)

Performed psychological disability determination evaluations and specialized psychological testing for claimants eligibility on request by the Pennsylvania Bureau of Vocational Rehabilitation.

Psychological Associate
Rose Marks Elfman, Ph.D., Psychologist - Private Practice 1968-1969 (part-time)
Swarthmore, Pennsylvania

Performed specialized developmental psychological assessment of infants and children, for private neuropsychological consultations to patients at a hospital neurosurgery service.

Counselor
Eastern State Prison 1968
Philadelphia, Pennsylvania

Performed forensic psychological assessments and psychological counseling to inmates of a maximum security prison. Composed technical evaluations and recommendations for psychological, vocational, and educational services based upon determination of individual cognitive needs at a correctional institution.

Prior employment (continued)

Research Assistant
Head Start Child Development Research Center 1965-1966
Philadelphia, Pennsylvania
Performed statistical technical analysis and classification of research data for assessing outcome effectiveness of developmental intervention program in the early days of *Project Head Start.*

Prior Hospital Affiliation

Affiliate Psychologist/Inpatient
Eugenia Hospital 1980-1994
Lafayette Hill, Pennsylvania
Privileges of referral, psychological testing, scoring and interpretation, consultation and treatment to self-contained adolescent unit, substance abuse, and general adult psychiatric units of a private hospital.

Industrial and Organizational Consultantships

MARKIM Group 1973-1983
International sales, rental, and operation of construction equipment
Philadelphia, Pennsylvania
Personnel placement counseling and general human resources consultant. Provided alcohol substance abuse evaluation; crisis management and treatment; and psychological consultation for hiring, retention, and termination procedures.

Emerson Electric Corporation, Brooks Scientific Instruments Division 1976-1988
Hatfield, Pennsylvania
Vocational and personality testing, executive selection, outplacement counseling, and work-related psychological counseling. Provided consultation regarding hiring practices, retention and termination criteria. Contracted for evaluation and treatment of sexual offenders and substance abusers; and counseling for employees and their families.

Professional presentations

The detection of malingering in pretrial juvenile competency evaluations.
Accepted for presentation at American College of Forensic Psychology Annual Conference (April, 1999)

Forensic psychological issues for persons with mental retardation in the new millenium.
The sexually-violent predator and persons with mental retardation.
Accepted for presentation at American Association of Mental Retardation Annual Meeting (May, 1999)

Review of neuropsychological literature with clinical implications for assessment in HIV-1 associated dementia.
American Board of Assessment Psychology First Annual Conference
April 1998, Orlando, Florida

Psychological testing of HIV+/AIDS prisoners: Clinical, ethical and moral consequences.
American Board of Assessment Psychology First Annual Conference
April 1998, Orlando, Florida

Forensic neuropsychology.
Memorial Hospital Jacksonville, Continuing Medical Education
North Florida Reception & Medical Center, January 1997, Lake Butler, Florida

Professional presentations (continued)

Psychological assessment and treatment of patients with head injuries.
Philadelphia Chiropractic Society, Second Annual Personal Injury Symposium 1986
Philadelphia, Pennsylvania

Lewin and psychotherapy.
Second Annual International Kurt Lewin Society Conference 1986
Department of Psychoeducational Processes, Temple University, Philadelphia, Pennsylvania

Interpersonal needs of patients with post-traumatic closed-head injuries.
Fifth Annual Meeting of the National Academy of Neuropsychologists 1985
Philadelphia, Pennsylvania

A psychologist in private practice discusses substance abuse among the well-to-do.
First International Conference on Substance Abuse 1977
Phoenix, Arizona

Treatment of chronic opiate addicts with acupuncture: A preliminary exploration of effectiveness.
North American Congress on Alcohol and Drug Problems 1974
San Francisco, California

Specialized post-doctoral training - Forensic

Competency: Psychological assessment and implications.
David Longo, Ph.D. and Karen Jacobi, Ph.D., Pennsylvania Psychological Association
at Philadelphia, Pennsylvania, 1996 (3 CE hours/credits)

Diverse approaches to dispute resolution in separation and divorce.
Nancy Van Tries Kidd, D.Ed. and Thomas Kidd, M.Ed., Pennsylvania Psychological Association
at Philadelphia, Pennsylvania, 1996 (3 CE hours/credits)

A conciliation/evaluation approach to child custody determination.
Robert D. Strochak Ph.D., Pennsylvania Psychological Association
at Philadelphia, Pennsylvania, 1996 (6 CE hours/credits)

Clinical assessment of malingering.
Ralph M. Reitan, Ph.D. and Deborah Wolfson, Ph.D., Ralph M. Reitan and Associates
at San Diego, California, 1995 (3 CE hours/credits)

Practical issues in clinical and forensic psychology.
David Faust, Ph.D., American Academy of Forensic Psychology
at New York City, New York, 1991 (6 CE hours/credits)

Forensic assessment of vocational impairment in civil litigation.
Ronald Kaiser, Ph.D., American Academy of Forensic Psychology
at New York City, New York 1991 (6 CE hours, credits)

Conducting insanity evaluations.
Richard Rogers, Ph.D., American Academy of Forensic Psychology
at New York City, New York, 1991 (6 CE hours/credits)

Forensic neuropsychology: Fundamentals, litigation workup and testimony practicum.
Melvin L. Schwartz, Ph.D., National Academy of Neuropsychologists
at Philadelphia, Pennsylvania, 1985

Specialized post-doctoral training - Forensic (continued)

Second annual symposium on psychology and the law.
The American College of Forensic Psychology
at Sanibel Island, Florida, 1986 (16 CE hours/credits)

Specialized post-doctoral training - Neuropsychology

Toxic brain injury: Neurotoxicology.
Michael H. LeWitt, M.D., Samuel H. Pond, Esq. and James D. Seward, Ph.D.
Bryn Mawr Rehabilitation Hospital at Malvern, Pennsylvania, 1995 (3.5 CE hours/credits)

Advanced workshop: Neurological inferences of underlying brain disorders,.
Ralph M. Reitan, Ph.D. and Deborah Wolfson, Ph.D., Ralph M. Reitan and Associates
at San Diego, California, 1995 (21 CE hours/credits)

Advanced workshop: The validity of age and education norms.
Ralph M. Reitan, Ph.D. and Deborah Wolfson, Ph.D., Ralph M. Reitan and Associates
at San Diego, California, 1995 (3 CE hours/credits)

Advanced workshop: Child neuropsychology and learning disabilities.
Ralph M. Reitan, Ph.D. and Deborah Wolfson, Ph.D., Reitan Neuropsychology Laboratory
at Philadelphia, Pennsylvania, 1993 (21 CE hours/credits)

Advanced workshop: The neuropsychologist as an expert witness.
Ralph M. Reitan, Ph.D. and Deborah Wolfson, Ph.D., Reitan Neuropsychology Laboratory
at Washington, D.C., 1990 (14 CE hours/credits)

Neuropsychological assessment of dementia and amnesia.
Nelson Butters, Ph.D., Philadelphia Neuropsychology Society
at Philadelphia, Pennsylvania, 1989 (6 CE hours/credits)

Neuropsychology in the nineties.
Charles Golden, Ph.D., Pennsylvania Psychological Association
at Lancaster, Pennsylvania, 1988 (6 CE hours/credits)

The process approach to neuropsychological assessment.
Edith Kaplan, Ph.D., Philadelphia Clinical Neuropsychology Group
at Philadelphia, Pennsylvania, 1988 (6 CE hours/credits)

The psychosocial implications of head trauma.
K.H. Wong, Ph.D., Irwin Pollack M.D. and Kathy Fralish, Ph.D., Devereux Foundation Institute
at Devon, Pennsylvania, 1987 (7 CE hours/credits)

Rehabilitation of the brain-injured adult and child.
Medical College of Virginia, Virginia Commonwealth University
at Williamsburg, Virginia, 1986 (25 CE hours/credits)

Advanced workshop: Head injury and rehabilitation.
Ralph Reitan, Ph.D., Deborah Wolfson, Ph.D., & J. Janesheski
Reitan Neuropsychological Laboratory
at Phoenix, Arizona, 1986 (21 CE hours/credits)

Brain-language relationships in head trauma and learning disabilities.
Alan Groveman, Ph.D. & Lois Mishkin, M.A., C.C.C./L.D.C., The Devereux Foundation
at Devon, Pennsylvania, 1986 (7 CE hours/credits)

The interdisciplinary approach in treating traumatic head injury.
D. Blumer, M.D., S. I. Littman, M.D., & N. Mayer, M.D., Philadelphia Psychiatric Center & the
Devereux Foundation, at Philadelphia, Pennsylvania, 1985 (6 CE hours/credits)

Applying Luria's techniques to follow-up care of the traumatic head-injured.
Ann-Lise Christensen, Head Injury Center, University of Pennsylvania
at Philadelphia, Pennsylvania, 1984

Advanced workshop: Clinical neuropsychological applications.
Ralph M. Reitan, Ph.D., J. Reed, Ph.D., and J. Janesheski, Reitan Neuropsychology Laboratory
at Atlantic City, New Jersey, 1984 (25 CE hours/credits)

Advanced workshop: Neurological inferences.
Ralph M. Reitan, Ph.D., J. Reed, Ph.D., and J. Janesheski, Reitan Neuropsychology Laboratories
at Atlantic City, New Jersey, 1984 (25 CE hours/credits)

Workshop in human clinical neuropsychology.
Ralph M. Reitan, Ph.D., J. Reed, Ph.D., and J. Janesheski, Reitan Neuropsychology Laboratory
at Atlantic City, New Jersey, 1984 (25 CE hours/credits)

Workshop in human clinical neuropsychology.
Ralph M. Reitan, Ph.D., J. Reed, Ph.D., and J. Janesheski, Reitan Neuropsychology Laboratory
at Monterey, California, 1981 (25 CE hours/credits)

Specialized post-doctoral training - Recent general

The Florida mental health professional and domestic violence.
Carolyn Stimel, Ph.D., ABPP, Florida Psychological Association,
Domestic Violence Home Study Program 1997 (1 CE hour/credit)

Ethical and legal principles for mental health practice.
Robert Henley Woody, Ph.D., Sc.D., J.D.
Florida Psychological Association, 1997 (4 CE hours/credits)

Advanced interpretation of the MMPI, MMPI-2 and MMPI-A.
Robert Gordon, Ph.D., Institute for Advanced Psychological Studies
at Philadelphia, Pennsylvania, 1996 (3 CE hours/credits)

Post-traumatic stress disorder: Current approaches to diagnosis and treatment.
Terrence Keane, Ph.D. and Robert Sadoff, M.D., University of Pennsylvania Department of Psychiatry
at Philadelphia, Pennsylvania, 1991 (6 CE hours/credits)

Stanley J. Butkus, Ph.D.
State Director
Robert W. Barfield
Deputy State Director
Administration
Brent H. Koyle, Ph.D.
Deputy State Director
Services and Supports

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Home Page: www.state.sc.us/ddsn/

Forensic Psychological Competency Evaluation

Name: Kenneth Simmons
Date of birth: [redacted]
Age: 37 years, 11 months
County: Dorchester

Dates of evaluation: 28 January 1999
2 February 1999
4 February 1999
9 February 1999
Date of report: 10 February 1999

Examiners: Leslie N. Sandler, Ed.D. Lead Psychologist
SC Department of Disabilities and Special Needs [SC DDSN]
Thomas McAbee, Ph.D., Secondary Psychologist
SC Department of Disabilities and Special Needs [SC DDSN]

Statement of non-confidentiality: Mr. Simmons was notified orally and in writing at the outset of each evaluation session of the lack of confidentiality with respect to the content of the interview and his responses during the evaluation. He was informed as to the recipients of copies of the evaluation results, as well as to the possibility that the examiners might be called to testify regarding the evaluation.

Purpose of evaluation: This evaluation was conducted pursuant to an order by Judge Rodney A. Peeples of the Court of General Sessions of the First Judicial Circuit dated 14 January 1999. The order requested that Mr. Simmons be evaluated to determine his competency to stand trial, his criminal responsibility pursuant to the M'Naghten test for his actions on or about 1 September 1996, and if found responsible, his capacity to conform his actions to the requirements of law. The initial order for an evaluation was made upon motion of Walter Bailey, Esq., Solicitor.

Charges: Mr. Simmons is charged with Murder, Armed Robbery, Kidnapping, Criminal Sexual Conduct, and Burglary.

Summary of evaluation results: Opined within reasonable scientific certainty.

Presence of mental retardation:	No
Competency to stand trial:	Yes
Criminal responsibility:	Yes
Capacity to conform:	Yes

Evaluation procedures:
Competence Assessment for Standing Trial for Defendants with Mental Retardation [CAST-MR]
Personal History Checklist for Adults
Trail Making Test, Parts A and B
Wechsler Adult Intelligence Scale-Revised [WAIS-R]
Vineland Adaptive Behavior Scale (attempted)

PENGAD 800-631-6989
STATE'S EXHIBIT 5
05-CP-18-1368

Interviews with Mr. Simmons on 28 January 1999 (approximately two hours), 2 February 1999 (approximately two hours), 4 February 1999 (approximately two hours), and 9 February 1999 (approximately two hours).
Interviews with Dorchester County Detention Center correctional officers Sidney Jackson and Emmet McKinney on 9 February 1999.

Telephone inquiries to SC Department of Education; Summerville High School (guidance office and athletic office); Alston Middle School; Dorchester School District Two Office of Special Services; SC Department of Public Safety (Driver Records and Driver Improvement offices).

Review of available records: Summerville Police Department incident reports dated 1 September 1996, Summerville Police Department voluntary statement forms dated 1 September 1996, 2 September 1996, 22 August 1997, 13 November 1997, 5 December 1997, 10 December 1997; 12 December 1997; Audio tapes and transcripts of State Law Enforcement Division interview dated 5 December 1997; Arrest warrants dated 8 December 1997; Indictments for Criminal Sexual Conduct-First Degree, Burglary in the First Degree, Murder, Kidnapping, and Armed Robbery; Order for Competency Evaluation dated 22 January 1998 and 10 September 1998, South Carolina Department of Mental Health hospital records, psychological test results, and forensic evaluation dated 8 January 1999; Psychological testing dated 15 May 1998; Transcripts of Court-Appointed Examination/Evaluation of Kenneth Simmons at Hall Psychiatric Institute dated 1 December 1998 and 8 January 1999; Dorchester County public school records, South Carolina Department of Public Safety driver records.

Relevant history: Kenneth Simmons is a 37-year-old, ambulatory, African-American male. The available records do not describe a history of significant childhood developmental delays. His records do not reveal him ever receiving any type of special education services. Though he repeated the eleventh grade and took some remedial courses for high school credit, he graduated from Summerville High School in 1980 after earning 18 units of high school credit. During his junior and senior years in high school, he played an important position (defensive end) on his varsity football team, earning two letters.

His high school transcript reveals that he attained a grade of B in ninth grade basic English, C in tenth grade basic English, B in eleventh grade remedial English, C in English language arts when he repeated the eleventh grade, and A in remedial English during the twelfth grade. Standardized achievement testing in April 1978 (during the eleventh grade) revealed that he had attained grade equivalent scores of fifth grade in reading, fourth grade, six months in language, and fourth grade, seven months in arithmetic/mathematics. (The name of the achievement test was not given, but it may have been the Comprehensive Test of Basic Skills.) His abilities are also revealed by his passing the state driver's license test in October 1979.

Mr. Simmons is married and reports having two sons by his wife and a third son by a girl friend. He reports previously working in "construction," including "carpenter work" and "brick layer" (his words).

Mr. Simmons acknowledges long-term use of alcohol, marijuana, and cocaine. The South Carolina Department of Mental Health [DMH] forensic evaluation dated 8 January 1999 reports diagnoses of Polysubstance Dependence, Mild Mental Retardation (provisional), peptic ulcer disease by history, and migraine headaches by history. During our first evaluation (on 28 January 1999), Mr. Simmons acknowledged having frequent headaches and blood in his stools. He wore eyeglasses during the third evaluation (on 4 February 1999) but not on the first two evaluations (although he had them in his pocket).

Additional pertinent information: Interviews and conversation with Correctional Officers Sidney Jackson and Emmet McKinney on 9 February 1999 were quite significant. Officer

Jackson related that Mr. Simmons was very different in his demeanor (he was not as alert and intelligent) while he was in the evaluation as opposed to the Correctional Facility in Dorchester. Mr. Simmons is said to lead Bible reading discussions with other inmates, play a card game called "spades," play chess with a notable degree of expertise, and has had to be directed to refrain from being the "jailhouse lawyer" (giving other inmates legal advice). Officer McKinney reports that Mr. Simmons writes letters regularly, plays the card game of "rummy," and after the initial evaluation session at Coastal Center (28 January 1999) Mr. Simmons stated, "They ask me stupid questions; I gave them stupid answers."

Prior psychological testing results: The William S. Hall Psychiatric Institute forensic evaluation dated 8 January 1999 noted that Mr. Simmons "has consistently scored in the high 60's on two different examinations of intellectual functioning" and concluded with diagnostic impressions of Mild mental retardation (provisional). One examination on 15 May 1998 with the Wechsler Adult Intelligence Scale-Revised [WAIS-R] reported scores of Verbal IQ 66, Performance IQ 75, and Full Scale IQ 69, in the significantly subaverage range of intellectual functioning. The second examination on 1 December 1998 with the Wechsler Adult Intelligence Scale-Third edition [WAIS-III] reported scores of Verbal IQ 65, Performance IQ 74, and Full Scale IQ 66, in the significantly subaverage range of intellectual functioning. No adaptive behavior assessments were reported.

No individualized school psychological evaluations were in the available records, and no record of him ever being referred for an individualized school psychological evaluation was found in the available school records. His school records did note that he had received group administered ability tests during elementary school: At age seven, he obtained an "IQ" score of 94 on the Primary Abilities Test. At age nine, he obtained an "IQ" score of 104 on the Primary Abilities Test and 69 on the Short Form Test of Academic Aptitude.

Current psychological testing: In an administration of the Wechsler Adult Intelligence Scale-Revised [WAIS-R] on 9 February 1999 he obtained the following IQ scores: Verbal 70; Performance 82; and Full Scale 75. A Full Scale IQ of 75 is in the mid-range of the Borderline Intelligence Classification (IQ scores of 70 to 79). The fact his Performance IQ score was 12 points higher than his Verbal IQ score is significant. One interpretation of this 12 point spread which the examiners believe may be likely is that his true IQ is in the Low Average intelligence classification (IQ scores of 80 to 89) as revealed in the Performance IQ, and intentionally suppressed by Mr. Simmons' tendency to malinger. His sub-tests raw scores can be converted into scaled scores along a continuum of 1 (the 0.1 percentile rank) to 19 (the 99.9 percentile rank). His highest sub-test scores were in the Object Assembly test (scaled score of 10: the 50th percentile), Picture Arrangement and Block Design tests (scaled scores of 8; the 25th percentile). His lowest sub-test scores were in the Information and Digit Symbol tests (scaled scores of 2; the 0.4 percentile rank). Notable responses (an answer which is often found in offender populations who are malingering) included the following: his answer in the Information sub-test that the colors of the flag were "red, blue, white, and yellow"; and in the Picture Completion Test in which he said that he failed to see anything missing in a playing card and a water pitcher in which the pitcher was tilted but no liquid was coming out.

The Trail-Making Test Parts A and B were administered as a screening instrument for the detection of brain dysfunction. He completed Part A in 162 seconds and Part B in 300 seconds. His scores were both elevated, yet showed no errors, reflecting the examiner's impression that Mr. Simmons was intentionally producing exaggerated slow responses (as he did in the WAIS-R Digit Symbol sub-test).

The Vineland Adaptive Behavior Scale, Interview edition, was attempted but no valid score was obtained because (1) Mr. Simmons is incarcerated, which precludes the performance of many adaptive skills in community living, and (2) no family member was available to serve as an informant about his skills when not incarcerated. Mr. Simmons and a Dorchester County Detention Center correctional officer, Mr. Sid Jackson, were interviewed about Mr. Simmons' current adaptive behavior in his present environment. The available descriptive information suggests that Mr. Simmons takes care of his personal hygiene and grooming independently, not needing assistance or reminders from others. He is described as getting along well with others. His personal leisure skills include playing cards (i.e., Spades) and reading magazines and newspapers. He reportedly can discuss the content of newspaper stories after reading them, according to the detention center correctional officer. Though Mr. Simmons said that he does not know how to play chess, the correctional officer reported that Mr. Simmons is a skilled chess player who apparently follows the rules of the game while playing against other inmates. He also reportedly leads a Bible discussion group with other inmates.

The CAST-MR was also administered; however the results were not available in time for the report composition.

Behavioral observations/mental status examination: Mr. Simmons was brought by Dorchester County detention center officers to the Coastal Regional Office for evaluations on four different days, each lasting approximately two hours. Mr. Simmons was dressed in institutional clothing with apparently adequate hygiene and grooming. A number of missing lower front teeth were noted. He stated that his height is "five [feet], nine [inches]" or "five [feet], ten [inches]" and estimated his weight as "190 something" pounds. He is right handed.

He can write his first and last name legibly in cursive. He knew the current day of week and approximate date (for example, he wrote "2-3-99" for 2-4-99). He correctly knew that he was in the city of "Summerville" in "Dorchester County" and the state of "South Carolina." He knew that the purpose of his office visit was "to answer questions about court." He was oriented to person, place, time, and situation. He also knew that three years was a longer period of time than eleven months.

He was active, alert, polite, and suspiciously guarded. He displayed appropriate behavior (remaining seated, not interrupting, not raising his voice) during the entire interview. He could maintain his attention and concentration to the examiners' questions. He answered most questions logically with relevant and coherent information, giving both abstract and concrete answers. He could speak in short phrases or simple but complete sentences, and most of his words were understandable. His hearing appeared adequate for the evaluation.

He acknowledged appetite and sleep disturbances, explaining that his stomach hurts sometimes. He stated that he had gained and then lost weight while in jail. He described his mood as "okay" but "tired." During each session he reported bilateral headaches but no dizziness, nausea, or emesis. He acknowledged past suicidal thoughts or intentions but was "not sure" about them now and "don't know" the last time he had suicidal thoughts or intentions. When asked about any homicidal thoughts or intentions, he replied, "For what?' During the first evaluation, he reported hearing "birds hollering," but during the third evaluation the following week, he stated that he had not heard birds hollering for "three weeks." He did not appear to be distracted by internal or external stimuli during the four evaluations. His insight was limited.

He demonstrated the ability to recall some detailed information from remote and recent memory. For example, he stated that he played "defense" on his high school football team, proudly recalling the teams' win-lost record for the years that he played ("13 and 1" and "14 and 0").

Malingering was observed more or less in each session. Malingering is the intentional production of false or grossly exaggerated psychological symptoms or intellectual deficits for apparent secondary gain, such as evading criminal prosecution. Some of his responses seemed exaggerated or distorted in a self-protective or self-serving fashion, as is sometimes encountered

during competency-to-stand-trial evaluations. His clinical presentation during the four evaluations appeared to be substantially lower than what would be expected from a high school graduate and also appeared to be substantially lower than his vocabulary and other skills as revealed in his 1997 oral and written statements to the police. Furthermore, he sometimes gave inconsistent answers across our four evaluations or gave incorrect answers that closely approximate the correct answers, which is commonly seen during malingering.

Presence of mental retardation: The American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, [APA DSM-IV] specifies the following three criteria for a diagnosis of mental retardation: significantly subaverage intellectual functioning with concurrent deficits or impairments in present adaptive functioning with onset before age 18 years. The available records do not report a history of significant developmental delays or of him ever receiving services for mental retardation or a related disability. While Mr. Simmons did repeat the eleventh grade and take remedial courses for high school credit, his records do not report that he received any special education services, including any services for learning, educable, or trainable mental disabilities. He graduated from high school, played varsity football, passed the South Carolina driver's license test, and drove a car by himself (per Mr. Simmons report). The preponderance of the available information does not suggest significant intellectual or adaptive deficits before age 18 years, and therefore, a diagnosis of mental retardation cannot be made.

It should be noted that competency to stand trial opinions are based on the defendant's ability to meet the Dusky standard and are not automatically determined by a defendant's diagnosis or intellectual abilities.

Competency evaluation: At the beginning of each evaluation, he read a written statement of his legal rights, needing frequent assistance for polysyllabic words such as *examination*, *specific*, and *participate* and for simple, one-syllable words. He explained that the right to remain silent meant "shut up" or "be quiet." When asked if the right to remain silent meant that he had to answer the examiners' questions if he did not want to answer, he said incorrectly "I guess" or "[I] don't know." Even though one examiner explained the meaning of the right to remain silent in simple terms several times, he persisted in saying statements such as "I've got to answer." or "If you ask [me] a question, I answer it." and did not (or would not) indicate his understanding of the right to remain silent by his verbal statements to the examiners. One examiner also explained several times in simple terms that he had the right to talk with his attorney about the evaluation. When asked if he wanted to talk with his attorney, he sometimes shook his head negatively but more often just answered the question with a question, replying "Ask him what?" (One of his attorneys, Mr. Jerry Theos, attended each evaluation, either sitting in the examining room or remaining outside the door, and was available to answer Mr. Simmons' questions.)

The competency evaluation consisted of assessing his initial ability to meet the Dusky standards, teaching him about the trial process and its participants, and then reassessing his ability to meet the Dusky standards after being taught.

He knew the name of his attorney ("Mr. Theos," or more often he just said, "Mr. Jerry."). He understood that his attorney was trying to help him and indicated that he could talk candidly with him about the charges. However, when asked if he could trust and work with his attorney, he replied, "I don't know." Not initially but after education, he reasoned that he could "ask Mr. Theos" if he heard words or statements in court that he did not understand.

During the third evaluation, he explained that he is charged with "murder," which means "kill them," and with "armed robbery," which means "take something from somebody" with "a gun." During the fourth evaluation, he stated that he is charged with "murder," which he again explained as meaning "kill them," "burglary," which means "break into somebody's house," and "rape," which means "take advantage of them" or "have sex with them." (He also said that he was charged with shoplifting, for which he reportedly was previously arrested in Richland

County.) He acknowledged that the charges could result in serious consequences, including the "death penalty" or "go[ing] to jail for rest of [my] life."

He defined the meaning of guilty as "did it" and "send you to prison." He defined the meaning of not guilty as "ain't did it." He explained the meaning of innocent as "find not guilty." He said that he wanted to be found not guilty on the current charges. He explained that plea bargain means plead guilty and "tell them what happened" in order to receive "a less[er] sentence."

In a picture of a courtroom, he could identify most trial participants. He stated that a jury consists of "twelve" persons who "listen to people" and "see if they [are] guilty or not." He knew that in a courtroom the prosecutor or solicitor would be working against him in order to find him "guilty" and "send me to prison." Not initially but after education, he reasoned that if the solicitor asked him a question that he did not understand, he could "don't say nothing (sic)" and "ask Mr. Theos" for help.

He explained the role of a witness as "tell what they know." Not initially but after education, he indicated his understanding that he could testify at his trial but could not be made to testify against his will. He defined evidence as "somebody know you did something and they can prove [it]." He could give examples of evidence and witnesses in a hypothetical crime. Not initially but after education, he acknowledged his understanding that he could "tell Mr. Jerry" if he believed that a witness told a lie about him.

Not initially but after education, he knew that he was charged with a "felony," which was more serious than a misdemeanor.

Criminal responsibility: Based on retroactive speculation and the results of the examination, it seems unlikely that his level of cognitive functioning would have interfered with his ability to differentiate moral and legal right from moral and legal wrong on the date of the alleged offense.

Capacity to conform: Based on retroactive speculation and the results of the examination, it seems unlikely that his level of cognitive functioning would have interfered with his ability to conform his conduct to the requirements of the law on the dates of the alleged offense.

Conclusions and limitations: Based upon the integration of all available records and the clinical impressions from the examination, and within reasonable scientific certainty, it is recommended to the court that Mr. Simmons be found competent to stand trial at this time. It seems unlikely that his level of cognitive functioning would have interfered with his ability to differentiate moral and legal right from moral and legal wrong or with his ability to conform his conduct to the requirements of the law on the date of the alleged offense.

Possible limitations that were considered included the number of available records about him, the amount of information that can be obtained from four office visits, each lasting about two hours, and the possible "practice effects" from the prior administration of the WAIS-R in May 1998 and the WAIS-III in December 1998. However, in spite of these potential limitations, we believe that the conclusions of this evaluation are valid and reliable.

Leslie Sandler, Ed.D.
Lead examiner
Forensic psychologist

10 Feb 1999
Date signed

Thomas McAbee, Ph.D.
Secondary examiner
Psychologist IV

10 Feb 99
Date signed

Court Exhibit

4491

FROM: 01/01/93
THRU: 01/22/07

URICCHIO, HOWE, KRELL, JACOBSON, TOPOREK & THEOS, P.A.

TIME: 11:50:46
File type: ALL

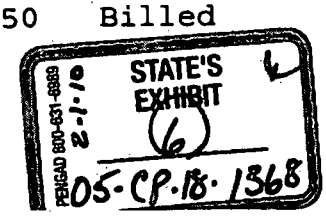
STATEMENT REVIEWS (PRE-BILLS) BY Matter: ALL

File # 0098JT0055
Client Name: SIMMONS, KENNETH
Fee type: (NORMAL BILLING FILE) Format 5
Resp Tkpr: JT AT Last billed 04/07/00

Re: STATE OF SC/APPT CASE DEATH PENALTY

ALL ENTRIES BEING BILLED

TYPE	DATE	T/K	B/C	LIT	TIME	RATE	AMOUNT	HOLD
B	01/27/98	JT	ATF		2.00	50.00	100.00	Billed
	ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: LETTER AND MOTION TO BAILEY AND FOR FILING.							
B	02/04/98	JT	ATF		4.00	50.00	200.00	Billed
	ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: REVIEW TRANSCRIPTS, DISCOVERY MATERIALS, INDICTMENTS, EXPERT MATERIALS.							
B	02/05/98	JT	ATF		.50	50.00	25.00	Billed
	ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: DICTATION							
B	02/05/98	JT	ATF		.25	50.00	12.50	Billed
	ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: LETTER TO GENE DUKES.							
B	02/05/98	JT	ATF		.50	50.00	25.00	Billed
	ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: PREPARATION AND LETTER TO GENE DUKES.							
B	02/10/98	JT	ATF		.25	50.00	12.50	Billed
	ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: REVIEW LETTER FROM WALTER BAILEY.							
B	02/10/98	JT	ATF		2.50	50.00	125.00	Billed
	ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: PREPARATION AND LETTER TO CLERK OF COURT OF MOTION TO VACATE ORDER.							
B	02/11/98	JT	ATF		.25	50.00	12.50	Billed
	ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: DICTATED LETTER TO SOLICITOR CONFIRMING TELEPHONE CONVERSATION.							
B	02/11/98	JT	ATF		.25	50.00	12.50	Billed



File # 0098JT0055 Re: STATE OF SC/APPT CASE
Client Name: SIMMONS, KENNETH DEATH PENALTY
Fee type: (NORMAL BILLING FILE) Format 5
Resp Tkpr: JT AT Last billed 04/07/00 ALL ENTRIES BEING BILLED

			ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: TELEPHONE CONVERSATION WITH WALTER BAILEY REGARDING ORDER OF COMPETENCY EVALUATION.			
B	02/11/98	JT ATF	.25	50.00	12.50	Billed
			ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: LETTER TO WALTER BAILEY CONFIRMING TELEPHONE CONFERENCE.			
B	02/11/98	JT ATF	.50	50.00	25.00	Billed
			ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: TELEPHONE CONFERENCE WITH WALTER BAILEY.			
B	02/13/98	JT ATF	8.00	50.00	400.00	Billed
			ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: REVIEW MCAINACH'S BOOK: SECTIONS MURDER, KIDNAPPING, CSC, ARMED ROBBERY, DEATH PENALTY.			
B	02/15/98	JT ATF	8.00	50.00	400.00	Billed
			ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: REVIEW DEATH PENALTY STATUTES, DISCOVERY PRODUCED TO DATE.			
B	02/16/98	JT ATF	1.00	50.00	50.00	Billed
			ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: MEETING WITH OUR INVESTIGATOR, PAUL BUCETTI REGARDING INVESTIGATING STRATEGY.			
B	02/16/98	JT ATF	1.00	50.00	50.00	Billed
			ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: MEETING WITH INVESTIGATOR, KELLY AUSTIN REGARDING INVESTIGATION STRATEGY.			
B	02/18/98	JT ATF	.25	50.00	12.50	Billed

FROM: 01/01/93 URICCHIO, HOWE, KRELL, JACOBSON,
THRU: 01/22/07 TOPOREK & THEOS, P.A.

TIME: 11:50:46 STATEMENT REVIEWS (PRE-BILLS) BY
File type: ALL Matter: ALL

File # 0098JT0055 Re: STATE OF SC/APPT CASE
Client Name: SIMMONS, KENNETH DEATH PENALTY
Fee type: (NORMAL BILLING FILE) Format 5
Resp Tkpr: JT AT Last billed 04/07/00 ALL ENTRIES BEING BILLED

ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: TELEPHONE CONFERENCE WITH GENE DUKES.

B	02/19/98	JT	ATF	3.00	50.00	150.00 Billed

ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: INTERVIEW WITH CLIENT AT CLIENT AT JAIL.

B	02/25/98	JT	ATF	.25	50.00	12.50 Billed

ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: REVIEW LETTER FROM COLETTE DELANEY, SISTER OF DEFENDANT.

B	02/27/98	JT	ATF	.25	50.00	12.50 Billed

ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: REVIEW CORRESPONDENCE FROM WALTER BAILEY.

B	03/02/98	JT	ATF	.50	50.00	25.00 Billed

ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: PREPARE AND FORWARD LETTER AND REVIEW LETTER FROM DEPARTMENT OF MENTAL HEALTH.

B	03/11/98	JT	ATF	.25	50.00	12.50 Billed

ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: REVIEW FAX FROM WALTER BAILEY.

B	03/26/98	JT	ATF	.50	50.00	25.00 Billed

ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: PREPARATION AND DICTATION OF LETTER TO GENE DUKES.

B	04/01/98	JT	ATF	.50	50.00	25.00 Billed

ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: PREPARATIONN AND DICTATATION OF LETTER TO GENE DUKES.

B	04/24/98	JT	ATF	.25	50.00	12.50 Billed

ATTORNEY'S FEE FOR SERVICES AS

File # 0098JT0055 Re: STATE OF SC/APPT CASE
Client Name: SIMMONS, KENNETH DEATH PENALTY
Fee type: (NORMAL BILLING FILE) Format 5
Resp Tkpr: JT AT Last billed 04/07/00 ALL ENTRIES BEING BILLED

			FOLLOWS: REVIEW LETTER FOR WALTER BAILEY.				
B	04/24/98	JT	ATF ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: REVIEW FAX FROM WALTER BAILEY.	.25	50.00	12.50	Billed
B	04/27/98	JT	ATF ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: FAX TO WILLIAM SHEILDS, LEGAL RESEARCH.	.25	50.00	12.50	Billed
B	04/27/98	JT	ATF ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: REVIEW FAX FROM MEDICAL UNIVERSITY.	.25	50.00	12.50	Billed
B	04/27/98	JT	ATF ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: REVIEW FAX FROM DR. SAYLOR.	.25	50.00	12.50	Billed
B	04/27/98	JT	ATF ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: REVIEW FAX FROM FRANK BLOOMINGBURG.	.25	50.00	12.50	Billed
B	04/28/98	JT	ATF ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: FAX TO WILLIAM SHIELDS.	.25	50.00	12.50	Billed
B	04/29/98	JT	ATF ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: REVIEW FAX FROM WILLIAM SHIELDS.	.25	50.00	12.50	Billed
B	04/29/98	JT	ATF ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: REVIEW FAX FROM PALMETTO PSYCHOTHERAPY ASSOCIATES.	.25	50.00	12.50	Billed
B	04/29/98	JT	ATF	.25	50.00	12.50	Billed

FROM: 01/01/93 URICCHIO, HOWE, KRELL, JACOBSON,
THRU: 01/22/07 TOPOREK & THEOS, P.A.

TIME: 11:50:46 STATEMENT REVIEWS (PRE-BILLS) BY
File type: ALL Matter: ALL

File # 0098JT0055 Re: STATE OF SC/APPT CASE
Client Name: SIMMONS, KENNETH DEATH PENALTY
Fee type: (NORMAL BILLING FILE) Format 5
Resp Tkpr: JT AT Last billed 04/07/00 ALL ENTRIES BEING BILLED

ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: REVIEW FAX FROM MEDICAL UNIVERSITY OF SOUTH CAROLINA.

B	04/29/98	JT	ATF	.50	50.00	25.00	Billed

ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: PREPARATION AND DICTATE LETTER TO THOMAS BERRY.

B	04/30/98	JT	ATF	4.00	75.00	300.00	Billed

ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: HEARINGS IN ST. GEORGE.

B	04/30/98	JT	ATF	3.00	75.00	225.00	Billed

ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: HEARINGS IN ST. GEORGE.

B	05/01/98	JT	ATF	.25	50.00	12.50	Billed

ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: FAX TO CLERK'S OFFICE.

B	05/04/98	JT	ATF	.25	50.00	12.50	Billed

ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: LETTER TO CLERK OF COURT.

B	05/04/98	JT	ATF	1.50	50.00	75.00	Billed

ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: PREPARATION OF AND LETTER & REVISED PROPOSED ORDER FOR EXPENSES TO JUDGE PEEPLES.

B	05/07/98	JT	ATF	.50	50.00	25.00	Billed

ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: MEITH WITH INVESTIGATOR SIMPSON.

B	05/07/98	JT	ATF	2.50	50.00	125.00	Billed

ATTORNEY'S FEE FOR SERVICES AS

ile # 0098JT0055 Re: STATE OF SC/APPT CASE
lient Name: SIMMONS, KENNETH DEATH PENALTY
Fee type: (NORMAL BILLING FILE) Format 5
Resp Tkpr: JT AT Last billed 04/07/00 ALL ENTRIES BEING BILLED

			FOLLOWS: PREPARATION OF PROPOSED ORDER FOR COMPETENCY EVALUATION & CRIMINAL RESPONSIBILTY.				
B	05/07/98	JT	ATF	.25	50.00	12.50	Billed
			ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: LETTER TO WALTER BAILEY.				
B	05/07/98	JT	ATF	.25	50.00	12.50	Billed
			ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: LETTER TO GENE DUKES.				
B	05/07/98	JT	ATF	.25	50.00	12.50	Billed
			ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: LETTER TO DR. MORTON.				
B	05/07/98	JT	ATF	.25	50.00	12.50	Billed
			ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: LETTER TO DR. FOXWORTH.				
B	05/07/98	JT	ATF	.25	50.00	12.50	Billed
			ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: LETTER TO DR. SAYLOR.				
B	05/08/98	JT	ATF	.25	50.00	12.50	Billed
			ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: REVIEWED WALTER BAILEY'S LETTER.				
B	05/14/98	JT	ATF	.25	50.00	12.50	Billed
			ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: LETTER TO DORCHESTER DETENTION CENTER INSTRUCTING OF DR. SAYLOR'S VISIT.				
B	05/26/98	JT	ATF	.25	50.00	12.50	Billed
			ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: LETTER TO JUDGE PEEPLES.				

FROM: 01/01/93 URICCHIO, HOWE, KRELL, JACOBSON,
THRU: 01/22/07 TOPOREK & THEOS, P.A.

TIME: 11:50:46 STATEMENT REVIEWS (PRE-BILLS) BY
File type: ALL Matter: ALL

File # 0098JT0055 Re: STATE OF SC/APPT CASE
Client Name: SIMMONS, KENNETH DEATH PENALTY
Fee type: (NORMAL BILLING FILE) Format 5
Resp Tkpr: JT AT Last billed 04/07/00 ALL ENTRIES BEING BILLED

B	05/27/98	JT	ATF	.50	50.00	25.00 Billed
	ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: LETTER TO GENE DUKES WITH ENCLOSURES.					
B	06/03/98	JT	ATF	.25	50.00	12.50 Billed
	ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: LETTER TO DR. SAYLOR MATERIALS FOR REVIEW.					
B	06/03/98	JT	ATF	.25	50.00	12.50 Billed
	ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: LETTER TO DR. MORTON ENCLOSING MATERIALS FOR REVIEW.					
B	06/03/98	JT	ATF	.25	50.00	12.50 Billed
	ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: LETTER TO DR. FOXWORTH ENCLOSING MATERIALS FOR REVIEW.					
B	06/04/98	JT	ATF	.25	50.00	12.50 Billed
	ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: LETTER TO JUDGE PEEPLES CC: WALTER BAILEY.					
B	06/09/98	JT	ATF	.25	50.00	12.50 Billed
	ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: LETTER TO TRIDENT HOSPITAL REQUESTING MEDICAL RECORDS.					
B	06/09/98	JT	ATF	.25	50.00	12.50 Billed
	ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: LETTER TO ROPER HOSPITAL REQUESTING MEDICAL RECORDS.					
B	06/09/98	JT	ATF	.25	50.00	12.50 Billed
	ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: LETTER TO MEDICAL UNIVERSITY OF SOUTH CAROLINA					
B	06/09/98	JT	ATF	.25	50.00	12.50 Billed

ile # 0098JT0055 Re: STATE OF SC/APPT CASE
lient Name: SIMMONS, KENNETH DEATH PENALTY
Fee type: (NORMAL BILLING FILE) Format 5
Resp Tkpr: JT AT Last billed 04/07/00 ALL ENTRIES BEING BILLED

			ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: LETTER TO ROPER HOSPITAL.				
B	06/09/98	JT	ATF	.25	50.00	12.50	Billed
			ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: LETTER TO SUMMERVILLE MEDICAL CENTER.				
B	06/12/98	JT	ATF	1.00	50.00	50.00	Billed
			ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: RESEARCH FACTS AND DICTATE LETTER TO JUDGE PEEPLES.				
B	06/12/98	JT	ATF	.25	50.00	12.50	Billed
			ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: REVIEW LETTER FROM WALTER BAILEY.				
B	06/15/98	JT	ATF	.25	50.00	12.50	Billed
			ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: LETTER TO CHARLESTON MEMORIAL HOSPITAL .				
B	06/15/98	JT	ATF	.25	50.00	12.50	Billed
			ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: DICTATE SUBPOENA FOR MEDICAL RECORDS.				
B	06/15/98	JT	ATF	.50	50.00	25.00	Billed
			ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: REVIEW CORRESPONDENCE FORM CHARLESTON MEMORIAL HOSPITAL REGARDING MEDICAL RECORDS SEARCH.				
B	06/24/98	JT	ATF	.25	50.00	12.50	Billed
			ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: LETTER TO DR. SAYLOR ENCLOSING MATERIALS FOR REVIEW.				
B	06/24/98	JT	ATF	.25	50.00	12.50	Billed
			ATTORNEY'S FEE FOR SERVICES AS				

FROM: 01/01/93 URICCHIO, HOWE, KRELL, JACOBSON,
THRU: 01/22/07 TOPOREK & THEOS, P.A.

TIME: 11:50:46 STATEMENT REVIEWS (PRE-BILLS) BY
File type: ALL Matter: ALL

File # 0098JT0055 Re: STATE OF SC/APPT CASE
Client Name: SIMMONS, KENNETH DEATH PENALTY
Fee type: (NORMAL BILLING FILE) Format 5
Resp Tkpr: JT AT Last billed 04/07/00 ALL ENTRIES BEING BILLED

			FOLLOWS: LETTER TO DR. MORTON ENCLOSING MATERAILS FOR HIS REVIEW.			
B	07/10/98	JT ATF	.25 ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: REVIEW LETTER FROM THOMAS O. BERRY.	50.00	12.50	Billed
B	07/14/98	JT ATF	.25 ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: LETTER TO DR. FOXWORTH ENCLOSING MATERIALS FOR HIS REVIEW.	50.00	12.50	Billed
B	07/14/98	JT ATF	.25 ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: LETTER TO DR. MORTON ENCLOSING MATERAILS FOR HIS REVIEW.	50.00	12.50	Billed
B	07/14/98	JT ATF	.25 ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: LETTER TO DR. SAYLOR ENCLOSING MATERIALS FOR HIS REVIEW.	50.00	12.50	Billed
B	07/17/98	JT ATF	.50 ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: LETTER TO WALTER BAILEY WITH CONSENT ORDER ATTACHED REGARDING SUBSTITUTION OF COUNSEL.	50.00	25.00	Billed
B	07/24/98	JT ATF	2.00 ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: MEETING WITH INVESTIGATOR SIMPSON REGARDING LEADS, SUBPOENAING WITNESSES.	50.00	100.00	Billed
B	07/24/98	JT ATF	.25 ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: REVIEW LETTER FROM WALTER BAILEY TO MOTTE TALLEY.	50.00	12.50	Billed

ROM: 01/01/93 URICCHIO, HOWE, KRELL, JACOBSON,
HRU: 01/22/07 TOPOREK & THEOS, P.A.

IME: 11:50:46 STATEMENT REVIEWS (PRE-BILLS) BY
ile type: ALL Matter: ALL

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ile # 0098JT0055 Re: STATE OF SC/APPT CASE
lient Name: SIMMONS, KENNETH DEATH PENALTY
Fee type: (NORMAL BILLING FILE) Format 5
Resp Tkpr: JT AT Last billed 04/07/00 ALL ENTRIES BEING BILLED

B	07/25/98	JT	ATF	.25	50.00	12.50	Billed
	ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: REVIEW BILL FROM DR. FOXWORTH.						
B	07/30/98	JT	ATF	2.00	50.00	100.00	Billed
	ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: LETTER WITH ENCLOSURE: PROPOSED MOTION TO RELIEVE COUNSEL.						
B	08/01/98	JT	ATF	4.00	50.00	200.00	Billed
	ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: REVIEW DISCOVERY MATERIALS.						
B	08/03/98	JT	ATF	.25	50.00	12.50	Billed
	ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: DICTATE LETTER TO CLERK OF COURT REGARDING EX PARTE ORDER APPROVING PAYMENT FOR NECESSARY CASE EXPENSES.						
B	08/05/98	JT	ATF	2.00	50.00	100.00	Billed
	ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: RESEARCH AND READING OF DEATH PENALTY MATERIALS.						
B	08/08/98	JT	ATF	3.50	50.00	175.00	Billed
	ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: REVIEW DISCOVERY MATERIALS.						
B	08/11/98	JT	ATF	2.50	50.00	125.00	Billed
	ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: RESEARCH AND READING DEATH PENALTY MATERIALS.						
B	08/12/98	JT	ATF	3.00	50.00	150.00	Billed
	ATTORNEY'S FEE FOR SERVICES AS FOLLOWS: REVIEW FILE, DISCOVERY AND PREPARE FOR MEETING WITH CLIENT.						
B	08/13/98	JT	ATF	2.00	50.00	100.00	Billed