Mute Witnesses

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John T. Philipsborn
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Suite 250
507 Polk Street
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Re: Jason Baldwin, et al.

Dear Mr. Philipsborn,

I have reviewed the materials you sent regarding the above referenced case. The nature of the materials leads me to ask several questions and make a few generalizations.

First, are these the entirety of materials that have been turned over to you? Based on the pages I received, several crucial items appear to be missing from that packet. Pages, in both the evidence listing and the bench notes (notes that accompany the examination process and support the report(s)), photographs, and other supporting documentation are not evident. If they were not supplied to you, please check and see if they are available.

I ask this because, for example, many of the designations of the evidence listing are confusing and follow no logical order. Under "ITEMS SUBMITTED BY WEST MEMPHIS POLICE DEPT. ON MAY 10, 1993," the item listing runs E19, E20a, E20b, BR1, BR 2...BR5a, and BR5b; it then jumps to another category and begins with E22a. E21 never appears in the listing. Many other items are listed out of order or not listed at all. The bench notes on packaging stop at E49 and do not start again; a printed item listing picks up with E72 and ends with E121. The handwritten notes then begin again at E147 and end with E177. Item E134 figures prominently in the report, being associated with two fiber types, but is never mentioned or described in the bench notes. This makes it difficult to track the items received and analyzed.

Moreover, and more disturbing, are the egregious lack of analytical documentation in the bench notes. One page covers what appears to be the microscopical examination of some of the items mentioned in the report but not all. Ultraviolet-visible range spectra are present in abundance but the designations of the individual evidence fibers are either not clear or repeated and paired with other fibers in odd pairings. Some fibers mentioned in the report (those from E5, E78, and E79) have no bench notes for them—they do not appear in the chart labeled "FIBERS" dated 1/16/94. Fibers *not* mentioned in the report appear in the bench notes (spectrum listing "E31QF," "BR1 QF," and "BR2QF," for example).

A photography log exists so, presumably, photographs also exist. Another disturbing note lies at the bottom of this page ("PHOTO LOG"):

very long fiber was recover

broke during flattening. Swelled end was
retained the rest of the fiber was ***lost*** before

and the rest of the page is lost due to misalignment during photocopying (my emphasis).

I also reviewed the testimony of the two state analysts (Sakevicius and Kilbourn). Ms. Sakevicius' testimony reveals at best a weak knowledge of hair and fiber examination and testimony. Acknowledging that the spoken word is very unlike the written one, especially when transcribed by a court stenographer who may be unfamiliar with technical jargon, Ms. Sakevicius' testimony is riddled with inaccuracies ("Then I did the fourier transform for thread analysis," when fourier transform infrared spectrometry analyzes molecular vibrations to determine generic polymer types and subtypes; on page 1473, saying that sign of elongation—incorrectly transcribed as 'inlongation'—is a property of low birefringent fibers when it is a property of all manufactured fibers that are anisotropic). She also acknowledges that she ran two ultraviolet-visible range spectra on a fiber (E2), one before flattening for infrared spectrometry and one after. Flattening a fiber alters the optical path the analytical beam would take through the fiber and, thus, would alter the color. Imagine a piece of blue glass three inches thick and one ½ inch thick—the color difference would be obvious. This is not a standard method for color analysis of textiles.

No notes are present that describe the debris removed from the items of evidence, that is, what *other* kinds of materials were removed, why were other hairs that were found not suitable for further analysis, were there other fibers that should have been analyzed as elimination standards, and so on.

Ultimately, the bench notes and analytical data do not support the reports insofar as the notes, etc. appear to be incomplete. The instrumentation and methods used originally are themselves appropriate for fiber analysis but it is not discernable that they were applied *appropriately* in these analyses. The scattered nature of the note-taking, the spectra, and the lack of comprehensive documentation leads me to question the quality of the work performed.

Mr. Kilbourn's testimony indicates he has a higher level of training and a better understanding of forensic textile comparisons. Although I find it odd that he reviewed all of Ms. Sakevicius' work *except* the cotton fibers which make up roughly half of the fiber evidence reported.

As regards his abilities as a forensic hair examiner, however, I have my doubts. In his report dated January 5, 1994, he states,

> Q1 and Q2 consisted of two hairs with razor cut proximal ends. These hair exhibit some similarities to both the known hair of Echols (K4) and Dodson (K7). These hairs could have originated from one of these individuals or another individual whose hair exhibits similar microscopic characteristics.

As it is rare, both in published clinical studies and in my professional experience, to find two individuals at random who have the same microscopic hair characteristics, I find this result questionable. This result is, in essence, an inconclusive answer.

Based on the spotty materials in the bench notes and analytical data and some of the questionable material in the testimony provided, I recommend the following:

1. All bench notes, laboratory notes, examination notes, spectra (hard copy), reports, photographs, drawings, photocopies, and any internal communications regarding Ms. Sakevicius' or Mr. Kilbourn's hair and fiber examinations in this case be obtained.

2. The original hair and fiber evidence, to include glass microscope slides, debris removed from evidence items, known samples, and subsidiary evidence be submitted for independent analysis.

Without these items, it is not possible to assess the accuracy, validity, and quality of the forensic hair and fiber examinations conducted by the Arkansas State Crime Laboratory in this case.

If you have any further questions, please do not hesitate to contact me. Thank you for your time and consideration in this matter.

Sincerely,

Max M. Houck

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