

**AFFIDAVIT OF MAX M. HOUCK**

State of *Washington*  
County of *King* ) ss.

Before the undersigned Notary Public, duly qualified and acting in and for said county and state, appeared Max M. Houck, to me well known to be the affiant herein, who stated the following under oath:

"1. I, Max M. Houck, am currently the Director of the Forensic Science Initiative at the University of West Virginia in Morgantown, West Virginia. In this capacity, I direct a multi-million dollar research, resource and training initiative in the forensic sciences. Part of the objective of the initiative is to develop management and business resources in the forensic sciences.

2. I currently serve as a professor in forensic and investigative sciences, as well as an adjunct professor in the division of Sociology and Anthropology at West Virginia Univeristy. I am also a Senior Instructor and Researcher in the Department of Applied and Forensic Chemistry at the Curtin University of Technology in Perth, Australia.

3. Beginning in 1992, I worked as a criminalist with the Tarrant County Medical Examiner's Office in Fort Worth, Texas. I organized and instituted a Forensic Anthropology section and a laboratory. I also initiated and developed an automated gunshot residue analysis system using scanning electron microscopy/energy dispersive analysis. I also worked on cases involving trace evidence.

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4. Thereafter, beginning in 1994 and up until 2001, I was a physical scientist in the Trace Evidence Unit in the Laboratory Division of the Federal Bureau of Investigation. In that capacity, I worked over 800 cases involving trace evidence and/or anthropology issues.
5. In connection with my work with the FBI, I testified in local, state, and federal courts as an expert in my areas of expertise.
6. I served as the Technical Liaison Manager for the FBI's laboratory in connection with its relationship with other agencies, including the U.S. Secret Service, the Bureau of Alcohol, Tobacco and Firearms, the Smithsonian Institution, and other agencies.
7. I also, while at the FBI, served as the Chairman of the Scientific Working Group for Materials Analysis, or SWGMAT. That Working Group, which was organized with the assistance of the United States Department of Justice consisted then, as now, of representatives from a wide variety of laboratories, organizations, academic institutions and the like, considered to be leaders in their field of endeavor within the framework of materials analysis. Among other things, the Working Group discussed, established, and published standards pertinent to the various aspects of materials analysis often pertinent to forensic issues. The Working Group, as have other Scientific Working Groups, working in the context of the Department of Justice's project, have published standards for analyst training in various disciplines; standards for laboratory practices; standards, or recommended protocols, for implementing accepted procedures in forensic laboratory

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endeavors and settings.

8. I am currently a doctoral candidate in applied and forensic chemistry at Curtin University of Technology in Perth, Australia. Prior to that, I obtained a Bachelor of Science degree from Michigan State University in 1984, and in 1988, a Master's Degree in Anthropology.
9. I received specialized training as part of my job-related work at Tarrant County and with the Federal Bureau of Investigation.
10. I have been subjected to proficiency testing as a criminalist and physical scientist. I have participated in training, and assessing the proficiency of other forensic scientists in the fields in which I have specialized.
11. I am a member of several professional organizations including as a Fellow of the American Academy of Forensic Science; a senior member of the American Association of Textile Chemists and Colorists; an associate member of the International Association for Identification; a member of the American Association for the Advancement of Science; an academic member of the American Society of Crime Laboratory Directors (among others).
12. I have participated on numerous committees that have dealt with standards pertinent to forensic science endeavors. I am a co-editor of the *Journal of Forensic Science Policy and Management*, and serve on the editorial boards of publications pertinent to the forensic sciences including *The Journal of Forensic Sciences* and *The Journal of Forensic Identification*.
13. I have given numerous presentations. I have also published books, and

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book chapters, as an author or co-author. Appended to this affidavit is a copy of my CV which correctly states my background and qualifications.

**Background pertinent to this case**

14. I was asked by John Philipsborn, who identified himself to me as a member of the California State Bar working on an Arkansas case entitled *State v. Echols and Baldwin* to review a series of documents which were represented to me to be associated with the case at issue. These documents included excerpts of Reporter's Transcripts of proceedings in what Mr. Philipsborn described to me as the trial of this case. Included in the testimony was that of Lisa Sakevicius, and John Kilbourn. I was also provided with a number of materials which were identified to me by attorney Philipsborn as being the documentation that he and other lawyers obtained during their interaction with the Circuit prosecutor involved in the *State v. Echols and Baldwin* case on behalf of the State of Arkansas. Mr. Philipsborn represented to me that the materials provided to me had been obtained from the Arkansas State Crime Laboratory with the assistance of personnel from that laboratory, and under the supervision of the Circuit prosecutor, Mr. Brent Davis.

15. I do not have personal knowledge of the origins of the documents and have relied on Mr. Philipsborn for the information just provided. A number of the documents appear to me to be copies of materials that I have been used to seeing as a forensic scientist involved in the examination of evidence in criminal cases. The items in question involved a combination of typewritten and handwritten items, including lists of materials under titles like "Items Submitted by the West Memphis Police Dept.", and the like.

16. As explained above, as a result of my own background and professional

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experience, I have viewed police reports, laboratory reports, evidence transmittal documents, evidence lists, and the like from a number of agencies, state, federal and local. I am aware that various police agencies and laboratories use varying, and sometimes agency or laboratory specific methods of describing, listing, inventorying, and otherwise accounting for items of physical evidence.

17. It has also been my experience that a variety of practices of record-keeping and documentation are used by laboratories involved in the review of evidence connected with criminal cases.
18. Based on the work I currently do, as well as on work I did with the Federal Bureau of Investigation, including with SWGMAT, I am aware that for a number of years, there have been efforts undertaken to try to standardize at least some of the laboratory practices employed in the acquisition, maintenance, examination, testing, analysis, and processing of evidence in pending criminal cases. Accepted laboratory practices, even at the time of this case, which I understand arose in 1993, and was tried in 1994, involved the maintenance and production of documentation in the form of evidence inventories, evidence lists, endless notes, reports and the like that would permit any qualified analyst, criminalist, or scientist working in a forensic laboratory to be able to verify whether valid and reliable methods, methodologies, tests, comparisons, and the like occurred in any given case.
19. I was asked by attorney Philipsborn to review the documentation that he provided to me first to see whether the documentation was sufficient to

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permit me to arrive at an opinion on whether the opinions stated in the reported trial testimony were supported by the documentation provided. I was also asked, among other things, to assess what I would need to arrive at an understanding of whether accepted methods were used by the analysts, criminalists, or examiners who reviewed fiber and other trace evidence in this case.

20. I was asked if it was possible to assess the accuracy, validity, and quality, from a forensic science's viewpoint, of the hair and fiber examinations conducted by the Arkansas State Crime Laboratory in this case, which included at least one report of examination by John Kilbourn, who was identified to me, at least by the documentation provided, as affiliated with the State Crime Laboratory in Alabama at the time.

**Opinions based on the information provided**

21. On February 2, 2004, I wrote a three-page letter addressed to John T. Philipsborn, explaining my views based on the material that had been sent to me. I have reviewed this three-page letter, which Mr. Philipsborn has explained to me has been filed with the Court. I have been told that Mr. Philipsborn will submit another copy of this three-page letter that I wrote and dated February 2, 2004 as an exhibit supporting this affidavit.
22. I believe that the opinions and views expressed in the February 2, 2004 letter are accurate. To summarize what I stated there, were I asked to testify about the matter, I would state that at least based on standards of professional practice pertinent to hair and fiber examination as these existed

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in 2004, and as they exist today, Ms. Sakevicius' testimony suggests a weak knowledge of both hair and fiber examination processes, of standards applicable to hair and fiber examination, and of the meaning of the technical vocabulary involved in the fields of hair and fiber examination.

23. Based on the transcripts provided to me, which included the testimony of Lisa Sakevicius at pp. 1458 (2241) to 1503 (2286), Ms. Sakevicius's testimony at pp. 2381 (3169) to 2392 (3180), Mr. Kilbourn's testimony at pp. 2392 (3190) to 2423 (3212), it does not appear to me that Ms. Sakevicius stated the foundation for her opinions, or the opinions themselves, in ways that are supported by the data. I also stand by the statements that I have made in my above described letter to counsel about Mr. Kilbourn.
24. I also received a copy of the transcript of the defense's expert, Mr. Linch at pp. 2302 (3090) to 2322 (3110). Mr. Linch's testimony did not, in my opinion, address the existing questions about the accuracy of the analysis of the fibers performed by the State that I have set forth in my February 2, 2004 letter.
25. In sum, having been asked to provide this affidavit, I have reviewed the information provided to me by counsel, and the testimony of Ms. Sakevicius, Mr. Kilbourn and Mr. Linch, I stand by the opinions stated in my February 2, 2004 letter. I do not believe that the accuracy of the testimony, and opinions, of Ms. Sakevicius can be determined according to currently accepted scientific practices primarily because of her failure to

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document her work in such a way as to permit it to be verified.

26. It is a generally accepted principle of the forensic sciences that documentation of an examination, test, analysis or comparison should be sufficient to allow other qualified scientists in the particular field of endeavor to understand what the analyst, examiner, or criminalist actually did with the evidence at issue. In this case, that documentation is not sufficient, and therefore, the reliability, validity and accuracy of the opinions presented to the trial court by Ms. Sakevicius cannot be assessed according to the currently applicable scientific and professional standards. The fibers at issue should be re-examined and re-tested according to accepted scientific standards with resulting scientifically and professionally acceptable documentation.

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27. If called to testify in court, I would provide truthful and accurate testimony about all the subjects that I have covered here."

Further the affiant sayeth naught.

IN WITNESS WHEREOF, I hereunto set my hand this 20 day of MAY, 2008.



MAX M. HOUCK

Subscribed and sworn to before me this 20 day of May, 2008.

Mary Ellen Egner  
Notary Public  
MARY ELLEN EGNER

My commission expires: 4-1-12

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