



U.S. Department of Justice

950 Pennsylvania Avenue, NW, Room 2261  
Washington, DC 20530

May 5, 2015

Ismael R. Ozanne  
District Attorney  
Dane County District Attorney's Office  
215 South Hamilton Street, Ste 3000  
Madison, WI 53703-3297

Re: State of Wisconsin v. Richard E. Beranek, Case No. 1989CF000946

Dear Mr. Ozanne:

We write to advise you of the results of a review by the United States Department of Justice (the "Department") and the Federal Bureau of Investigation ("FBI" and collectively with the Department "DOJ") of laboratory reports and testimony by FBI Laboratory examiners in cases involving microscopic hair comparison analysis. Through this review, we have determined that a report or testimony regarding microscopic hair comparison analysis containing erroneous statements was used in this case. This error and the process through which it was identified are explained in more detail below. We ask that you determine the actions your office should take in light of this error.

**I. Background**

DOJ has been engaged in a review of microscopic hair comparison reports and testimony presented by the FBI Laboratory before December 31, 1999, after which mitochondrial DNA testing became routine. The science underlying microscopic hair comparison is not the subject of this review. However, in some cases, FBI Laboratory examiners exceeded the limits of science by overstating the conclusions that may appropriately be drawn from a positive association between evidentiary hair and a known hair sample. This is in contrast to cases in which the FBI Laboratory report and examiner testimony presented conclusions that may appropriately be drawn from a positive association. Thus, the purpose of this review is to ensure that FBI Laboratory reports and examiner testimony regarding microscopic hair comparison analysis met accepted scientific standards and to identify those cases in which those standards were not met so that any appropriate remedial action may be taken.

## **II. Error Identified in this Matter**

We have determined that the microscopic hair comparison analysis testimony or laboratory report presented in this case included statements that exceeded the limits of science in one or more of the following ways and were, therefore, invalid: (1) the examiner stated or implied that the evidentiary hair could be associated with a specific individual to the exclusion of all others - this type of testimony exceeded the limits of the science; (2) the examiner assigned to the positive association a statistical weight or probability or provided a likelihood that the questioned hair originated from a particular source, or an opinion as to the likelihood or rareness of the positive association that could lead the jury to believe that valid statistical weight can be assigned to a microscopic hair association - this type of testimony exceeded the limits of the science; or (3) the examiner cites the number of cases or hair analyses worked in the laboratory and the number of samples from different individuals that could not be distinguished from one another as a predictive value to bolster the conclusion that a hair belongs to a specific individual - this type of testimony exceeded the limits of the science. (A copy of the documents upon which our determination is based, specifying which of the three error types were identified, is enclosed.)<sup>1</sup> We take no position regarding the materiality of the error in this case.

## **III. Potential Victim Notification**

We recommend that you promptly advise the appropriate victim advocate in your office of this error, so that he/she may determine how and when to inform the victim or the victim's family that this matter may be the subject of further litigation and that they may be contacted by the defense.

## **IV. Potential DNA Testing**

In the event that your office determines that further testing is appropriate or necessary or the court orders such testing, the FBI is available to provide mitochondrial DNA testing of the relevant hair evidence or STR testing of related biological evidence if testing of hair evidence is no longer possible, if (1) the evidence to be tested is in the government's possession or control, and (2) the chain of custody for the evidence can be established.

## **V. Potential Waiver of Procedural Defenses**

In the event that the defendant seeks post-conviction relief based on the Department's disclosure that microscopic hair comparison laboratory reports or testimony used in this case contained statements that exceeded the limits of science, we provide the following information to make you aware of how we are handling such situations in federal cases. In such cases under 28 U.S.C. § 2255, in the interest of justice, the United States is waiving reliance on the statute of limitations under Section 2255(f) and any procedural-default defense in order to permit the

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<sup>1</sup> You should be aware that after reviewing transcripts and laboratory reports in a number of different cases, the FBI conducted additional review of this case. However, certain aspects of the approach of the additional review were rejected by the DOJ. Accordingly, the results embodied in the attached report represent the official results of the FBI's review of this case.

resolution of legal claims arising from the erroneous presentation of microscopic hair examination laboratory reports or testimony.

#### **VI. Report of Action Taken**

To assist us in monitoring the status of cases involving microscopic hair analysis comparisons, we ask that you please advise us by June 15, 2015, if you intend to take any action based on the information that we are providing to you. Please send this information to [USAEO.HairReview@usdoj.gov](mailto:USAEO.HairReview@usdoj.gov), and let us know if we can be of any assistance.

#### **VII. Additional Notifications**

You should be aware that we are also notifying the defense, as well as the Innocence Project and the National Association of Criminal Defense Lawyers of the error. These organizations have expressed an interest in determining whether improper reports or testimony affected any convictions and, if so, to ensure appropriate remedial actions are taken. To assist them in their evaluation, we will provide them with information from our files, including copies of FBI Laboratory examiners' reports and testimony, as well as our assessment of those reports and testimony.

If you have any questions regarding this matter please contact us at the email address provided above.

Sincerely,



Norman Wong  
Special Counsel

Enclosures

3/31/2015

## Response Sheet

*Please send completed form within 14 days to:*

**FBI POC**

FBI Laboratory

Quantico, VA 22135

Fax: 703-632-7714

Email: [FBICaseReview2@ic.fbi.gov](mailto:FBICaseReview2@ic.fbi.gov) (please include in the subject line "IP and NACDL response" and the name of the defendant)

Referenced FBI Case Number: 95-HQ-289730

Court Docket Number: 1989 CR-000946

Subject(s)/Defendant(s): Richard E. Beranek

**Independent Findings of both the Innocence Project (IP) and the National Association of Criminal Defense Lawyers (NACDL):**

☐ The IP and NACDL independently concur with the conclusion reached by the FBI Microscopic Hair Comparison Analysis Review that the materials reviewed contain no instances of Error 1, Error 2, or Error 3.

☒ The IP and NACDL independently concur with the conclusion reached by the FBI Microscopic Hair Comparison Analysis Review that the materials reviewed contain the following Error Types:

☐ Error 1

☒ Error 2

☐ Error 3

☐ The IP and NACDL independently disagree with the conclusion reached by the FBI Microscopic Hair Comparison Analysis Review because, contrary to that conclusion, the IP and NACDL have found that the materials reviewed contain the following error types:

☐ Error 1

☐ Error 2

☐ Error 3

Comments:

☐ The IP and NACDL would like to meet with the FBI (in person or by phone) to discuss the differing opinions of both the IP and NACDL regarding the appropriateness of FBI testimony and/or lab reports.



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C., 20535-0001

**MICROSCOPIC HAIR COMPARISON ANALYSIS  
RESULT OF REVIEW**

Date: March 16, 2015

To: Innocence Project  
Microscopic Hair Comparison Analysis Review Team

From: Federal Bureau of Investigation  
Microscopic Hair Comparison Analysis Review Team

FBI File Number: 95-HQ-289730  
Criminal Docket Number: 1989CF000946  
Defendant: Beranek, Richard E.  
Victim: Unnamed  
Contributor: Eau Claire Police Department  
740 2nd Avenue  
Eau Claire, WI 54703

☒ Trial ☐ Plea ☐ Stipulation  
☒ Transcript enclosed  
☐ Lab Report enclosed

Pursuant to the Letter of Agreement between our organizations, this letter serves to provide your office with the results from the Federal Bureau of Investigation (FBI) Microscopic Hair Comparison Analysis Review regarding the analysis of testimony and lab reports provided in the above-referenced case. Please notify the FBI, within 14 days of receipt of this letter, as to whether or not the Innocence Project (IP) agrees with the FBI's conclusions.

The FBI has conducted its review of the report issued in this case and found it to contain:

☐ Appropriate Statements ☐ Inappropriate Statements

The FBI has conducted its review of the FBI testimony transcript and/or stipulation in accordance with the November 9, 2012 agreed upon scientific standards between the IP and FBI with the following results:

☐ **Error Type 1:** The examiner stated or implied that the evidentiary hair could be associated with a specific individual to the exclusion of all others. This type of testimony exceeds the limits of the science.

☒ **Error Type 2:** The examiner assigned to the positive association a statistical weight or probability or provided a likelihood that the questioned hair originated from a particular source, or an opinion as to the likelihood or rareness of the positive association that could lead the jury to believe that valid statistical weight can be assigned to a microscopic hair association. This type of testimony exceeds the limits of the science.

☒ **Error Type 3:** The examiner cites the number of cases or hair analyses worked in the lab and the number of samples from different individuals that could not be distinguished from one another as a predictive value to bolster the conclusion that a hair belongs to a specific individual. This type of testimony exceeds the limits of the science.

☐ **Appropriate**

This document may contain information protected by the Privacy Act of 1974 and is provided by the FBI to your agency solely for authorized law enforcement purposes. The information contained herein may not be further disclosed or disseminated without the express consent of the FBI.

# Response Sheet

*Please send completed form within 14 days to:*

**Cherise B. Dreyfus**

FBI Laboratory

2501 Forensic Way

Quantico, VA 22135

**Fax: 703-632-7714**

**Email:** [FBICaseReview2@ic.fbi.gov](mailto:FBICaseReview2@ic.fbi.gov) (please include in the subject line "IP response" and the name of the defendant)

Referenced FBI Case Number: 95-HQ-289730

Court Docket Number: 1989CF000946

Subject(s)/ Defendant(s): Beranek, Richard E.

## Findings of the Innocence Project (IP):

- ☐ The IP concurs with the conclusion reached by the FBI Microscopic Hair Comparison Analysis Review, or
- ☐ The IP disagrees with the conclusion reached by the FBI Microscopic Hair Comparison Analysis Review for the following reasons:
  - ☐ Error 1
  - ☐ Error 2
  - ☐ Error 3
  - ☐ Appropriate
- ☐ The IP would like to meet with the FBI (in person or by phone) to discuss the differing opinions regarding the appropriateness of FBI testimony and/or lab reports.

FBI Microscopic Hair Comparison Analysis Review  
Evaluation Form

<b>Case Information:</b>	
Case Number:	95-HQ-289730
Defendant(s):	Richard E. Beranek
Date of Review:	02/25/2015
Standard Applied:	MHCA Standards dated 11/9/2012
<b>Review of Testimony:</b>	
Date of Testimony:	02/06/1990 and 02/07/1990
Testifying Examiner:	Oakes
Name of Prosecutor:	Robert Kaiser
Name of Defense:	Archie Simonsen
Testimony Results (mark as appropriate):	
Inappropriate Statements :	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Limiting Language Included in Testimony?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Identify by Page and Line Number(s):	
<u>02/06/1990</u>	
Page 181, Line 8-11	
<u>02/07/1990</u>	
Page 69, Line 11-24	
Page 70, Line 16-20	
If testimony contained Inappropriate Statements, cite each by Error type, page(s) and line number(s):	
<u>02/06/1990</u>	
Page 180, Line 22 – Error 2	
Page 181, Line 3-7 – Error 2	
Page 181, Line 19 to Page 182, Line 2 – Error 2 and Error 3	
<u>02/07/1990</u>	
Page 61, Line 2-3 – Error 2	
Page 70, Line 1-5 – Error 2	
Page 70, Line 21 – Error 2	
Page 71, Line 2-3 – Error 2	

Approved By:



Date: 02/25/2015

1 STATE OF WISCONSIN

CIRCUIT COURT  
Branch II

DANE COUNTY

3  
4 STATE OF WISCONSIN,

5  
6 Plaintiff,

7 vs.

Case No. 89 CF 946 *m*

8  
9 RICHARD BERANEK,

10  
11 Defendant.  
12

13  
14 PROCEEDINGS:

City-County Building  
Madison, Wisconsin  
February 6, 1990  
Jury Trial--1st day

15  
16  
17 PRESIDING:

HONORABLE DANIEL R. MOESER  
Circuit Judge, Branch II

18  
19 APPEARANCES:

20 ROBERT KAISER,  
Assistant District Attorney,  
representing the STATE OF WISCONSIN

21  
22 DEFENDANT in person, represented by  
ATTORNEY ARCHIE SIMONSON.  
23

24  
25 Barbara M. Klopotek  
Registered Professional Reporter/CM



# I N D E X

## WITNESSES:

	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
Kathleen Dixon	31	62	76	--
Nanci Newton	77	83	86	--
Dr. Victoria Vollrath	89	94	95	--
Ted Mell	97	99	100	101
Dawn Johnson	103	113	114	--
Norman Grosland	115	121	125	132
Randall Burmeister	139	--	--	--
Kevin Hughes	143	--	--	--
Wayne Oakes	174	--	--	--
Nanci Newton	185	187	187	187

## EXHIBITS:

	<u>Marked</u>	<u>Offered</u>	<u>Received</u>
A---Cap Times Article	5		
1---Composite Sketch	48		
2---Photos	49		
3---Videotape Lineup	52		
4---Witness Lineup ID form	54		
5---Bag of evidence, blouse	56		
6---Plastic bag, instrument	57		
7---Bag underwear	58		
8---Bag containing Ex. 9	59		
9---Male Underwear	59		
10---Victim's Statement	62		
11---Employer's Records	125		
12---Wrapping Paper	140		
13---Piece Paper	141		
14---Manilla Folder	144		
15---Paper Sack	148		
16---Envelope, head hair	155		
17---Box	157		
18---Portin Package	158		
19---Portion Packaging	159		
20---Bag with evidence	161		
21---Evidence from Ex. 20	162		
22---Evidence from Ex. 20	162		
23---Motor Vehicle Records	164		
24---Motor Vehicle Records	164		
25---Certificate of Record	164		
26---Drivers License	165		

(JURY BROUGHT INTO THE COURTROOM)

2 THE COURT: Be seated, folks. As you  
3 recall, when we left, Detective Hughes was testifying. You  
4 will be seeing more of Mr. Hughes tomorrow. We haven't  
5 finished his testimony, but we're going to interrupt his  
6 testimony to take the testimony of another witness for  
7 ~~scheduling reasons. Mr. Kaiser?~~

8 MR. KAISER: Thank you, Your Honor. The  
9 State calls Wayne Oakes.

10 THE COURT: Mr. Oakes, would you come up  
11 here, please.

12 MR. SIMONSON: Oakes, isn't it?

13 MR. KAISER: Wayne Oakes.

14 MR. SIMONSON: Yeah.

15 THE COURT: I'm sorry.

16 WAYNE OAKES,  
17 being first duly sworn to tell the truth, the whole truth and nothing  
18 but the truth, on oath testified as follows:

19 THE COURT: Have a seat up here, please.

20 DIRECT EXAMINATION BY ASSISTANT DISTRICT ROBERT KAISER OF MR. WAYNE  
21 OAKES:

22 Q Sir, would you state your name and spell your last name for  
23 the record, please?

24 A Yes, my name is Wayne, the last name is spelled, O-a-k-e-s.

25 Q And Mr. Oakes, what is your occupation?

1 A I'm supervisory special agent with the FBI, Federal Bureau of  
2 Investigation.

3 Q How long have you been employed by the FBI?

4 A Approximately 12 years.

5 Q Could you tell us about your educational background, please?

6 A Yes, I have a Bachelor of Science degree in biology from

7 ~~Boston College.~~

8 Q Could you tell us about the nature of your work for the FBI?

9 A I'm presently and have been for the last eight and a half  
10 years assigned to the Laboratory Division of the FBI at our  
11 headquarters in Washington, D.C. Specifically, I'm assigned  
12 to the hairs and fibers unit.

13 Q How long have you been assigned to the hair and fibers unit?

14 A Approximately eight and a half years.

15 Q Have you received any scientific training in your specialized  
16 training in your scientific field since you entered the FBI?

17 A Yes, after serving three and a half years in the field as a  
18 field agent and upon being assigned to the laboratory  
19 division, I had one year of intensive training which consisted  
20 of normal classroom training at the FBI Academy.

21 Also, during that one year period I worked cases under  
22 supervision with experienced agents, conducted numerous  
23 practical examinations where I'd be given large number of  
24 questioned hairs and I'd be required to correctly associate  
25 them from known hair standards from where they originated, the

availability and completed a number of certification boards  
before being certified by the Director of the FBI.

Q Is your entire time at work devoted to hair and fiber  
comparisons?

A Yes, it is.

Q Have you previously testified as an expert in this particular  
~~scientific field?~~

A Yes, I have.

Q And how many times have you done that?

A Somewhere between 130 and 140 times.

Q And in each of those cases have you been qualified as an  
expert by the Court?

A Yes, I have.

Q Have you ever been qualified as an expert in Wisconsin?

A Yes, I have.

Q And how many occasions was that?

A On one occasion in Milwaukee.

Q Have you ever not been found to be an expert in your field by  
a court?

A No, I have not.

MR. KAISER: Your Honor, I tender the  
witness as an expert.

THE COURT: Any questions?

MR. SIMONSON: Objection.

THE COURT: Okay. The witness will be

permitted to testify as an expert in this case..

2 Q Mr. Oakes, could you tell the ladies and gentlemen of the jury  
3 why hair examinations are conducted?

4 A Certainly. The reason that I conduct hair examinations is  
5 because hairs on the head and other parts of a body are  
6 constantly being shed naturally and can be forcibly removed  
7 ~~during times of struggle. These hairs can be taken from the~~  
8 head or other parts of the body and can be deposited on  
9 another person's body, on another person's clothing or at a  
10 crime scene; and by looking at this debris which we will take  
11 off of a person's body or from clothing or from vacuum  
12 sweepings and then comparing them with known hair standard, we  
13 can make associations and tend to put peers in contact with  
14 each other or individuals in locations.

15 Q What is it that you determine when you do a hair examination?

16 A Okay. By looking at a single hair, an experienced hair  
17 examiner can first of all tell you whether the hair is of a  
18 male origin or human origin. If it's human origin, I can tell  
19 you the race from the person whether it's originated from  
20 Caucasian, Negroid or Mongoloid individual. I can generally  
21 tell the body area where it originated. I can tell you  
22 whether the hair has been damaged or artificially treated.  
23 These are things I can look at very quickly and tell by  
24 looking at a single hair.

25 Q Would you describe for us what the microscopic appearance of a

hair is like?

2 A Certainly, and Your Honor, with your permission may I use the  
3 blackboard.

4 THE COURT: Sure.

5 A You take just a moment and look around the courtroom with the  
6 naked eye, you can see tremendous differences in person's head  
~~7 hairs and you are really only looking at three~~

8 characteristics: the color, the length and the texture.

9 Obviously when I look at a hair, I can also see these three  
10 features, but what I can see when I mount a hair on a glass  
11 microscope, in a particular mounting medium that makes me  
12 look inside the hair and magnify two hundred and fifty to four  
13 hundred times. I can see internal characteristics that you  
14 all cannot see with your naked eye. You take just a normal  
15 head hair at the root, the long shaft and acute type and  
16 magnify a very small portion of the shaft and you might see  
17 something that looks like my diagram here. (Drawing on board).  
18 And if you think of a hair as a three dimensional object like  
19 a pencil running down the center of a hair is a core of  
20 graphite. Running down the center of the hair is a core of  
21 cells called the medulla. Now, remember this is like cutting  
22 into the hair and looking inside of the hair. The plain  
23 portion of the hair like the widen portion of the pencil  
24 called the cortex and in this cortex we have the pigment  
25 granules which give hair its color. We have white or green

hair. You lack these granules and you lack color. We may have little air filled spaces called cortical fuze scattered throughout the hair and we may have other inclusions called ovoid bodies which are darkened areas in the cortex; and going back to the analogy with a pencil covering the outside of the pencil which usually painted is the layer of paint, the outside layer of the hair is called the cuticle. It would be this layer here. And covering the cuticle is a layer of scales much like scales on a fish or shingles on a roof. So, these are basically the characteristics that are present in most hairs in varying degrees. And if you think of these characteristics like a person's facial features, most people have two, two ears, two eyes and there's a mouth, but those characteristics can vary, vary subtly from one person to another; and it's the recognition of those subtleties and variation that allow you to walk into a crowded room and to pick out somebody whom you are acquainted. So, an experienced, and I emphasize experienced, examiner can detect subtle differences in these characteristics. Some people may have a medulla that's continuous like it is in my diagram, some are fragmented or discontinuous, some people may have evenly distributed pigment granules like that, some people may have pigment granules that are concentrated towards the cuticle there, some people may have a clot of these dark ovoid bodies, some might not have any. Same with cortical fuze.

Some might have a lot and not so many or some might have some distributed near the root into the hair. Some persons might have a very thin cuticle, other persons have a thick one. It can be clear white, yellowish. Sometimes the pigment goes up to into the layer itself. The scales might appear as they do on my diagram or if you back comb, you might get a lot of scale protrusion. ~~Other people might have scales that are~~ long and flat. Sometimes they're very indiscernible, you can't even see them. So these characteristics can vary greatly from one person to another within the same racial group, but they are relatively consistent within a person's known hair sample. It's not to say that every hair on the head is exactly the same, it's not. Obviously, if I took one of the short gray hairs from my temple it would be different from a longer sun bleached hair from my head, but if I was to look at twenty-five hairs from the head, I would get a picture of what characteristics looked like and I'd keep the picture in my mind for comparison persons. Characteristics are relatively consistent in a person's head sample, but can vary greatly from one person to another racial group and that's what allows me to make association of a known hair standard and hair groups. Now, when I do my comparison after I have identified a hair as being generally similar to hairs in a known hair sample, and I'm referring to hair at a crime scene. I get hairs from hair samples from the victim or



suspect depending on the circumstances. I will do what's  
called a side by side comparison using a compound microscope  
which is nothing more than a comparison microscope, which is  
nothing more than two compound microscopes bridged together in  
such away that allows me to look at two hairs side by side.  
We'll put that Exhibit 1 over here and call it the question  
hair. ~~Let's say that's the hair at crime scene and we want to~~  
know if that's coming from a suspect of the crime. We'll call  
known hairs Exhibit 1. I'll then compare to the root of the  
hair to the type of the hair side by side to all of these  
characteristics; and if there are any differences, I will  
conclude that this question here did not originate from the  
source represented by Exhibit 1 from the individual  
represented by the known hairs. In other words, the thickness  
of the cuticle is different or the scale profusion or length  
was different or the distributions of individual bodies,  
pigment and cortical fuzi. The general thickness or the color  
is different. If any of those things are different, I'll  
excuse Exhibit 1 as being the source of that question hair;  
but if I can see no differences, if they are microscopically  
indistinguishable, I'll conclude that question hair is  
consistent from originating from the hair of the person  
originated by the known sample one; or stated another way, it  
either originated from that person or another person of the  
same racial group whose hairs exhibit all of these same

microscopic characterized in range in the same way from root  
2 to tip and it's my experience and the collective experience of  
3 the FBI Laboratory that rarely, extremely rarely do we see  
4 known hairs from two different people from the same person  
5 that we can't tell them apart. So, when I associate a  
6 known hair from a standard in my opinion, it carries a high  
7 ~~degree of probability it originated from that person, although~~  
8 I can't say it's a positive means of identification, it's not  
9 a positive means of identification because I can't exclude the  
10 possibility that someone whose hairs I haven't looked at could  
11 also look like that individuals, but again our experience is  
12 that generally we can tell different persons hairs alike.

13 Q In your experience, have you ever had a case where you knew as  
14 a result of confessions or whatever that a questioned hair  
15 that you had could have come from one of two people because  
16 two different people had two different Exhibit 1's and Exhibit  
17 1 and Exhibit 2 were so similar that one could have come from  
18 the same one? Have you ever had that experience?

19 A In approximately 3,000 cases examined in eight and a half  
20 years almost all of those cases have at least two known  
21 standards, the victim and the suspect hairs. Some of them  
22 have many, many as many as ten or twenty or thirty known hair  
23 standards and on only one occasion have I had known hairs from  
24 two different people that I compared I could not tell them  
25 apart and those were Negroid, but like hairs, I have never had

any Caucasian head hairs, I have never not been able to  
differentiate two Caucasian even head hairs. That's basically  
how we do hair examination in the FBI Laboratory and just a  
little bit on what I see when I actually look at a hair under  
a microscope.

Q You did have occasion to perform such tests as a result of a  
request from Detective Hughes?

A Yes, I did.

MR. SIMONSON: Judge, I have to say my objection  
now because proper foundation has not been laid.

THE COURT: Well, if you want. Should we excuse  
the jury and deal with it? Let's do that.

THE BAILIFF: All rise for the jury, please.

(JURY TAKEN OUT OF THE COURTROOM)

THE COURT: Be seated, folks. Mr. Simonson, your  
objection?

MR. SIMONSON: My objection is that there's been  
a breach of the chain of custody and I wish, I wanted to call  
Nanci Newton back to the stand to support my position.

THE COURT: She was on the stand, Mr. Simonson.  
You had an opportunity to question her.

MR. SIMONSON: I have an opportunity at this  
point in time to put my testimony on to impeach the chain of  
evidence and I cited the case in my letter brief to you.

THE COURT: Is there some reason you didn't

question her when she was on the stand?

2 MR. SIMONSON: May have been because I forgot,  
3 but this man's life is on, is on the line, but I cited  
4 Lamour vs. State, 87 Wis. 2d 739. As I have an opportunity  
5 to present my testimony, not by way of cross examination, but  
6 by direct examination to further establish the breach in the  
7 ~~chain of custody.~~

8 THE COURT: Mr. Kaiser, any objection to that?

9 MR. KAISER: No, Your Honor.

10 THE COURT: Go ahead.

11 MR. KAISER: It's just we go through this, the  
12 Court and Mr. Simonson has been aware since the beginning of  
13 this trial of my limitations on today. We may end up having  
14 to bring this witness back tomorrow as well.

15 THE COURT: It's possible. Sir, I'm going to ask  
16 you to step down and we'll try to complete your testimony if  
17 we can today.

18 MR. OAKES: Thank you, Your Honor.

19 MR. KAISER: I ask the record to reflect I have  
20 tendered to Mr. Simonson photocopies of Exhibit Numbers 23, 24  
21 and 25.

22 THE COURT: Thank you. Ms. Newton, would you  
23 come forward and I would remind you, you are still under oath.

24 MS. NEWTON: I don't have any records with me.

25 THE COURT: It may or may not be necessary.

MS. NEWTON: Okay.

THE COURT: Go ahead, Mr. Simonson.

DIRECT EXAMINATION BY ATTORNEY ARCHIE SIMONSON OF MS. Nanci Newton:.

Q At the time you received the bag with the mens undershorts, did you, were you able to identify brand name of those shorts?

A I did not look at them closely enough to do so.

~~Q So, therefore, you do not know if they are the same shorts that, that Kathy Dixon picked up in her basement?~~

A That's correct.

Q You placed the shorts in the cleaning closet of Rape Crisis Center?

A Yes.

Q In a bag?

A Yes.

Q Still in the bag, but in a box?

A Yes.

Q And when you placed them, and when you saw the shorts again, where you took it out of there to take it into Detective Hughes, this time it was June 19th almost a month later?

A I did not see the shorts again.

Q You did not look at them again to ascertain whether or not they were the same shorts that were in the bag at the time you put it in the closet; is that right?

A I did not open a bag again.

Q So, you don't know that the shorts that you delivered to  
2 Detective Hughes was the same shorts that Kathy Dixon  
3 delivered to you, do you?  
4 A That's correct.  
5 Q And did you examine the shorts to determine the presence of  
6 hair?  
7 A No.  
8 Q So, you don't know if the shorts had hair in them at the time  
9 you received them, do you, from Kathy Dixon we're talking  
10 about?  
11 A No, I do not.  
12 Q And so you don't know if the condition changed at the time  
13 that you took them out of the closet to deliver them to  
Detective Hughes, do you?  
15 A Would you repeat that?  
16 Q You don't know if that, the shorts changed in any, as to the  
17 condition during the time they were in the closet at the time  
18 you delivered them to Detective Hughes?  
19 A That's correct.  
20 Q You testified before that, that, up to perhaps twelve to  
21 twenty people had access to that closet?  
22 A That's right.  
23 Q And in other words, the closet was not your exclusive domain?  
24 You did not have a lock and key for that?  
25 A That's right.

MR. SIMONSON: I have no further questions.

THE COURT: Mr. Kaiser?

MR. KAISER: Asked and answered.

CROSS EXAMINATION BY ASSISTANT DISTRICT ATTORNEY ROBERT KAISER OF MS.  
NANCI NEWTON:

Q Ma'am, was the bag in the same or substantially the same  
~~condition when you picked it up to take it to the Dane County~~  
Sheriff's office as it was when you put it in that box in that  
room?

A It was exactly the same as I had left it.

MR. KAISER: I have no further questions.

THE COURT: Mr. Simonson.

REDIRECT EXAMINATION BY ATTORNEY ARCHIE SIMONSON OF MS. NANCI NEWTON:

Q When you say, "exactly", did you mark the bag or seal it to  
determine whether or not?

A I did not mark the bag or seal it.

Q And I think you testified before it's possible that somebody  
else could have gotten into that bag while it was in the  
closet?

A It is possible.

MR. SIMONSON: I have no further questions.

THE COURT: Mr. Kaiser.

RECROSS EXAMINATION BY ASSISTANT DISTRICT ATTORNEY ROBERT KAISER OF  
MS. NANCI NEWTON:

Q Based on everything you know, is it probable?

1 A No, it is very unlikely.

2 Q When you say you didn't seal it, what did you do with the top  
3 of the bag when you left it, how was it arranged?

4 A I rolled it tightly down.

5 Q And was it any different when you found it to take it to the  
6 Sheriff's Department?

7 A ~~No, it was not.~~

8 MR. KAISER: No further questions.

9 THE COURT: Anything else?

10 MR. SIMONSON: No.

11 THE COURT: Thank you, Ms. Newton. You are  
12 free to leave unless you are under subpoena still to somebody.

13 MR. SIMONSON: Judge, the break in the  
14 chain of evidence is quite, is quite evident from this  
15 testimony. Kathy Dixon did not testify as to the brand name  
16 of the shorts, the size of the shorts, this witness did not,  
17 there's no evidence that the shorts found by Kathy Dixon were  
18 in fact shorts that were at the scene at the time of the  
19 alleged crime. There's no evidence that the shorts when they  
20 were received by Kathy Newton were in the same condition as  
21 when they were in the possession of Kathy Dixon. As a matter  
22 of fact, Kathy Dixon had the shorts in her car for it appears  
23 for almost a month or more before she delivered them to Nanci  
24 Newton. There's no evidence that the shorts were in the same  
25 condition at the time that Nanci Newton delivered them to



1 Detective Hughes and that's the first time that there was any  
2 care taken to preserve the evidence; and, Judge, I cited the  
3 cases. It would appear that not only is it the relevance of  
4 the shorts suspect, but having this breach of or this break in  
5 the chain, the State, having this breach in the chain of the  
6 evidence, the State is unable to lay a foundation that the  
7 ~~examination of the shorts by, by this FBI lab man is an~~  
8 examination of the shorts that are at the scene of the crime.

9 THE COURT: Mr. Kaiser?

10 MR. KAISER: Your Honor, the testimony during the  
11 trial has been from Kathy Dixon that she recovered the  
12 underpants that are here in the courtroom from her house  
13 subsequent to her having been the only person in the house  
14 other than her husband, Tom who wears a size 32, which these  
15 aren't and which she did not recognize and which because she  
16 was the only one with access to her house, there would not  
17 have been the opportunity for anyone else to place there and  
18 they are identified by Detective Hughes as being the same  
19 underpants that he subsequently sent to the FBI. So, I think  
20 the chain as far as them being the underpants has been  
21 established. I think that the weakling of Mr. Simonson's  
22 argument derives from this. The question here is not were  
23 they wet, were they dry? The question here isn't  
24 contamination of any kind other than has the defense shown  
25 that somewhere along the line someone has had the opportunity

to frame this defendant because if Mr. Oakes isn't going to  
testify that there's a hair on those underpants that match the  
defendant's hair, then they have no relevance and we should  
not even be here talking about this. That's the only reason  
that the underpants are relevant is because there's a hair on  
those underpants that matches the defendant's; and my position  
~~is that the chain of custody as the Court has heard, it shows~~  
that there has never been a time or an opportunity for anyone  
with any connection or possibility of a connection to those  
underpants to get a hair from the defendant and plant it on  
the underpants. Without that showing from the defense, my  
position is that I have done everything I can to show that  
anyone who had any connection with these underpants did  
nothing to contaminate it with the defendant's hair. Any  
other definition of contamination is simply irrelevant to this  
discussion. I think we have proved that there has been no  
contamination, that there's been a proper chain of custody on  
the underpant; and if we're allowed to proceed, we'll prove  
that the FBI has matched a hair from the defendant to that  
found on the underpant.

THE COURT: Mr. Simonson?

MR. SIMONSON: Well, the examination of Detective  
Hughes is not complete. The very first time there's any  
evidence other than the word of witnesses that there's hair in  
the shorts is when the FBI received the box. That's the first

1 time any hair is ever identified. There's no hair identified  
2 in the shorts back in 1987, there's no hair preserved, there  
3 was no hair extracted from the shorts in June of 1989 to be  
4 preserved as having been found there. The very first time we  
5 find hair in the shorts with the corroborating testimony,  
6 evidence is going to be the FBI Laboratory examined the shorts  
7 ~~out in Washington, D.C., the very first time.~~

8 MR. KAISER: Well, then I guess Detective Hughes  
9 lied, Your Honor, and I suppose we're just going to have to  
10 subject him to some serious cross examination and oh we can  
11 prove he lied when he said he took the underpants out, found  
12 hair in them and then sent them to the FBI. If that's true,  
13 I suppose we have to stop everything and put Detective Hughes  
14 back on the stand; and I wish counsel had objected earlier  
15 when I said we'd put the FBI on earlier and he went along with  
16 it and now we have got two witnesses we're stuck in the middle  
17 of doing it.

18 THE COURT: Who do you want called first, Mr.  
19 Simonson?

20 MR. SIMONSON: I have here established there's  
21 been a break in the chain of custody and I can continue with  
22 my examination to sustain the representation of tampering by  
23 placing Detective Hughes back on the stand.

24 THE COURT: Well, I think technically you are  
25 correct that prior to Mr. Oakes testimony, we should complete

the testimony of Detective Hughes; and I'd understood that you  
had agreed we didn't need to do that many, but now I  
understand that you feel we do need to do that. So, we will  
do it in that order. I think that means Mr. Oakes is going to  
have to stay and come back tomorrow or I certainly don't mind  
coming back tonight. I know we have to take a break for Mr.  
~~Kaiser to do what he has to do, but we can decide how to~~  
handle that after you talk with Mr. Oakes, Mr. Kaiser.

MR. KAISER: Thank you, Your Honor.

THE COURT: Assuming that the chain is completed  
through Detective Hughes testimony, however, I will be  
admitting the testimony of Mr. Oakes. I think all of the  
argument raised by defense counsel go to weight rather than  
admissibility. If the chain is so contaminated the probative  
value of the evidence is very low, the jury is going to  
disregard it anyway; and if the jury believes the witnesses  
and believes the chain is completed, then he'll have to decide  
how much weight to give to the analysis, but I don't think the  
appropriate remedy is suppression. I think the jury is here  
to decide how much weight to give to all of the evidence and I  
think they are entitled to hear all of the evidence assuming  
we complete the chain.

MR. SIMONSON: Excuse me, Your Honor, it's not  
suppression. It's laying a foundation that the article  
examined was the article involved in the offense.

THE COURT: I understand it and we have to finish with Mr. Hughes to do that.

MR. SIMONSON: Let me ask this question because if I examine Hughes and get the answers I'm going to get, I can see right now you are not going to agree with me. Does the FBI agent have plane reservations tonight, Bob?

~~MR. KAISER: I think he has them for 9:00~~  
tomorrow morning; and if we don't start him until 8:30, he's not going to make them.

MR. SIMONSON: Why don't you put him back on the stand? I can see if we get Detective Hughes back on the stand. We know what he's going to testify to.

THE COURT: I don't know. You might know.

MR. SIMONSON: I know what he's going to testify to. It's going to be same thing on the report.

THE COURT: Well, I don't want to end up with an argument tomorrow about it. If you want Mr. Hughes to complete his testimony, you may be right. I don't know what he'll say and I may end up agreeing with you.

MR. SIMONSON: In that case we better put Hughes back on.

MR. KAISER: Well, the other remedy is if we do have the FBI agent testify, you can always strike his testimony if we don't have proper foundation and as I have always pointed out, if that's the remedy in this, the State

continues to be embarrassed and that certainly doesn't  
2 prejudice the testimony.

3 THE COURT: That's another option.

4 MR. SIMONSON: In other words, take Oakes  
5 testimony tonight and if it turns out that I am right, then  
6 we can ask the jurors to disregard it.

7 ~~THE COURT: That's always an option. The danger~~  
8 in that is the jury will have heard something obviously that  
9 they shouldn't have heard if you end up being correct.

10 MR. SIMONSON: That's a problem because I know  
11 what he's going to say.

12 THE COURT: I'll do it any way you like, Mr.  
13 Simonson.

14 MR. SIMONSON: Well, I would guess that it would  
15 be best if we finish with Hughes testimony then if Mr. Oakes  
16 has to stay over another day, he has to stay over another day.  
17 There's a lot of planes to Washington. They leave almost  
18 every three hours.

19 MR. KAISER: Could I go talk to him?

20 THE COURT: Why don't you take a minute and check  
21 his schedule and see what we can do you.

22 MR. KAISER: Your Honor, Mr. Oakes has agreed to  
23 accommodate us. He's going to return to his hotel and we're  
24 going to attempt to rearrange transportation for tomorrow.

25 THE COURT: Okay. What I'd asked before we

1 pursue this line of questioning before a jury since  
2 technically Mr. Hughes isn't done anyway, that we put him on  
3 the stand and let Mr. Simonson do to him what he's going to do  
4 so we can see where we're at.

5 MR. SIMONSON: Mr. Hughes you mean?

6 MR. KAISER: Yeah, without the jury.

7 ~~MR. SIMONSON: Well, this goes to credibility I~~  
8 guess.

9 THE COURT: Let's only do it once. I think the  
10 best procedure is to finish everything with Mr. Hughes and  
11 then take Mr. Oakes. What I don't know is if your schedule  
12 permits, I suspect we can't finish all of Mr. Hughes including  
13 cross and maybe this is an appropriate time to stop.

14 MR. KAISER: That's probably true. I guess we do  
15 have those other documents he wants a chance to look at.  
16 Technically if I want to follow the rules, I suppose I don't  
17 even need to put those in through him anyway. They are  
18 certified copies. I could just put them in on their own for  
19 that matter.

20 THE COURT: Talking about transportation records.  
21 Well, Mr. Simonson wants time to look at it. Let's deal with  
22 it tomorrow.

23 MR. KAISER: I think we are better off quitting  
24 now.

25 THE COURT: Do you want to start a little earlier

tomorrow because we're loosing a little time now? I don't  
know what other witnesses people may have arranged.

MR. SIMONSON: You want to know didn't you about  
the witness schedule?

MR. KAISER: If we're going to let them know,  
maybe we should let them go.

~~THE COURT: I need to tell them what time.~~

MR. KAISER: We can be ready at 8:00.

THE COURT: I don't want to inconvenience anyone.  
If that's okay with everybody, let's start a little earlier?

MR. SIMONSON: Five after eight maybe.

THE COURT: Let's bring the jury in. We'll  
excuse them.

THE BAILIFF: All rise for the jury, please.

(JURY BROUGHT INTO THE COURTROOM)

THE COURT: Okay, be seated, folks. For reasons  
which I don't need to explain to you, and I won't explain to  
you, we have concluded that we are not going to finish the  
next section of evidence tonight in the time we have available  
and it's better rather than to do part of it, to do it all at  
once. It will be easier for you to follow. Plus you have had  
a long day. So, we are going to stop at this point and we're  
going to start again tomorrow morning. Is there anybody who  
cannot be here at 8:00? If you can't be here, that's okay,  
we'll go a little later because I think we originally told you



8:30, and if 8:00 doesn't work for you, just say so. Anybody  
have a problem?

THE JUROR: It's difficult for me.

THE COURT: Let's say 8:15. Is that okay? Will  
that help?

THE JUROR: That will help.

~~THE COURT: Knowing the way the courts operate,~~  
that will get us going by noon if you are all here at 8:15.  
Now, it's very important please do not read anything about  
this case, don't talk to anybody about it, don't listen to the  
TV or radio and don't let anybody talk to you about it,  
including family, household members or co-workers or friends  
or neighbors. That's very, very important. We'll come back  
tomorrow. My best guess at this point is that we will be here  
on Thursday. So, you should be making arrangement for that.

THE COURT: That's it unless someone here has  
some question. We'll see you 8:15 tomorrow. Thank you very  
much.

THE BAILIFF: All rise for the jury, please.

(JURY TAKEN OUT OF THE COURTROOM)

THE COURT: Okay, counsel, a couple of things.  
Any suggestions on the jury instructions and how to work the  
alibi instruction into various counts? I'm happy to put it  
into each of the nine counts. I'm also happy to do one  
instruction that says that the alibi instruction applies to

all nine counts.

MR. KAISER: I think since there's one place from which he is absent where the incidents, where the crimes occurred, that it's like the reasonable doubt instruction at that point and really only needs to be stated one time. I think that the instruction does say something about various counts, but I don't see that the jury needs to be reminded nine times that if he says he's some place else. It's not as if there's serious crimes occurred in different locations. When he's claimed to be at another location, they all occurred in the same place. I'd ask it only be read one time.

THE COURT: Mr. Simonson?

MR. SIMONSON: I think as a practical matter that would be great because these were nine counts that happened at one time and he was either gone all nine times or not.

THE COURT: Okay. I'll draft them and giving it once and making it clear it applies to everything, but if you change your mind, we'll do it a different way. Nobodys bound by this at this point. Also, is there any other evidence now that may come up tomorrow, and I'm directing this to Mr. Kaiser, that you think might lead to the same kinds of disputes that we had today so that we don't end up taking a break tomorrow to permit time to review something? I'm talking about document or physical exhibit or something like that?

MR. KAISER: I believe we tendered to Mr.  
Simonson the document from the Department in North Dakota  
from the Job Service in North Dakota.

MR. SIMONSON: I didn't have Job Service. I  
don't have anything from Job Service. I have a letter.

MR. KAISER: Right, that's what I'm talking  
about.

MR. SIMONSON: I have a report you were there.  
You have got documentation.

MR. KAISER: There was a letter that was sent and  
I believe you have talked to that witness and then the check  
which we have got copies of, but we don't have, the original  
has been given copies of a photographic array that was shown  
in North Dakota.

MR. SIMONSON: I had the original of that check.

MR. KAISER: We do have one other document which  
in talking to the person in North Dakota from the Human  
Services Department, indicated that she received or she had in  
her possession documents from Layle Hanson indicating a  
receipt of employment for work done in the first or second  
week of March that we didn't know she had before. So, we'll  
be getting those tomorrow and as soon as we get them we'll get  
a copy of them and give them to Mr. Simonson.

MR. KAISER: He has the original of the check.

MR. SIMONSON: I got--

1 THE COURT: Remember we are on the record, Mr.  
2 Simonson. Talk so the Reporter can hear you.

3 MR. SIMONSON: I'm sorry. I got the original  
4 check that he was talking about and I made a copy of not only  
5 the front but also the back part of the check and the State  
6 had not had a copy of the back part of the check yet. So, I  
7 ~~just now gave him that copy.~~

8 MR. KAISER: I understand what Mr. Simonson is  
9 saying he does in fact have the originals?

10 MR. SIMONSON: Yes.

11 THE COURT: Anything that we can anticipate on  
12 possible witnesses being called that weren't disclosed or  
13 anything like that that we could deal with tonight instead of  
14 tomorrow?

15 MR. KAISER: Well, he didn't disclose any  
16 witnesses anytime. I guess I can't complain. He can put  
17 anybody he wants.

18 THE COURT: State, read off a list of who they  
19 are going to call or might call.

20 MR. SIMONSON: There was one witness I couldn't  
21 identify. Let me get it out here. I had the Court Reporter  
22 type.

23 THE COURT: I have it here if you'd like the  
24 transcript.

25 MR. SIMONSON: There's one witness I couldn't

identify. That was again Clairmore.

MR. KAISER: He's an official representative from the Milwaukee office of Western Union who will be authenticating a document that's previously been tendered to counsel and the result therein.

MR. SIMONSON: Okay.

~~THE COURT: We'll see you then at 8:15. Do you~~  
have an estimate on whether we will finish the evidence phase?  
How about a second opinion?

MR. KAISER: That's what I have been telling a lot of people.

THE COURT: And I realize it's an estimate.

MR. KAISER: I think if we start at 8:15, we should be done including cross most likely by 10:30 at the absolute latest.

THE COURT: Mr. Simonson.

MR. SIMONSON: I'm anticipating testimony of my witnesses would be relatively short and within two at the outside three hours.

MR. KAISER: Puts my rebuttal well into Thursday I think.

THE COURT: Then we would have to deal with instructions. So, I think we are into Thursday which will help me deal with the other case I have to deal with. Do want to agree if possible to finish all the evidence tomorrow

and argue Thursday morning? What I don't want to do is get  
to 3:00 and have no witnesses and a lot of time.

MR. KAISER: No, all my witnesses will be here  
ready to do rebuttal tomorrow and we'll work. They have  
plane reservations for Thursday and I don't have any  
limitations tomorrow. I apologize to the Court for the  
limitations today.

THE COURT: That's okay.

MR. KAISER: I'll work as late as you need to  
tomorrow to accommodate that.

MR. SIMONSON: We can finish it tomorrow. I  
think it's a good idea to finish testimony tomorrow and argue  
and give the case to the jury on Thursday morning.

THE COURT: Let's shoot for that. Obviously  
something may happen, but it will take us awhile on jury  
instructions plans, too. We'll finish the evidence, we'll  
finish the jury instruction conference, we'll deal with  
everything and then we'll start fresh with instructions and  
closing arguments Thursday. That's the tentative plan anyway.

MR. KAISER: That will be fine. I don't mean to  
throw a kink into the jury instructions either because I did  
attempt to be as complete as I could when I prepared by my  
proposal, but I haven't really decided other than to alert  
you to the possibility that depending on what happens during  
the case in chief of the defense, that I may request second

degree sexual assault on the four sexual assault charges as an  
alternative verdict.

THE COURT: Okay. We'll obviously have to deal  
with that.

MR. KAISER: I just didn't want you to be shocked  
and surprised if it happened.

~~THE COURT: Nothing will shock me. We're~~  
adjourned. Thank you, folks.

C E R T I F I C A T E

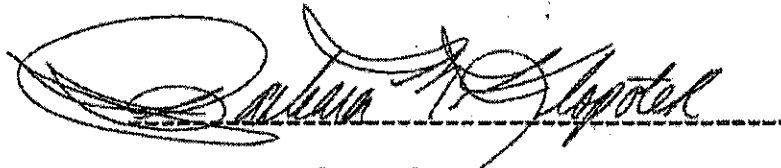
STATE OF WISCONSIN)

) ss.

~~COUNTY OF DANE~~

I, Barbara M. Klopotek, RPR/CM, hereby certify that I reported in Stenograph the proceedings had before the Court on the 6th day of February, 1990, and that the foregoing transcript is a true and correct copy of the said Stenograph notes.

Dated this 11th day of January, 1991.



Barbara M. Klopotek  
Registered Professional Reporter/CM

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STATE OF WISCONSIN

CIRCUIT COURT --  
Branch 11

DANE COUNTY

STATE OF WISCONSIN,

Plaintiff,

vs.

Case No. 89 CF 946

RICHARD BERANEK,

Defendant.



PROCEEDINGS:

City-County Building  
Madison, Wisconsin  
February 7, 1990  
Jury Trial--2nd day

PRESIDING:

HONORABLE DANIEL R. MOESER  
Circuit Judge, Branch 11

APPEARANCES:

ROBERT KAISER,  
Assistant District Attorney,  
representing the STATE OF WISCONSIN

DEFENDANT in person represented by  
ATTORNEY ARCHIE SIMONSON.

Barbara M. Klopotek  
Registered Professional Reporter/CM

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# EXHIBITS

Exhibit No.:	Offered	Received
A - Cap Times Article	74	75
1 - Composite Sketch	74	75
2 - Photos	74	75
3 - Video Lineup	74	75

1       been going longer than you have been going here. We are going  
2       to take a break ourselves, give you a short break and we'll  
3       come back and have more testimony. We'll take ten or fifteen  
4       minutes.

5               THE BAILIFF: All rise for the jury, please.

6       (JURY TAKEN OUT OF THE COURTROOM).

7               THE COURT: Now, are there any matters we need to  
8       take up outside the jury's presence?

9               MR. KAISER: We need to take up counsel's continuing  
10       objection to Mr. Oakes.

11              THE COURT: Is Mr. Oakes the next witness?

12              MR. KAISER: Yes.

13              THE COURT: Any objections, issues you want to  
14       raise, Mr. Simonson to his testimony? What I don't want to do  
15       is get him on the stand and then have an objection and have to  
16       send the jury back out if we can avoid it.

17              MR. SIMONSON: Well, the chain of custody still has  
18       not been established and again, I think in addition to the  
19       break in, the chain involving Nanci Newton, we have a break in  
20       the chain involving, involving this officer because he has not  
21       preserved the evidence, the hair evidence as mandated by the  
22       proper investigative procedures to substantiate its claim that  
23       two years later he finds hair in the shorts. And he did not  
24       make that observation immediately after that, after the  
25       receipt of the shorts; and as a consequence, and the chain

1 also involves the issue of relevancy, there has to be some  
2 connection between the questioned evidence and the crime. To  
3 date, at this point, there has not been an established chain  
4 from the crime scene to the point in which this evidence was  
5 mailed to the Crime Lab in Washington.

6 THE COURT: I lost you on the last one. Obviously,  
7 if it's not tied into the testimony, there's no relevancy, but  
8 that's the next witness.

9 MR. SIMONSON: Yeah, but that witness has to  
10 testify. The questioned documents has to be tied into the  
11 crime scene not the defendant. It has to be tied into the  
12 crime scene. So far that has not been established. The next  
13 witness has to testify that he examined properly gathered  
14 evidence; and there's nothing on the record so far that the  
15 shorts are even part of the crime scene because of the lapse  
16 of time and the manner in which it became contaminated as a  
17 result of lying on the basement floor.

18 THE COURT: Well, one version of the evidence is  
19 that the shorts were in the sheets that went in the washing  
20 machine, the shorts came out, Ms. Dixon put the shorts in a  
21 bag, delivered the bag to Ms. Newton, Ms. Newton delivered it  
22 to Detective Hughes and you have just heard Detective Hughes'  
23 testimony.

24 MR. SIMONSON: It's not my burden to establish that.  
25 It's the State's burden to show it.

1 THE COURT: I just indicated that's what they have  
2 shown.

3 MR. SIMONSON: But I have, I have superior evidence  
4 from the first initial investigation that's not the true  
5 version. The true version is testified she kicked the shorts  
6 on the basement floor and they have been contaminated. Also,  
7 the original version disclosed they stayed there several  
8 months before she took them to Nanci Newton.

9 THE COURT: But isn't that for the jury to assess  
10 how much weight to give.

11 MR. SIMONSON: That's foundation as well, it's  
12 weight and foundation. First, you have to address the  
13 foundation stage.

14 THE COURT: Mr. Kaiser.

15 MR. KAISER: Your Honor, the initial question is how  
16 are the underpants tied to the defendant? That question we  
17 have addressed by having the victim testify that the only time  
18 that she slept on the bed on which the defendant attacked her  
19 was that night with the covers over the entire bed. From then  
20 on, she was not in that bed and did not remove the covers from  
21 that bed until the day that she was going to move out which  
22 she testified was less than a month after the attack. No one  
23 else was inside the house, no one else had access to the  
24 house; and she testified that on that date she went into the  
25 house, she was upset by having to go back into the house, look

1 at the bed, think about what happened to her and she took the  
2 bedding, ripped it off the bed and forced it into her washing  
3 machine, thereby overloading the machine. She noticed the  
4 underpants when she removed the now wet bedding from the bed  
5 and noticed that they did not look familiar to her. She had  
6 never seen them before; and since neither she nor anyone else  
7 had slept in that bed under those covers since she had been  
8 sexually assaulted by the defendant in that room, her  
9 conclusion was it must have been something to do with this  
10 case?

11 My position is that that is a sufficient showing  
12 that those underpants have some connection with this incident  
13 and this defendant to allow us to then proceed to do the  
14 testing which corroborates that position. Obviously we  
15 wouldn't be going through all this to put Mr. Oakes on if Mr.  
16 Oakes was not going to express his opinion based on his  
17 examination that the hair found on the underpants matches the  
18 defendant.

19 Now, that corroborates her position which is that  
20 nobody else did anything to those underpants until he got  
21 them. I think the connection of the underpants to this  
22 defendant is there. The connection of the defendant to the  
23 hair is there and this detective's testimony that I never did  
24 anything to contaminate the hair is un rebutted.

25 Now, counsel can argue that he shouldn't be believed

1 for whatever reason he wants to do that, but at this point for  
2 the purposes of an evidentiary ruling, unless the Court finds  
3 that Detective Hughes is lying, I think that we have  
4 established a proper foundation for the admissibility of the  
5 evidence. The hair is not contaminated.

6 If counsel doesn't like the fact that the underpants  
7 got wet, I still contend that that's irrelevant because he  
8 didn't put the underpants on after he sexually assaulted her  
9 and ejaculated. He didn't put them on. So, whether they got  
10 wet or not is irrelevant. There wouldn't be anything on there  
11 that would be of evidentiary value to use in any event.  
12 Whether they got wet or not in his words contaminated is  
13 irrelevant.

14 The fact remains that the hair can't be contaminated  
15 by being wet. It's on there, it's still on there and the only  
16 way it could have gotten on there was from being from the  
17 defendant on the day of the attack.

18 I think the chain is established, the relevance is  
19 established and the probative value is established. I think  
20 it's admissible, it should go to the jury and let them decide  
21 the weight.

22 THE COURT: Mr. Simonson, anything else?

23 MR. SIMONSON: I think before you can rule on the  
24 admissibility of the FBI report, I'm going to have to  
25 introduce testimony perhaps through the FBI agent himself that

1 people lose hair, body hair throughout the day and that body  
2 hair accumulates on clothing. It's possible that you and I  
3 may have each other's hair commingled in our clothing as well  
4 as the District Attorney's and when shorts or other articles  
5 of clothing are lying around such as in a basement, there's  
6 ample opportunity for such articles of clothing to collect  
7 hair and Mr., I forgot Art's last name.

8 MR. KAISER: Varriale.

9 MR. SIMONSON: Mr. Varriale. I'm going to put you  
10 on notice he's going to testify that not only did he find  
11 black hair, he found a blonde hair and he found animal hair,  
12 to demonstrate the fact that there's other hair in these  
13 shorts other than a black hair and this just demonstrates that  
14 articles of clothing laying out anyplace in any home would  
15 tend to collect hair floating through the air and the fact  
16 that--

17 THE COURT: So what, I guess.

18 MR. SIMONSON: Well, there's a break in time from  
19 the act until the time the shorts are discovered for one  
20 thing, even by the victim.

21 THE COURT: Well, you can argue a hair floating  
22 through the air came in through the window and worked its way  
23 down to the basement I suppose.

24 MR. SIMONSON: Well, the point is there has to be  
25 some relevance between the subject here and the crime. It



1 wasn't discovered at the time of the incident.

2 THE COURT: Well, unless you have something new, I'm  
3 going to cut off the argument. We have been over this many,  
4 many times in this trial. The foundation is sufficiently  
5 established to permit the testimony of Mr. Oakes.

6 MR. SIMONSON: Just a minute, Judge. I think you  
7 should rule it's established to the point it was to Mr. Oakes.

8 THE COURT: Pardon.

9 MR. SIMONSON: There's a lot goes on after it gets  
10 there.

11 THE COURT: Obviously Mr. Oakes is going to have to  
12 complete the chain and tie that in, but assuming that does  
13 happen, I'll permit the testimony. The chain has been  
14 established, at least on the record there isn't contamination  
15 of the hair, the jury would have to decide whether the chain's  
16 complete. The jury will have to decide how much weight to  
17 give to the testimony. The jury will have to decide what  
18 weight to give to the opinion, but assuming that Mr. Oakes  
19 meets the chain, the evidence is admissible and obviously on  
20 cross examination or with other witnesses, you can attack it  
21 all you want to attack it. Okay. See you in ten minutes.

22 (COURT IN RECESS).

23 THE COURT: Okay, we're ready for the jury I  
24 believe. You can be seated up here, sir, and we'll reswear  
25 you in once we have the jury.

1 (JURY BROUGHT INTO THE COURTROOM).

2 WAYNE OAKES,

3 being first duly sworn to tell the truth, the whole truth and  
4 nothing but the truth, on oath testified as follows:

5 THE COURT: You may remember Mr. Oakes from  
6 yesterday. We're continuing on with the direct testimony of  
7 this defendant. Mr. Kaiser.

8 MR. KAISER: Thank you, Your Honor.

9 DIRECT EXAMINATION BY ASSISTANT DISTRICT ATTORNEY ROBERT KAISER OF  
10 MR. WAYNE OAKES:

11 Q Mr. Oakes, I think when we, when we basically left off  
12 yesterday, you had been at the board. You'd indicated to us  
13 the method by which you conduct the hair comparison; is that  
14 correct?

15 A Yes.

16 Q Now, in the normal course of doing a test such as this, how  
17 many known hairs are you normally supplied with if there's any  
18 kind of number?

19 A The literature suggests that contributing agencies who  
20 contribute hairs to the FBI laboratory for comparison purposes  
21 submit at least twenty-five full length head hairs randomly  
22 selected from various areas of the head, the front, the back,  
23 the side, etc and that these hairs need to be cut or pulled.

24 Q And then when you have your unknown hair sample then, what are  
25 you, let's say you have one hair in the unknown hair sample,

1           what are you looking for from that one hair in relation to all  
2           of the hairs in the known sample where you know where the hair  
3           came from?

4           A   Well, initially I would examine the known hair sample from  
5           either the victim or the suspect and get a mental picture of  
6           what that person's hairs look like. As I indicated previously  
7           in my testimony, characteristics, the microscopic  
8           characteristics will be generally similar within a person's  
9           known hair sample, but can vary greatly from one person to  
10          another. So, once I have a picture of what that person's  
11          hairs look like, I will then take a look under the microscope  
12          of the questioned hair and if it appears generally similar to  
13          the hairs in the known hair sample. In other words, if it  
14          falls within the range of characteristics exhibited in the  
15          known hair sample, I will then conduct a side-by-side  
16          comparison using the comparison microscope, wherein I compare  
17          each and every one of the characteristics from the root to the  
18          tip of the hair, side-by-side, the questioned versus the known  
19          hairs; and in order for me to make an association based on  
20          hairs or what we would call a hair match, I have to find at  
21          least one head hair in the known hair sample that's  
22          microscopically indistinguishable from the questioned hair.

23          Q   In other words, if I was to take that questioned hair to put  
24          it in a bag of known hairs, shake it up and examine them all  
25          under a microscope, I would not be able to pick that

1 questioned hair out as being different or pluck them from the  
2 known hairs?

3 A I didn't do that here no, not putting them in a bag, no.

4 Q Speaking then of the bag, I'm going to show you what's  
5 previously been marked as Exhibit Number Fifteen for  
6 identification.

7 MR. SIMONSON: Judge, we better have a side bar.

8 THE COURT: Approach the bench.

9 (OFF THE RECORD DISCUSSION)

10 THE COURT: Go ahead.

11 Q Mr. Oakes, showing you what's been marked as Exhibit Number  
12 Fifteen for identification, can you tell us what that is,  
13 please?

14 A Yes, I can. It's a, a bag in which was contained a pair of  
15 men's underwear and I can identify it because it has my  
16 initials, WWO, on it.

17 Q What was the condition of that bag when you received it?

18 A It was sealed.

19 Q In the normal course of the procedures of the Federal Bureau  
20 of Investigation Crime Laboratory, if anyone in the lab had  
21 opened that package from the time that it was sent to you,  
22 would they have noted it on the exhibit?

23 A Yes, when I received this bag, it had not been opened by  
24 anyone at the FBI.

25 Q Now, showing you what's been marked as Exhibits Number 8 and

9, can you tell us what those are, please?

A Yes it's a pair of men's underwear and I can identify them. It has my initials on it, WWO, etched on the waist band and these are the underpants or underwear that were contained in the previously identified bag.

Q That's number eight. Can you tell us when you received that evidence?

A Yes, I received it on September 20th of 1989.

Q And would you tell us then after you received that evidence, what procedure you used to investigate the question that was put to you?

A Following the standard procedure in the laboratory, the underwear was removed from the sealed bag and scraped the debris, hairs and fibers removed from the underwear was placed in a pill box. Later the hairs in the pill box were mounted on the glass microscope slides and it's those hairs that I examined and compared and associated with known hair standards of the defendant, from the defendant.

Q Showing you an envelope previously marked Exhibit Number Twenty for identification. Could you tell us what's contained inside of there, please?

A Yes, I had an opportunity previously to examine the content here and in this plastic bag is the plastic pill box containing the remains of the debris that were removed from the underwear. These cardboard items are mailers in which I

1 place the glass microscope slides on which are now the hairs  
2 that were removed from the underwear as well as known hair  
3 standards from the defendant. So, the actual physical  
4 evidence is now on these glass microscope slides and it's from  
5 these slides that I conducted my examinations.

6 Q Showing you what's been previously marked as Exhibit Number  
7 Sixteen. Do you recognize that?

8 A Yes, I do. It has my initials WWO as well K1, which tells me  
9 that's a known hair standard, head hair standard from the  
10 defendant.

11 Q And is that the same envelope from which you removed and  
12 compared those samples?

13 A Yes, and this was sealed when it was received by me in the FBI  
14 laboratory.

15 Q As a result of your examination and comparison of the known  
16 hair standards to the hairs scraped from the underpants, did  
17 you form an opinion to a reasonable degree of certainty in  
18 your area of expertise as to the question of whether or not  
19 the person whose hair was in the known standard was the same  
20 person whose hair was found on the underpants?

21 A Yes, I did, present in the debris removed from the underwear  
22 was one head hair of Caucasian origin. I compared this hair  
23 with the known head hair standards from the defendant using  
24 the procedure that I talked about earlier and the one head  
25 hair found in the underwear was microscopically the same as

1 the known head hairs of the defendant. I concluded that this  
2 head hair found in the underwear was consistent with  
3 originating from the defendant.

4 Q After you reached that conclusion, what, if anything, did you  
5 do with the evidence itself?

6 A I returned the evidence to another special agent in the  
7 laboratory who was the primary examiner on this case and he  
8 subsequently returned it to the Dane County Sheriff's  
9 Department.

10 Q And did you seal the bag that had contained the underpants and  
11 bag inside?

12 A Yes.

13 Q In examining the bag which is Exhibit Number Fifteen, is it  
14 indicated on there anywhere that any other personnel at the  
15 Crime Lab. of the FBI examined the underpants other than  
16 yourself?

17 A Yes.

18 Q Is government Exhibit Fifteen the large bag?

19 A Right.

20 A Well, the initials of Keith Lolland, who was the other  
21 examiner on this case appears on the bag. If there were any  
22 other examinations done on the underwear, it would have been  
23 done after my hair examination and after I removed the hair  
24 evidence from them because as I indicated when I received the  
25 evidence, it was sealed. So, if serological examinations were  
26 conducted, it would have been after the hairs were removed

from them and the hairs as you have indicated have been permanently mounted on these glass microscope slides where they remain now.

Q Sir, you drew us a picture to show on the blackboard how you did this comparison. Is there technology by which if you know a photograph or something could be taken so the jury could see what kind of comparison you did?

A The FBI routinely does not photograph hair comparisons or hair matches.

Q Why is that?

A The reason being in order for you to visualize what I see under a microscope, you would have to take literally a series of a hundred of photographs because as I compare the question hairs to the known hairs from the root to the tip and when we look at hairs two hundred and fifty or four hundred power magnification, if I were to take a photograph, it would be of such a small segment of that hair that it wouldn't be representative of whole hair or how the characteristics can change from the root to the tip. So I would literally have to lay out a row of hundreds of photographs and then I would be asking the jury to render an opinion without any formal training or experience; and because hair examinations are subjective, it takes years of experience and a consistency in doing these types of examination to draw conclusions.

Q And your testimony is that from root to tip the known sample



1 was indistinguishable from the sample recovered from the  
2 underpants; is that correct?

3 A That's correct, I did, and by giving one photograph of one  
4 questioned hair with one photograph of a, of a known hair, it  
5 could be misleading because it would be possible to find areas  
6 of two different hairs that were alike in that one particular  
7 spot, but if you looked at the hair along its entire length,  
8 it could be variable or it could be differences there.

9 Q Well, you talked before about your experience. Can you tell  
10 us, you said yesterday you've worked on three thousand cases?

11 A Approximately, yes.

12 Q Do you know how many hairs that is that you have worked on?

13 A I'm sure it's billions.

14 Q In the normal course of the procedure of the FBI, would anyone  
15 else other than yourself confirm your result?

16 A Yes, the protocol in the FBI laboratory calls for a  
17 confirmation by a second agent when we make a quote, hair  
18 match.

19 Q Was that done in this case?

20 A Yes, it was.

21 Q And who did that confirmation for you?

22 A Special Agent Michael P. Maline, who I believe has been in the  
23 unit doing hair examinations for fourteen or fifteen years.

24 Q So, he's senior to you; is that correct?

25 A Yes.

1 Q He would have done even more cases and looked at more hairs  
2 than you have?

3 A Yes, I believe he's worked in excess of ten thousand cases and  
4 has testified four hundred to five hundred times.

5 Q And what was his opinion when he observed your comparison in  
6 order to--

7 MR. SIMONSON: Objection hearsay.

8 THE COURT: Objection sustained.

9 MR. KAISER: Your Honor, could we approach the  
10 bench?

11 THE COURT: Sure.

12 (OFF THE RECORD DISCUSSION AT THE BENCH)

13 THE COURT: The objection to the last question is  
14 sustained.

15 Q Mr. Oakes, can you tell us what affect it would have had upon  
16 your report had you not had, if you were not confirmed by  
17 another agent?

18 A Yes, if the second examining agent does not confirm the hair  
19 match made by the first examining agent, the report would not  
20 go out as a match. In other words, it would go out as a no  
21 match. So, in order to have a report go out that there was a  
22 hair match, two agents must concur that the hair is a match.

23 Q And your report did go out as a match; is that correct?

24 A Yes, it did.

25 Q So, you had a confirmation?

1 A Yes, I did.  
2 (CLERK MARKS EXHIBIT THIRTY FOR IDENTIFICATION).  
3 THE CLERK: Thirty marked.  
4 MR. SIMONSON: Mr. Kaiser, what's thirty?  
5 Q Showing you what's been marked as Exhibit Number Thirty for  
6 identification. Can you tell the ladies and gentlemen of the  
7 jury what that is, please?  
8 A Yes, it's an FBI Laboratory report in connection with this  
9 matter dated November 29th, 1989; and the only part that I can  
10 see here is Page 1 which is the--  
11 Q I think the back is on there?  
12 A Which is the listing of the specimens, excuse me, and Page 2  
13 and a portion of Page 2 contains my hair results.  
14 Q And is this a true and accurate copy of your report?  
15 A Yes.  
16 Q Who does the FBI do these examinations for?  
17 A Any city, county, state or federal law enforcement agency in  
18 the United States and in certain instances under foreign  
19 police cooperation, matters we will do examinations for  
20 foreign police agencies.  
21 Q Once you sent out that report, whatever the results are, who  
22 do you testify for?  
23 A Primarily for the prosecution, but on several occasions I have  
24 testified for the defense. My results go out in a written  
25 form; and if they are helpful to the government's theory of

1 the case, I testify for the prosecution; if it's helpful to  
2 the defense, I will and have testified for the defense.

3 Q What is the standard procedure in the FBI regarding whether or  
4 not you do tests after other people have already run tests on  
5 the same evidence?

6 A There's a general prohibition in the FBI Laboratory that we do  
7 not do reexaminations of evidence. In other words, if an item  
8 of evidence has been examined by city, county, state or other  
9 federal laboratory, we will not except under extremely unusual  
10 circumstances conduct a reexamination.

11 Q Why is that?

12 A Just because of the potential problems of redoing work that  
13 other people have already done. Our caseload is such that  
14 it's difficult to keep up with the cases that we have that  
15 nobody else has already examined; and then to do examinations  
16 on evidence that other laboratories have already done would  
17 not be a good use of our manpower.

18 MR. KAISER: Thank you, Mr. Oakes. I have no  
19 further questions.

20 THE COURT: Cross examination.

21 CROSS EXAMINATION BY ATTORNEY ARCHIE SIMONSON OF MR. WAYNE OAKES:

22 Q Did you find evidence of other debris other than the  
23 questioned hair when you examined the shorts?

24 A Yes, I did.

25 Q What did you find?

1 A I found limb hairs of Caucasian origin.  
2 Q Excuse me?  
3 A Limb hairs.  
4 Q What's that?  
5 A Probably from one of the extremities of the body like the leg  
6 or arm.  
7 Q All right?  
8 A And very fine body hairs not pubic hairs. The only pubic hair  
9 I found was the one head hair we have dissimilar. The FBI  
10 Laboratory will only compare a questioned head hair and a  
11 questioned pubic hair; and the reason we only limit ourself to  
12 head and pubic hairs is because these are the hairs in our  
13 body that differ the most from one person to another.  
14 Caucasian origin limb hairs from the arms don't differ much  
15 from one person to another within the same racial group. So,  
16 if I had say let's say a questioned hair and then a known leg  
17 hair from the suspect, I could very easily match those hairs,  
18 but they also could have originated from some other  
19 individuals that it really wouldn't be a significant  
20 association. So, we limit ourself in the FBI to head hairs  
21 and pubic hairs. So, the other hairs I found in there were  
22 not for comparison values with known standards.  
23 Q Did you get all of the debris from the shorts?  
24 A The majority of the hairs would have been removed, yes. Our  
25 procedure is a general scraping procedure wherein the item is

1 suspended, it's scraped down, and we believe that we get most  
2 of the, most of the evidence off of there. On occasion if you  
3 have a blanket or garment and there's a small hair or  
4 something, you may not get them all. Generally, what we don't  
5 get is so small a fragmented that it's not going to be of  
6 value for comparison purposes anyway.

7 Q Isn't it unusual for you to find head hair in shorts?

8 A Not particularly. You know I have found pubic hairs in very  
9 strange places, also. It's the nature of the evidence is that  
10 it can be found anywhere. It's not particularly unusual, no.

11 Q Is there an explanation for that?

12 MR. KAISER: Objection speculation.

13 THE COURT: Objection overruled. If you understand  
14 the question, answer it.

15 A I do understand the question, Your Honor, but it would be  
16 speculation for me to answer the question as to how that hair  
17 got there. I really don't know. I can only tell you that  
18 when I received the underwear, the hair was there. How it got  
19 there, I don't know.

20 Q Well, at this very moment, we are all losing body hair, are we  
21 not?

22 A Losing body hair?

23 Q Yes.

24 A Well, let's say with respect to head hairs, the literature  
25 suggests that the average person loses approximately a hundred

1 head hairs a day. So, with respect to head hair, sure you're  
2 shedding head hairs now and very possibly if I scrape down  
3 your suit jacket, I might find some head hairs like yours.

4 Q On the floor?

5 A It's possible.

6 Q Or any shorts lying on the floor?

7 A Well, you know it would depend. You know the hair is probably  
8 not going to just fall off and be-- If you came in contact  
9 with the shorts, sure your head hair could be there or if you  
10 brushed your jacket and the shorts were close, sure.

11 Q You point out in your report that head hairs, hair comparisons  
12 do not constitute a basis from absolute personal  
13 identification?

14 A That's correct.

15 Q That's a caveat that you put in your report?

16 A Yes, sir.

17 Q Why?

18 A Because as I pointed out yesterday during my direct testimony,  
19 hair comparisons are not a positive means of personal  
20 identification. They are not like fingerprints and not like  
21 D and A profiling or D and A fingerprinting because not having  
22 examined all the Caucasian head hairs in the world, I can't  
23 discount the possibility that someone else's head hairs don't  
24 microscopically match those of the defendant. I do know that  
25 that person's exists because I haven't ever seen that, but I.

can't discount that possibility, but as I testified in examining thousands of cases, it's extremely rare to find hair samples from two different people that are so alike we can't tell them apart. So, hair examinations and comparisons in my opinion constitute a basis for strong association, but not a positive association.

Q You also examine sample hair with subject hair for the purposes of eliminating a suspect; do you not?

A I do on occasions, certainly. In other words, if I had a questioned item from the victim and there was a head hair in there and it's dissimilar to the victim and the suspect, I would report that out. For instance, like theoretically, I would say a brown Caucasian head hair found in the underwear was dissimilar to the known hairs of the victim or defendant, it could not be associated with either individual.

Q Therefore, when you conclude that the subject hair in your report is consistent with having originated from the suspect, you cannot say with scientific certainty that the hair you, the subject hair you examined did in fact come from my client?

A I cannot say with absolute certainty. I can only base it on my experience that it's likely that it did, although not positively come from him.

Q But you did notice in your report the words highly likely?

A No, I said, "consistent".

Q Is that the same?



1 A Pardon me.  
2 Q Highly likely is the same as consistent?  
3 A No, it's a step further. I don't include that in the report,  
4 but that's, that's my opinion.  
5 Q But your corroborating agent or supervising agent approved the  
6 submission of the report coming to the conclusion that the  
7 hair submission of the report coming to the conclusion that  
8 the hair is consistent with having originated from the subject  
9 or suspect?  
10 A He concurred with me that the hairs match. Okay. His  
11 experience is more vast than mine and he has had less  
12 instances wherein he has not been able to differentiate known  
13 person's hair samples from each other. So, he testifies  
14 somewhat stronger than I do based on his experience which is  
15 more than mine.  
16 Q But Exhibit Thirty accurately reflects your test results; does  
17 it not?  
18 A The report does and my testimony both accurately reflect my  
19 results in my opinion.  
20 Q But you seem to be adding to the report now with your  
21 testimony?  
22 A Certainly everything I have testified here today and yesterday  
23 is not in the report. That's correct.

24 MR. SIMONSON: I have no further questions.

25 THE COURT: Mr. Kaiser, redirect.

1 REDIRECT EXAMINATION BY ASSISTANT DISTRICT ATTORNEY ROBERT KAISER  
2 OF MR. WAYNE OAKES:

3 Q You were asked concerning the method by which you recover the  
4 stuff. Did you as a person who's received evidence for eight  
5 and a half years have any problem with the form in which you  
6 received this evidence?

7 A No, as a matter of fact this particular item government  
8 Exhibit Fifteen, I believe, was sealed to a far greater degree  
9 than I think probably any item I've ever received before in  
10 the lab. It had a waxed seal on it. I mean usually things  
11 are not that well sealed.

12 Q When trying to determine whether or not you got something to  
13 compare or not, do you as a, as a laboratory person prefer  
14 this instance where you have had the opportunity to make the  
15 recovery from the clothing yourself or, or do you prefer that  
16 someone else have done that and you get what they have done?

17 A It doesn't make any difference. Cases that we receive from  
18 Tennessee and Vermont and New Hampshire have their own Crime  
19 Laboratory. They process the evidence and remove the trace  
20 evidence at the time. They don't have any hair examiners.  
21 So, instead of sending us the garment, for instance, the  
22 underwear, they'll just send us a pill box with the debris and  
23 ask us to compare the debris and the pill box with known hair  
24 standard. It doesn't matter to me which way I do it.

25 Q This isn't any less reliable because it all came in one

1 package?

2 A Sure.

3 MR. KAISER: I have no further questions.

4 THE COURT: Mr. Simonson.

5 MR. SIMONSON: No further questions.

6 THE COURT: Thank you, sir. You are excused.

7 MR. KAISER: Your Honor, can we approach the bench?

8 (OFF THE RECORD BENCH CONFERENCE)

9 THE COURT: Sure. We have several matters we have  
10 to handle outside your presence at this point. So, we are  
11 going to excuse you. All rise for the jury, please.

12 (JURY TAKEN OUT OF THE COURTROOM).

13 THE COURT: Mr. Kaiser, I gather from the bench  
14 conference, you have no further witnesses?

15 MR. KAISER: That's correct, Your Honor.

16 THE COURT: We need to deal with the exhibits, and  
17 we need to deal with the testimony about the name change, and  
18 we need to deal with any other motions that will be made at  
19 this point. Let's deal with the name change issue first  
20 because I think that will affect what we do with some of the  
21 exhibits.

22 MR. KAISER: Your Honor, I have talked to Detective  
23 Hughes, and we have been attempting to reach Officer Ryan,  
24 who's the person who made the arrest on January 5th of 1988.  
25 We have been unable to get in touch with him. What I have

C E R T I F I C A T E

STATE OF WISCONSIN )

) ss.

COUNTY OF DANE )

I, Barbara M. Klopotek, RPR, CM, hereby certify that I reported in Stenograph the proceedings had before the Court on the 7th day of February, 1990, and that the foregoing transcript is a true and correct copy of the said Stenograph notes.

Dated this 1st day of March, 1991.



Barbara M. Klopotek  
Registered Professional Reporter/CM

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