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6 IN THE COURT OF COMMON PLEAS OF CAMBRIA COUNTY CRIMINAL DIVISION
7

8 KEVIN SIEHL

9 Petitioner,

10 vs.

11 COMMONWEALTH OF PENNSYLVANIA

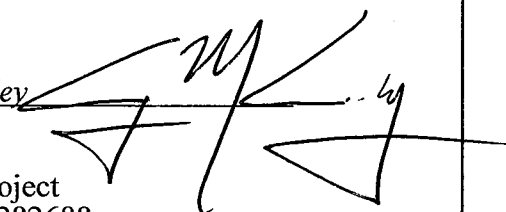
12 Respondent
13

Case No. 1058-1991

MEMORANDUM OF LAW IN SUPPORT OF
MOTION FOR POST CONVICTION DNA
TESTING PURSUANT TO 42 Pa. C.S.A. §
9543.1

14 Petitioner, Kevin Siehl, hereby submits his motion for post-conviction DNA testing pursuant
15 to 42 Pa. C.S.A. § 9543.1. The motion is presented in good faith and premised on the following
16 facts and points of authority.

17 Respectfully submitted this ___ day of January 2008.
18

19 */s/ Craig M. Cooley*
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1 **I. Introduction**

2 On July 13, 1991 someone brutally murdered Christine Siehl by stabbing her more than
3 twenty times in the bathroom of her residence; the assailant left her body in the bathtub, and turned
4 on the shower; the murder scene was covered with blood and in complete disarray. The
5 Commonwealth charged, prosecuted, and convicted Ms. Siehl's husband—Kevin Siehl—with her
6 murder. Although convicted, legitimate questions persist regarding the evidence used to convict
7 him. Mr. Siehl claimed (and still claims) he did not murder his wife; at trial, he presented several
8 alibi witnesses which placed him somewhere besides the Ms. Siehl's residence when the murder
9 allegedly occurred. His alibi is supported by the fact the Commonwealth failed to produce a single
10 eyewitness who placed him at the murder scene when the murder allegedly occurred. Instead, the
11 Commonwealth premised its case on weak circumstantial evidence and misleading and false blood
12 and fingerprint evidence.¹

13 Given the brutal nature of the murder and the bathroom's disarray, it was obvious Ms. Siehl
14 struggled with her assailant—likely creating a transfer of evidence between her and her assailant;
15 defense wounds on her arms support this conclusion. The medical examiner collected a wealth of
16 physical evidence from Ms. Siehl's autopsy, including her fingernail clippings; hair from underneath
17 a left hand fingernail; combed and pulled public hairs; vaginal swabs; anal swabs; and her clothing.
18 Investigators also collected more than eighty items of evidence from the murder scene, including
19 several blood samples from bloodstains located on the bathroom wall, a cigarette butt, and several
20 bloodstained items. Despite the fact DNA testing was still in its infancy in 1991-1992, the
21 Commonwealth could have possibly pursued RFLP DNA testing—and conclusively determined Mr.
22 Siehl's guilt or innocence—if not for a misunderstanding or miscommunication between the
23 Commonwealth and its blood expert.

24 Prior to trial, the Commonwealth's blood expert—Scott Ermlick of the Pennsylvania State

25
26 ¹In one recent study, researchers estimated that erroneous forensic science factored
27 in 63% of 86 DNA exoneration. See Michael J. Saks & Jonathan J. Koehler, *The Coming Paradigm*
28 *Shift in Forensic Identification Science*, 309 *Sci.* 892 (Aug. 2005). With respect to forensic fraud,
the same researchers concluded that “forensic scientists [were] the witnesses most likely to present
false or misleading testimony,” and that nearly 1/3 of the 86 exonerations involved false or
misleading testimony by a forensic scientist. Saks & Koehler, *supra*, at 893.

1 Police (PSP) Crime Laboratory, informed Johnstown detectives DNA testing could be performed
2 on certain items of evidence, but that Cellmark Laboratories had to perform the testing because the
3 PSP crime labs did not have RFLP DNA technology at the time. The Cambria County District
4 Attorney's Office initially refused to pay for the testing; shortly thereafter, however, the Johnstown
5 Police Department, Cambria County District Attorney's Office, and the Cambria County Coroner's
6 Office discussed splitting the testing cost amongst the three agencies. When the Cambria County
7 Coroner's Office contacted Mr. Ermlick to discuss DNA testing, Mr. Ermlick said he consumed the
8 blood samples (which he suggested DNA testing for) when he performed his serological
9 examinations; Mr. Ermlick performed the serological tests because he did not think the
10 Commonwealth would pay for the testing.² Consequently, with too little biological material for
11 RFLP DNA testing, the Commonwealth premised much of its case on rudimentary serology.

12 As evidenced by the DNA exonerations, serology's limited probativeness has played a
13 significant role in numerous wrongful convictions.³ To make matters worse, Mr. Ermlick greatly
14 exaggerated serology's discriminatory potential; he claimed he could—with only six blood
15 markers—individualize a bloodstain (from the bloody bathroom) to Mr. Siehl. Furthermore, he
16 exaggerated the discriminatory potential of a presumptive blood test used to test for the **possible**
17 presence of blood on Mr. Siehl's shoes; he claimed the presumptive test definitively established the
18 presence of human blood on his shoes. Both claims are specious and prejudiced Mr. Siehl; the
19 Commonwealth misled the jury to believe investigators recovered his blood from a bloody murder
20 scene and that his shoes had human blood on them.

21 The Commonwealth's fingerprint evidence is equally disturbing and problematic. The
22 Commonwealth presented PSP Trooper Merrill Brant as its fingerprint expert. Trooper Brant made
23 three critical conclusions: (1) he identified a latent print lifted from the bathroom shower head as Mr.

24 ²As noted *infra*, Mr. Ermlick failed to inform the jury he accidentally consumed
25 certain critical blood samples; instead, he said the Commonwealth did not pursue DNA testing
26 because the sample sizes were too small for RFLP DNA testing and because the PSP crime labs were
not equipped with RFLP DNA technology.

27 ³E.g., Brandon L. Garrett, *Judging Innocence*, 108 COLUMBIA L. REV. (forthcoming
28 2008) (noting that conventional serology testimony supported nearly 40% of the first 200 convictions
which DNA exposed as erroneous).

1 Siehl's fingerprint; (2) he opined that Mr. Siehl must have made the print as he stood outside the
2 bathtub; and (3) he said Mr. Siehl must have deposited the latent print near the time of Ms. Siehl's
3 murder (i.e., he time-dated the latent print). Each of his claims are incorrect or specious. First, Mr.
4 Siehl developed newly-discovered evidence which proves Trooper Brant mistakenly linked the latent
5 print to him.⁴ Second, fingerprints cannot be time-dated; numerous forensic science journals and
6 textbooks have repeatedly acknowledged this fact. *See infra* (citing scientific literature). Trooper
7 Brant's specious testimony prejudiced Mr. Siehl; it placed him at the murder scene during the time
8 the Commonwealth argued he committed the murder; and it suggested he murdered Ms. Siehl in the
9 bathroom, placed (or left) her body in the bathtub, and adjusted the shower head (from outside the
10 bathtub) to aim it at Ms. Siehl's bloody body.⁵

11 The rudimentary (and misleading) serology evidence and the false (and mistaken) fingerprint
12 testimony, raise serious questions about Mr. Siehl's first-degree conviction. These questions can be
13 conclusively answered with today's DNA technology. As noted, Ms. Siehl's homicide represents
14 a very personalized and intimate killing involving a great struggle; in such murders, it is likely the
15 assailant transferred biological evidence to the victim. Likewise, because the assailant repeatedly
16 stabbed Ms. Siehl, it is reasonable to assume the assailant may have cut himself during the attack;
17 a cut would leave blood on certain items at the scene depending on the assailant's actions during and
18 after the attack (e.g., the bathroom walls, the sinks, or towels). Investigators collected several items
19 of evidence which can be subjected to DNA testing, the results of which can do both—i.e., identify
20 the assailant's DNA on Ms. Siehl and/or in her bathroom. Accordingly, Mr. Siehl seeks to test this
21 evidence pursuant to 42 Pa. C.S.A. § 9543.1 so he may prove his actual innocence.

22 Pursuant to § 9543.1, a petitioner may seek DNA testing—in order to prove his or her
23 innocence—if he or she satisfies the statutory requirements. Mr. Siehl satisfies these requirements.

24
25 ⁴The new evidence is an affidavit from Herb MacDonell—one of the country's
26 foremost fingerprint experts—which unequivocally states that Trooper Brant's identification is
27 incorrect. Ex. 2. As the wrongful conviction cases have demonstrated, misidentifications are more
28 common than once expected. *E.g.*, Simon A. Cole, *More Than Zero: Accounting For Error in Latent
Fingerprint Identification*, 95 J. CRIM. L. & CRIMINOLOGY 985 (2005).

⁵The Commonwealth argued Mr. Siehl moved the body from behind the bathroom
door into the bathtub. NT, Trial—Dennis Kwiatkowski, 5/11/92, at 148.

1 First, he can specify which items of evidence he wants tested. Second, he consents to provide bodily
2 fluid samples and acknowledges that law enforcement may use these samples “in the investigation
3 of other crimes and may be used as evidence against the [him] in others cases.” § 9543.1 (1)(iii).
4 Third, he asserts he is actually innocent of the crime for which the jury convicted him of—i.e., first-
5 degree murder. Fourth, the perpetrator’s identity “was at issue in the proceedings that resulted in
6 [his] conviction and [life] sentence.” § 9543.1 (3)(i). Fifth, his trial occurred before January 1, 1995,
7 and the DNA technology he seeks to employ was not available when the Commonwealth prosecuted
8 him in May 1992. See § 9543.1(a)(2). And sixth, exculpatory DNA results would prove his “actual
9 innocence of the offense for which [he] was convicted. § 9543.1 (3)(ii)(A). Mr. Siehl is entitled to
10 DNA testing to prove his actual innocence.

11 **II. Statement of Facts**

12 **A. The Crime and Crime Scene**

13 During the early evening of July 14, 1991, James Griffin, Christine Siehl’s landlord, stopped
14 by her residence to investigate why water was flowing out of her residence.⁶ When no one answered,
15 Mr. Griffin entered Ms. Siehl’s residence and walked to the bathroom where he found the shower
16 running and Ms. Siehl’s lifeless body sitting in the bathtub; she was dressed in shorts, a halter top,
17 and a bra.⁷

18 Although investigators found no signs of forced entry, the bedroom phone and living room
19 phone and T.V. lines had been pulled from their sockets.⁸ Likewise, the bathroom exhibited signs
20 of a bloody struggle; the bathroom door was kicked in, the mirror broken, and a radiator top and kitty
21 litter box overturned.⁹ Investigators identified blood around the bathroom door frame; they found
22 more concentrated and profuse stains on the bathroom side of the door and the walls against which
23 the door opened. Investigators concluded that the primary attack occurred in the bathroom corner
24

25 ⁶NT, Trial, 5/11/92, at 25-28. NT = Note of Testimony.

26 ⁷Id. at 26-28, 75.

27 ⁸Id. at 63-64.

28 ⁹Id. at 75, 79.

1 behind the door.¹⁰

2 **B. The Autopsy and Evidence Collected from the Autopsy**

3 Chief Coroner, Dr. John Floyd Yerger, conducted the autopsy at approximately 9 p.m. on
4 July 14, 1991. Dr. Yerger identified twenty knife wounds on Ms. Siehl's body. Of these twenty,
5 three presumably lead to her death: one to her face; one to her elbow; and one to her back. The face
6 and elbow wounds severed critical arteries, while the back wound punctured her left lung.¹¹

7 Based on the potassium levels in Ms. Siehl's eyes, Dr. Yerger opined she died between thirty-
8 six and forty hours before he performed the autopsy; this would place the time of death between 5
9 a.m. and 9 a.m. on July 13, 1991¹²—at time period for which Mr. Siehl had an alibi. Likewise, he
10 opined that, given the nature and extent of Ms. Siehl's wounds, she could have only survived
11 between five and ten minutes after they were inflicted; this placed the time of the attack within the
12 same period as her death.¹³

13 Dr. Yerger recovered the following items of evidence from Ms. Siehl's body: fingernail
14 clippings; hair from underneath a left hand fingernail; combed and pulled public hairs; vaginal
15 swabs; anal swabs; and her clothing. Except for the vaginal and anal swabs, Dr. Yerger turned over
16 these items along with the clippers used to clip Ms. Siehl's fingernails to Pennsylvania State Police
17 Trooper Merrill Brant, who submitted them to the Pennsylvania State Police Southwest Crime
18 Laboratory for testing.¹⁴ Dr. Yerger chose not to submit the vaginal and anal swabs because his
19 initial examination of them failed to detect semen or sperm.¹⁵

20 Scott F. Ermlick, a forensic chemist with the Pennsylvania State Police Southwest Crime

21 ¹⁰Id. at 79-80.

22 ¹¹Id. at 123-24, 127.

23 ¹²Id. at 133-34.

24 ¹³NT, Trial, 5/11/92, at 126.

25 ¹⁴NT, Discovery & Inspection Hrg., 01/29/92, at 4; NT, Trial, 5/11/92, at 163
26 (Trooper Brant: "I collected pubic hairs, head hairs, fingernail scrapings and fingernail cuttings. I
27 collected various hairs that were on the body. I collected her clothing and two vials of blood"); NT,
28 Trial, 5/12/92, at 16; PSP General Investigation Rpt., 7/17/91, by Tpr. Merrill Brant; Ex. 1.

¹⁵NT, Trial, 5/11/92, at 118, 130.

1 Laboratory, examined the hairs lifted from Ms. Siehl's leg and beneath her fingernail, and excluded
2 Mr. Siehl as a possible donor.¹⁶

3 Items significant to Mr. Siehl's instant motion for DNA testing include:

- 4 • the fingernail clippings (item nos. 2-3);¹⁷
- 5 • the hair from underneath a left hand fingernail (item no. 8);
- 6 • the combed and pulled public hairs (items nos. 5-6);
- 7 • the vaginal swabs (no item no. because not submitted);
- 8 • anal swabs (no item no. because not submitted);
- 9 • the fingernail clippers (item no. 3); and
- 10 • Ms. Siehl's clothing (item nos. 15-17).

11 **C. Physical Evidence Collected From the Crime Scene**

12 Investigators recovered an abundance of physical evidence which can be subjected to today's
13 DNA technology (e.g., STR, Y-STR, and mitochondrial DNA testing). For instance, investigators
14 collected twelve blood samples from bloodstains located throughout Ms. Siehl's residence (item nos.
15 21-32).¹⁸ They also collected a cigarette butt (item no. 79) with apparent blood on it; bloodstained
16 clothing; a bloodstained green bag (item no. 20) and bloodstained towels from the bathroom.¹⁹
17 Similarly, investigators collected several knives, including one which appeared bloodstained (item
18 no. 11); a bloodstained knife; hair; and household goods—all of which investigators submitted to the
19 Southwest Crime Laboratory for testing.²⁰

20 Trooper Merrill Brant collected fingerprints from Ms. Siehl's residence; he lifted two
21
22

23 ¹⁶NT, Trial, 5/12/92, at at 23.

24 ¹⁷The item numbers refer to the Pennsylvania State Police Laboratory Report
25 identifying the items of evidence submitted to the Pennsylvania State Police Report; the laboratory
report is attached hereto as exhibit 1.

26 ¹⁸NT, Trial, 5/12/92, at 4.

27 ¹⁹Id. at 14-15, 195.

28 ²⁰NT, Trial, 5/11/92, at 74, 165; Ex. 1.

1 complete and one partial print from her living room.²¹ He also lifted a partial and three complete
2 prints from the bathroom; he lifted the three complete prints from the showerhead, bathtub, and the
3 ledge behind the bathtub.²² Trooper Brant linked the showerhead print to Mr. Siehl.

4 Nearly a month after Ms. Siehl's death, police located her car.²³ Trooper Brant collected
5 fibers and three partial fingerprints from the car and submitted the fibers to the Southwest Crime
6 Laboratory for testing.²⁴ Trooper Brant examined the fingerprints and excluded Mr. Siehl.²⁵
7 Similarly, Mr. Ermlick examined the hairs and excluded Mr. Siehl as a possible donor.²⁶ Mr.
8 Ermlick also examined a hair recovered very near the bathroom door (item no. 9) and excluded Mr.
9 Siehl as a possible donor.

10 Eager to identify the assailant, investigators collected and submitted more than eighty items
11 of evidence to the Southwest Crime Laboratory.²⁷ Items significant to Mr. Siehl's instant motion for
12 DNA testing include:

- 13 • the twelve bloodstains (item nos. 21-32);
- 14 • the bloodstained green rag (item no. 20);
- 15 • the bloodstained knife from the kitchen (item no. 11);
- 16 • the cigarette butt (item no. 79); and
- 17 • the telephone and cable cords.

18 **D. Trial**

19 The critical issue at trial was the perpetrator's "identity." For instance, during opening
20 statements, the Commonwealth stated:

21 _____
22 ²¹NT, Trial, 5/11/92, at 170-71.

23 ²²Id. at 174-75.

24 ²³NT, Trial, 5/14/92, at 120.

25 ²⁴NT, Trial, 5/12/92, at 5.

26 ²⁵Id. at 39.

27 ²⁶Id. at 10.

28 ²⁷Id. at 13-17.

1 We ask you to keep focused really on three things. Did a murder occur; was there a
2 death? **Who committed the murder? And is there evidence that Mr. Siehl is the**
3 **person that committed that murder and killed his wife?** And why was the murder
4 committed?²⁸

5 Trial counsel's opening statements also highlight the "identity" issue:

6 You won't hear the District Attorney emphasize these three pieces of evidence
7 because these [three] blood stains did not come from the defendant, Kevin Siehl.
8 And you won't hear the District Attorney emphasize these three pieces of evidence
9 because these blood stains did not come from the other two suspects whose blood
10 was collected for comparison.

11 Ladies and gentlemen, the police don't know who this blood belongs to. All they can
12 tell you is that those three pieces of evidence most likely came from the same
13 person.²⁹

14 Prosecutors argued Mr. Siehl killed his ex-wife because they had material problems and because she
15 dated other men.³⁰ Mr. Siehl, on the other hand, argued the police failed to thoroughly investigate
16 two other plausible suspects—Frank Willis and Robert Prebehalla.³¹

17 **1. The Prosecution's Case**

18 Because no one witnessed Ms. Siehl's murder, this forced the Commonwealth to prove the
19 assailant's identity by relying on weak circumstantial evidence and specious or exaggerated forensic
20 fingerprint evidence. Specifically, the Commonwealth relied on false fingerprint testimony,
21 questionable and exaggerated serological testimony, and testimony from an alternate suspect who
22 police assaulted before he finally told them Mr. Siehl allegedly made incriminating comments to
23 him.

24 **a. The Serology Testimony**

25 The Commonwealth presented Mr. Ermlick as its serological expert. Mr. Ermlick was well-
26 credentialed; he had a bachelor's degree in chemistry, a master's degree in forensic chemistry, and
27

28 ²⁸NT, Trial, 5/11/92, at 17 (emphasis added).

²⁹Id. at 19.

³⁰Id. at 10.

³¹Id. at 20-21.

1 FBI and other law enforcement training in genetics and DNA analysis.³² The Commonwealth used
2 Mr. Ermlick's testimony to establish three critical points: (1) a bloodstain from the bathroom (item
3 no. 22) could have only come from Mr. Siehl; (2) Mr. Siehl's shoes (item no. 67) had human blood
4 on them; and (3) a kitchen knife (item no. 11) had human blood on it. The Commonwealth used Mr.
5 Ermlick's testimony to argue that the blood evidence not only identified the murder weapon (i.e., the
6 knife), it implicated Mr. Siehl in his ex-wife's murder. Thus, the blood evidence played a critical
7 role in Mr. Siehl's conviction.

8 Mr. Ermlick, however, presented misleading and incomplete testimony. Notably, he
9 repeatedly claimed blood grouping tests can individualize bloodstains. Likewise, he opined Mr.
10 Siehl had human blood on his shoes—despite the fact he failed to conduct confirmatory blood tests.
11 Finally, his reports and testimony failed to inform trial counsel and the jury that blood samples
12 recovered from the crime scene could have originated from the two alternative suspects—Robert
13 Prebehalla and Frank Wills. As a result, there are many questions left unanswered by Mr. Ermlick's
14 serological testing—answers which can be conclusively answered with today's DNA technology.

15 (1) Bathroom Bloodstains

16 Johnstown and Pennsylvania State Police submitted over eighty items of evidence; of these,
17 twenty tested positive for human blood; these included item numbers 15 (Ms. Siehl's bra), 16 (Ms.
18 Siehl's shorts), 17 (Ms. Siehl's pink halter top), 18 (bath towel), 19 (bath towel), 21-32 (twelve
19 blood samples from bathroom), 44 (white panties), 45 (white dress), 79 (cigarette butt).³³ Of these
20 twenty items, twelve included bloodstains from Ms. Siehl's bathroom and bathroom door (items no.
21 21-32).³⁴ Of these bloodstains, Mr. Ermlick testified he tried to **individualize** each bloodstain: "As
22 I have mentioned already, what we are trying to do is individualize a blood stain."³⁵

24 ³²Id. at 5.

25 ³³Ex. 1.

26 ³⁴NT, Trial, 5/12/92, at 40.

27 ³⁵Id. at 29; see also id. at 25 ("We will start out, first of all, doing the enzymes and
28 then we will apply the ABO blood grouping and then we will generate profiles based upon this
information and compare these profiles to the known profiles from the victim and the suspects to try

1 Of the twelve bloodstains (items no. 21-32), Mr. Ermlick said items 21, 23, 24, 25, 26, 27,
 2 28, 29, 30, and 31 came from Ms. Siehl,³⁶ while item 22 came from Mr. Siehl.³⁷ The following
 3 exchange between Mr. Ermlick and the Commonwealth captures this point:

4 Commonwealth: Now, Mr. Ermlick, of the item numbers that appear on page
 5 five of your report starting with 15 and ending with 79 how
 6 many different individuals were responsible for those blood
 groups?

7 Mr. Ermlick: It would appear that based on what I see I can only see two
 8 different blood groups there. I only have evidence of two
 different blood groups.

9 Commonwealth: So how many different individuals were responsible for
 10 depositing blood at the crime scene?

11 Mr. Ermlick: Based upon the information that I have... I would say that
 12 there were two people.

13 Commonwealth: And who were those two individuals.

14 Mr. Ermlick: ... I would say the individuals would be the victim which
 15 would be Christine Siehl, and the suspect which would be Mr.
 16 Siehl.³⁸

17 With respect to item 22, Mr. Ermlick premised his opinion on the fact six enzymes present in Mr.
 18 Siehl's blood were also identified in item 22:

19 **Item 22 and Mr. Siehl's Blood Characteristics**

	ABO	PGM	EST	EAP	AK	ADA
20 Item No. 22	A	1+	1	B	1	2-1
21 Item No. 46 (Mr. Siehl)	A	1+	1	B	1	2-1 ³⁹

22 and determine **who or from where certain spots of blood came from.**) (emphasis added); *id.* at
 23 39 ("was not enough stain there to determine the species of origin or to individualize those stains.").
 An "item is individualized when it can be described in such a way that no other item in the universe
 24 is like it, even items identified as being similar." Inman & Rudin, *supra*, at 4.

25 ³⁶NT, Trial, 5/12/92, at 40, 43.

26 ³⁷*Id.* at 43

27 ³⁸*Id.* Mr. Ermlick provided similar testimony later during re-direct examination. *Id.*
 at 75.

28 ³⁹Ex. 1.

1 Mr. Ermlick's testimony was significant; it placed Mr. Siehl's blood at a bloody murder scene; a
2 murder which the Commonwealth claimed he committed.

3 Mr. Ermlick's testimony, however, exceeded conventional serology's parameters; serology
4 cannot individualize a bloodstain to an individual:

5 True individualization of a specimen of blood would mean that a sufficiently large
6 number of factors could be typed so that nobody else in the world would have the
7 particular combination of blood types found. At the present time, this is impossible,
8 and it will probably be impossible for the foreseeable future. Individualization can
be **approached**, however, by typing as many factors as possible. The more factors
that can be typed, the smaller the number of people whose blood could have the
combination of types found.⁴⁰

9 On cross-examination, Mr. Ermlick refused to conceded this point:

10 Trial Counsel: ... You said that from your experience and from this profile
11 that the blood you found belonged to two people, Christine
Siehl and Kevin Siehl; isn't that what you said?

12 Mr. Ermlick: Yes, I did.

13 Trial Counsel: Now, that's not true, Mr. Ermlick; is it? You can't make that
14 statement.

15 Mr. Ermlick: I think I can.

16 Trial Counsel: Oh, you think you can?

17 Mr. Ermlick: Yes, sir, I do because what I have to do is I look at all of the
18 profiles, I look at all of the blood groupings. The only
19 difference that I find is in the ADA on the one particular item
20 which is consistent with Mr. Siehl. I find no other foreign
blood groups there. Now, granted there are areas where I was
unable to detect stains. But the fact of the matter is that
which was detectable was certainly consistent with the both
of them and would not indicate a third party.⁴¹

21 Mr. Ermlick reinforced his opinion during another colloquy with trial counsel:

22 Trial Counsel: You were unable to individualize these stains specifically to
23 either the victim or the defendant; isn't that true?
24
25

26 ⁴⁰PETER DE FOREST ET AL., FORENSIC SCIENCE: AN INTRODUCTION TO
27 CRIMINALISTICS 231 (1983) (emphasis in original).

28 ⁴¹NT 5/12/92, at 45-46.

1 Mr. Ermlick: No, that's not true at all.⁴²

2 Contradictorily, after supposedly individualizing item 22 to Mr. Siehl, Mr. Ermlick testified
3 that one in two hundred people would have his blood types.⁴³ Thus, in a city the size of New York
4 (8, 214,426 people),⁴⁴ 40,000 people may share Mr. Siehl's genetic markers. Moreover, in a county
5 the size of Cambria County (152,598),⁴⁵ 763 people could possibly share Mr. Siehl's genetic
6 markers.

7 Moreover, Mr. Ermlick testified it was possible to identify at least eight additional enzymes
8 (i.e., CA, GLO, GD, HP, GC, TF, PI, and HB) to further individualize the samples. Adhering to the
9 Pennsylvania State Police Crime Laboratory's standard protocol, however, he did not test for these
10 enzymes.⁴⁶ Mr. Ermlick's failure to test for these enzymes raises serious questions regarding item
11 number 22's origin, and contradicts his stated objective of individualization. As explained:
12 "Individualization can be **approached... [only] by typing as many factors as possible. The more**
13 **factors that can be typed**, the smaller the number of people whose blood could have the
14 combination of types found."⁴⁷

15 Mr. Ermlick also presented misleading testimony. As noted, he testified only two
16 people—Mr. Siehl and Ms. Siehl—could have produced the bathroom bloodstains and other
17 bloodstains identified on items recovered from the crime scene.⁴⁸ Implicit in his conclusion was that
18 the bloodstains could not have come from two alternative suspects—Frank Wills and Robert

19
20 ⁴²Id. at 46. Mr. Ermlick finally conceded another person could have produced items
21 22, 26, 27, 28, and 29, and that he could not individualize these items to Mr. Siehl and Ms. Siehl.
22 Id. at 53, 55.

23 ⁴³Id. at 41.

24 ⁴⁴See <http://www.citypopulation.de/USA-NewYork.html> (last visited Oct. 16, 2007).

25 ⁴⁵See http://en.wikipedia.org/wiki/Cambria_County,_Pennsylvania (last visited Oct.
26 16, 2007).

27 ⁴⁶Id. at 55-56.

28 ⁴⁷De Forest et al., *supra*, at 231 (initial emphasis in original; later emphasis added);
see also Inman & Rudin, *supra*, at 37 ("the more places you look, the greater the chance of finding
a difference between two people.').

⁴⁸Id. at 48.

1 Prebehalla. Mr. Ermlick's serological data, however, does not support this conclusion; Robert
 2 Prebehalla cannot be excluded as a possible donor of bloodstains on item numbers 16 (Ms. Siehl's
 3 purple shirt), 18 (a bath towel), 19 (a bath towel), 21 (bathroom bloodstain), 44 (Ms. Siehl's white
 4 panties), and 79 (a cigarette butt from the bathroom):

	ABO	PGM	EST	EAP	AK	ADA
5						
6	Item No.	A	1+	1	BA	1
7	53					
7	Prebehalla					
8	Item No.	A	1+	1	-	-
9	16					1
9	Ms. Siehl's					
9	shorts					
10	Item No.	A	1+	1	-	1
11	18					1
11	Bath towel					
12	Item No.	A	-	-	-	-
13	19					
13	Bath towel					
14	Item No.	-	1+	1	-	1
15	21					1
15	Bathroom					
16	stain					
17	Item No.	A	-	-	-	-
18	44					1
18	White					
18	panties					
19	Item No.	A	-	-	-	-
20	79					

21 The serological data regarding item numbers 26 (blood patch collected from wall behind
 22 commode), 28 (a blood patch collected from a full length bathroom mirror), and 29 (a blood patch
 23 collected from the bathroom kitty litter box) also contradict the Commonwealth and Mr. Ermlick's
 24 claim that the bloodstains could have only come from Mr. Siehl or Mrs. Siehl. Notably, items
 25 numbers 26, 28, and 29 have PGM type 1; this does not correspond with Mr. or Mrs. Siehl's PGM
 26 type, which is 1+. ⁴⁹ Thus, if Mr. or Mrs. Siehl could not have produced these bloodstains, they must

28 ⁴⁹Ex. 1.

1 have come from a third party. Mr. Ermlick's misleading testimony supports Mr. Siehl's request for
2 DNA testing because it can resolve the substantial questions it created.

3 (2) **Bloodstain on Mr. Siehl's Shoes**

4 Mr. Ermlick provided misleading testimony regarding stains identified on Mr. Siehl's shoes.
5 Mr. Ermlick testified his presumptive blood tests on Mr. Siehl's shoes tested positive for the possible
6 presence of blood. Presumptive testing only indicates whether a substances is **possibly present**; it
7 cannot definitively state whether a substance is actually present. Consequently, because various
8 substances share certain qualities witnessed in human blood,⁵⁰ the probative value of a presumptively
9 positive blood test is very limited.⁵¹ Mr. Ermlick did not conduct confirmatory blood tests because
10 there "was not enough stain there to determine the species of origin or to individualize those
11 stains."⁵² Moreover, he failed to adequately document these alleged bloodstains when he failed to
12 photograph Mr. Siehl's shoes.⁵³

13 _____
14 ⁵⁰Dr. Ermlick identified several substances which can produce false positives: "There
15 are several substance [that can produce false positives for human blood]. I can give you some ideas
16 as to what we're dealing with, rust, oil, bleach, some apples will, beets will, beans, plant products."
17 NT, Trial, 5/12/92, at 39.

18 ⁵¹See PETER DEFOREST ET AL., FORENSIC SCIENCE: AN INTRODUCTION TO
19 CRIMINALISTICS 248 (1983) ("Most authorities agree that positive presumptive tests **alone** should
20 not be taken to mean that blood is definitely present. A positive tests suggests that the sample could
21 be blood...") (emphasis in original); *id.* at 249 ("Once a specimen has been identified as blood, it
22 is necessary to find out whether it is human or not.").

23 ⁵²*Id.* at 39.

24 ⁵³Acceptable "ways to document the basis for conclusions derived from evidence
25 examinations, include, but are not limited to: a narrative description of the examination process and
26 observations made, photographs, photocopies, diagrams, drawings, worksheets which provide spaces
27 or sections for the insertion of data or other observations made during various steps of the
28 examination process, or a combination of two or more of these approaches." AMERICAN SOCIETY
OF CRIME LABORATORY DIRECTORS, LABORATORY ACCREDITATION BOARD MANUAL 31 (2003); see
also *United States v. Monteiro*, 2005 U.S. Dist. LEXIS 39062, at *14 (D.Mass., Nov. 28, 2005)
("documentation to support conclusions must be such that in the absence of the examiner, another
competent examiner or supervisor could evaluate what was done and interpret the data.") (quoting
AMERICAN SOCIETY OF CRIME LABORATORY DIRECTORS, LABORATORY ACCREDITATION BOARD
MANUAL 29 (1997)). According to one forensic examiner:

[F]or our work to be valid, it must be verifiable to other examiners. This means that
other examiners must be able to repeat the work and come to the same conclusions.
Therefore, the data that we gather should provide a well-defined "roadmap" as to
what experiments we performed to answer the question(s) posed, what data was
gathered, and a clear demonstration of the evidence from which we supported our

1 Despite failing to conduct confirmatory blood tests, Mr. Ermlick testified he was certain the
2 stains were in fact human bloodstains; Mr. Ermlick based his opinion on his experience and visual
3 acuity: “[I]t’s been my experience that whenever I combine the presumptive test with the visual
4 examination and I have gotten a positive presumptive test along with what appears to be blood
5 visually, it has turned out to be blood through the course of my experience[.]”⁵⁴ Mr. Ermlick
6 reiterated his opinion on re-direct:

7 Commonwealth: In... your years of experience, is there any relationship
8 between times when you find blood presumptive for blood
9 and there is enough left for you to determine whether or not
10 it is blood?

11 Mr. Ermlick: Yes. It’s been my experience that when there is enough that
12 is, in fact, blood or it has turned out to be blood.⁵⁵

13 **(3) Additional Questions**

14 A thorough review of the police and crime laboratory report raises additional questions
15 regarding the accuracy of Mr. Ermlick’s blood testimony. According to one police report, Sgt.
16 Wagner’s December 30, 1991 (Johnstown) police report, Mr. Ermlick informed him that the
17 bloodstains identified on items 18 (bath towel) and 23 (bathroom door jam) were consistent with Mr.
18 Siehl’s blood:

19 This writer spoke with Scott Ermlick who is the forensic scientist who is doing all
20 of the analysis on the evidence from the SIEHL homicide. He stated that he did find
21 blood on the door jam which is consistent with that of KEVIN SIEHL. He stated that
22 he also found blood on the towel which is consistent with Kevin SIEHL. ERMLICK
23 suggested that the blood from the towel be sent to Maryland to Sel Marc [sic] for
24 D.N.A. testing.⁵⁶

25 Curiously, despite his statement to Sgt. Wagner, it is obvious from Mr. Ermlick’s official serological
26 report that items 18 and 23 could not have come from Mr. Seihl; the ADA enzymes from both

27 conclusion(s). This mechanism of communication among scientists is a substantial
28 part of the process of verification.
29 Bruce Moran, *Photo Documentation of Toolmark Identifications—An Argument in Support*, 35 AFTE
30 J. 174, 181 (2003).

31 ⁵⁴Id.

32 ⁵⁵Id. at 73-74.

33 ⁵⁶See Johnstown Police Dep’t, Supplement Rpt., dated December 30, 1991, by Sgt.
34 L. J. Wagner. Sgt. Wagner meant to refer to Cellmark Laboratories.

1 samples exhibited a "1" subtype, while Mr. Siehl's blood exhibits a "2-1" blood type.

	ABO	PGM	EST	EAP	AK	ADA
3 Item 18	A	1+	1	-	1	1
4 Item 23	A	1+	1	B	1	1
5 Mr. Siehl	A	1+	1	B	1	2-1

6 As Mr. Ermlick, himself, conceded: "Now, another important thing to remember is that if the bloods
7 **differ in any of these systems they are different.** To match they have to match in all or they are
8 not considered to be the same."⁵⁷ Again, these facts raise serious questions about Mr. Ermlick's
9 blood work.

10 (4) No Pre-trial DNA Testing

11 According to Mr. Ermlick's trial testimony, DNA testing could not be performed for two
12 reasons: (1) the samples were too small for RFLP DNA testing; and (2) the Pennsylvania State Police
13 (PSP) had yet to incorporate DNA technology into its crime laboratory system; the PSP was
14 projected to have DNA technology by August 1992—three months after Mr. Siehl's trial.⁵⁸

15 Mr. Ermlick's trial testimony, however, is not entirely accurate. On August 1, 1991 Mr.
16 Ermlick urged Sgt. Wagner (Johnstown Police Department) to perform DNA testing on several
17 items, and he identified the likely cost of the DNA testing:

18 ERMLICK suggested that the blood from the towel be sent to Maryland to Sel Marc
19 [sic] for D.N.A. testing. He stated that the evidence would be packaged by the crime
20 lab and then transported to Sel Mac [sic] by the investigating officers. He stated that
the cost is \$450.00 per sample and he suggested a total of five samples be done for
a cost of \$2,250.00.⁵⁹

21 Sgt. Wagner sought approval for the DNA testing; on August 5, 1991 the Cambria County District
22 Attorney's Office refused to pay for the DNA results:

23 5 Aug. 91, ... A call was received from Brad BLANKTON, who is the two year law
24 student interning with the DA's office. He stated that he spoke with DA Tim
CREANY and that CREANY said he would not authorize payment for the DNA

25 ⁵⁷NT, Trial, 5/12/92, at 32.

26 ⁵⁸NT, Trial, 5/12/92, at 47-48.

27 ⁵⁹Johnstown Police Dep't, Supplement Rpt., dated December 30, 1991, by Sgt. L. J.
28 Wagner.

1 testing. It was suggested to BLACKINGTON that the costs be split in two ways with
2 his office and with this department.⁶⁰

3 Sgt. Wagner subsequently called Johnstown Police Chief, Linda Weaver, who suggested the cost
4 could possibly be split three ways between the Cambria County District Attorney's Office, the
5 Johnstown Police Department, and the Cambria County Coroner's Office.⁶¹ Sgt. Wagner then called
6 John Barron of the Cambria County Coroner's Office, who "suggested that DNA testing only be
7 done on the blood of Kevin SIEHL as opposed to all other persons as suggested previously by the
8 crime lab."⁶² Mr. Barron told Sgt. Wagner he would contact Mr. Ermlick. When Mr. Barron spoke
9 with Mr. Ermlick, Mr. Ermlick informed him "there will be no DNA testing done because there were
10 no samples left to be tested."⁶³ When Mr. Barron relayed this information to Sgt. Wagner and Sgt.
11 Cancelliere,

12 SGT. CANCELLIERE immediately called Scott Ermlick. Ermlick stated that he was
13 not sure if there was going to be any DNA testing done so he used up all of the
14 samples for blood grouping and there is not sufficient samples remaining to do DNA
15 testing.⁶⁴

14 (5) Impact of Blood Testimony

15 In short, Mr. Ermlick's testimony misled the jury into believing: (a) item number 22 was in
16 fact Mr. Siehl's blood; (b) of the three likely suspects—only Mr. Siehl's blood was recovered from
17 the bloody murder scene; and (c) there was human blood on Mr. Siehl's shoes. The Commonwealth
18 hammered home these points during its opening and closing statements:

19 [T]here is a small patch of the defendant's blood on the outside of the door...

20 ...

21 ⁶⁰Id.

22 ⁶¹Id.

23 ⁶²Id.

24 ⁶³Id.

25 ⁶⁴Id. A significant question which needs to be answered is why Mr. Ermlick would
26 suggest DNA testing on August 1, 1991—clearly implying there were sufficient samples to test for
27 certain items—and then, on August 5, 1991, inform detectives he consumed all the relevant biological
28 samples. That Mr. Ermlick issued his official serological report on August 6, 1991, supports the
notion he completed his serological testing on or before August 1, 1991 when he recommended DNA
testing to Sgt. Wagner. The date of his report also raises the question of why he told Sgt. Wagner
items 18 and 22 were consistent with Mr. Siehl's blood, when in fact they were not.

1 Scott Ermlick... gave us a lecture on blood grouping and genetic markers. The
2 bottom line of that lecture was there were two people's blood found in that
3 apartment, the victim's and the defendant's.

4 ...
5 Mr. Ermlick said that there was a substance on those tennis shoes that was
6 presumptively positive for blood; there just wasn't enough to test it... He also said in
7 his experience when he looks at something and he does a test and it's presumptively
8 positive for blood when he does have enough it turns out to be blood.⁶⁵

9 Without question, Mr. Ermlick's misleading blood testimony inevitably affected—adversely—the
10 jury's perception of Mr. Siehl's culpability. E.g. Little v. Streater, 452 U.S. 1, 14 (1981) (“Unlike
11 other evidence that may be susceptible to varying interpretation or disparagement, blood test results,
12 if obtained under proper conditions by qualified experts, are difficult to refute.”).

13 (6) Post Conviction: Newly
14 Discovered Evidence

15 Mr. Siehl developed new evidence calling into question the reliability and accuracy of Mr.
16 Ermlick's serological results. In particular, he developed new evidence regarding item numbers 21
17 and 22—two bloodstains collected from the door frame of the bathroom door.⁶⁶ Mr. Ermlick testified
18 and reported that these two bloodstains originated from **two different sources** because both
19 bloodstains presented with different genotypes for the ADA enzyme; item number 21 presented with
20 ADA 1, while item number 22 presented with ADA 2-1.⁶⁷

21 During state post-conviction proceeding, Mr. Siehl retained renowned forensic expert Herb
22 MacDonell to review the Commonwealth's forensic evidence. Mr. MacDonell examined item
23 numbers 21 and 22 and concluded that they **could not** have originated from different sources due
24 to the similarities in their patterns and directionality. Mr. MacDonell stated:

25 It has been reported that the characteristics of the blood in these two bloodstains is
26 different and, therefore, they must have come from two different individuals. While
27 this is a very remote possibility, I find it so unlikely as to seriously question the
28 accuracy of that determination. Both of these bloodstains struck the wall with a near
parallel left to right configuration. Furthermore, the internal angle of impact to the

25 ⁶⁵NT, Closing Arguments, 5/16/92, at 30, 40, 40; see also NT, Opening Statements,
26 5/11/92, at 13.

27 ⁶⁶Ex. 7.

28 ⁶⁷Ex. 1.

1 wall or door casing is very acute. The very small size of the two bloodstains suggests
2 that they were the result of their being cast off from an instrument or, less likely, the
3 result of an impact that occurred at the same place in space, with the same impact
4 force, and with identical directionality.

5 Based upon my experience I conclude that [the] two small bloodstains are the result
6 of a single event and they came from the same source. Therefore, I question the
7 accuracy of any report that concluded these two bloodstains came from two different
8 individuals. The probability that whatever mechanism produced one of these
9 bloodstains from one individual could be duplicated by some mechanism by another
10 individual's movement to duplicate the same size and impact angle to the wall of the
11 second bloodstain is so unlikely that... it is an impossibility. I feel that it is far more
12 likely that there was some kind of contamination to one or both of these samples
13 prior to their being tested than it is that they actually came from two different
14 individuals.⁶⁸

15 Mr. MacDonell's expert opinion raises substantial questions regarding Mr. Ermlick's
16 serological results. As Mr. MacDonell intimated, a significant likelihood exists that one of these two
17 bloodstains was contaminated and produced erroneous results. This is critical because the
18 Commonwealth premised much of its case on item number 22. As mentioned, Mr. Ermlick testified
19 and reported that Mr. Siehl's blood sample possessed the same six blood markers (or enzymes) as
20 item number 22. The Commonwealth argued item number 22 proved that Mr. Siehl murdered his
21 wife because police recovered his blood from the murder scene. At this point, however, it is
22 apparent that item number 22 may have been contaminated and produced erroneous results falsely
23 incriminating Mr. Siehl. This concern further supports Mr. Siehl's request for DNA testing.

18 (7) Advancing DNA Technology

19 The probative value of the serology evidence supporting Mr. Siehl's conviction is limited and
20 raised more questions than it could answer; so did Mr. Ermlick's exaggerated, contradictory, and
21 misleading testimony. Thanks to advancing DNA technology, however, today's DNA technology
22 can now answer many of the questions created and left unanswered by Mr. Ermlick's rudimentary
23 serological examinations and suspect testimony.⁶⁹

24
25 ⁶⁸Ex. 2, at 12a.

26 ⁶⁹E.g., Micah A. Luftig & Stephen Richey, *DNA and Forensic Science*, 35 NEW ENG.
27 L. REV. 609, 612 (2001) ("DNA evidence can be used to overturn previous serologically based guilty
28 verdicts because of its higher discriminatory power."); NAT'L INST. OF JUST., DEP'T OF JUST., *THE
FUTURE OF FORENSIC DNA TESTING* 14 (Nov. 2000) ("Criminal cases require a higher standard of
proof. Although a combination of blood groups and serum proteins often gave small probabilities

1 **b. Fingerprint Testimony**

2 The Commonwealth presented Trooper Brant as its fingerprint expert; it used his testimony
3 to establish two critical points: (1) the fingerprint recovered from the bathroom showerhead came
4 from Mr. Siehl; and (2) Mr. Siehl deposited this fingerprint at or near the time of Mrs. Siehl's
5 murder.⁷⁰

6 **(1) The Showerhead Fingerprint**

7 Mrs. Siehl's landlord discovered her body in her bathroom with the shower water running.
8 The Commonwealth argued the perpetrator turned the shower on immediately after murdering Mrs.
9 Siehl. To support its argument, the Commonwealth presented Trooper Brant who testified he
10 recovered several fingerprints from Mrs. Siehl's bathroom, including one from the showerhead.
11 While several prints were not suitable for identification purposes, the showerhead print "was
12 extremely clear" and identifiable.⁷¹ Trooper Brant identified the print as Mr. Siehl's right thumb
13 print.⁷²

14 More importantly, because Mr. Siehl had access to Mrs. Siehl's residence, and had in fact

15 _____
16 for a match between two unrelated individuals, and were sometimes used in criminal investigations,
17 more powerful methods were desirable."); NAT'L INST. OF JUST., DEP'T OF JUST., POSTCONVICTION
18 DNA TESTING: RECOMMENDATIONS FOR HANDLING REQUESTS 40 (Sept. 1999) ("where serology
at the time was inconclusive or not highly discriminating, and new, more discriminating tests are
now available, the prosecutor should order DNA testing.").

19 ⁷⁰At trial, Mr. Siehl entered into a stipulation with the Commonwealth where both
20 parties conceded that Mr. Siehl created the fingerprint lifted from the showerhead. NT, Trial-Trp.
21 Brant, 5/11/92, at 156-58. Trial counsel, however, only entered into the stipulation after his retained
22 forensic expert, Warren Stewart Bennett, confirmed Trooper Brant's conclusion that the print could
23 have only come from Mr. Siehl. During post-conviction proceedings, Mr. Siehl uncovered new
24 evidence which revealed that Warren Stewart Bennett was a fraud and unqualified to review
25 fingerprint evidence—or any forensic evidence for that matter. In particular, Mr. MacDonell offered
26 a scathing review of Mr. Bennett's alleged expertise and opined that he is clearly not qualified to
serve as a fingerprint expert. Ex. 2, at 6a-12a. Moreover, the Commonwealth knows Mr. Bennett
is a fraud because it contacted Mr. MacDonell in 1993 to inquire about his knowledge of Mr. Bennett
and whether Mr. Bennett previously served as his research assistant. In response to the
Commonwealth's inquiry, Mr. MacDonell drafted another scathing report regarding Mr. Bennett's
professed expertise in bloodstain pattern interpretation. Ex. 8. In short, had trial counsel hired a
qualified fingerprint examiner (like Mr. MacDonell), who would have concluded the showerhead
print could not have come from Mr. Siehl, trial counsel would not have entered into the stipulation
with the Commonwealth.

27 ⁷¹NT, Trial-Trp. Brant, 5/11/92, at 181.

28 ⁷²Id. at 177.

1 been in her residence the night of her murder, the Commonwealth had to establish that he created
2 the print at or near the time of her murder—and not at a previous time. To get over this hurdle, the
3 Commonwealth did three things: first, it introduced evidence Mr. Siehl never showered at Mrs.
4 Siehl's residence;⁷³ second, it introduced Trooper Brant's testimony that the position of Mr. Siehl's
5 thumb indicated he must have been outside the shower when he created the print:

6 Commonwealth: Does [the fingerprint's position] indicate anything to you?

7 Trooper Brant: That would indicate to me that when Mr. Siehl touched that
8 showerhead, he was on the outside of the tub, not inside
taking a shower.⁷⁴

9 and third, it introduced Trooper Brant's testimony that he could time-date the showerhead fingerprint
10 by examining whether it started to deteriorate:

11 From my experience and articles that I have read on fingerprinting, fingerprints
12 usually start to deteriorate after 24 to 36 hours. I, myself, did not think that [the
13 showerhead] print... started to deteriorate because you can see the ridge
characteristics. It's almost identical to the inked impression.⁷⁵

14 (2) Impact of Fingerprint Testimony

15 The confluence of these facts created the clear and damning inference Mr. Siehl must have
16 created the print at the time of the murder. The Commonwealth emphasized Trooper. Brant's
17 fingerprint testimony during opening statements:

18 Now [Trooper Brant] found a fingerprint. This fingerprint is very important because
19 it's Mr. Siehl's fingerprint. It is a direct piece of evidence that ties Mr. Siehl to the
murder scene... Kevin Siehl's fingerprint was found on the shower nozzle in a
20 position which will indicate... he had to be outside of the shower to turn the nozzle.
In other words, this is not a causal fingerprint, but the point of a murder.⁷⁶

21 The Commonwealth also emphasized his testimony during closing arguments:

22 Trooper Brant's testimony resulted in four named findings:... Number three, without
23 a doubt and no question, no questions whatsoever, no doubt whatsoever, the
thumbprint, the upside down thumbprint on that shower head, belonged to the

24 ⁷³According to police, Mr. Siehl originally told investigators that he never showered
25 at Mrs. Siehl's residence (an assertion he later denied). NT, Trial-Sgt. Cancelliere, 5/12/92, at 17.

26 ⁷⁴NT, Trial-Trp. Brant, 5/11/92, at 180.

27 ⁷⁵Id. at 174; NT, Trial-Trp. Brant, 5/12/92, at 29 ("All of the reference books and
writings state that they start to deteriorate after 24 to 36 horse").

28 ⁷⁶NT, Opening Statements, 5/11/92, at 12.

1 defendant, Kevin Siehl. He also said that that thumbprint hadn't started to
2 deteriorate. Finally, he... testified that that thumbprint was made while the defendant
was standing outside of the shower.⁷⁷

3 Without question, then, Trooper Brant's fingerprint testimony influenced the jury's decision to
4 convict Mr. Siehl. E.g., Davis v. Mississippi, 394 U.S. 721, 727 (1969) ("fingerprinting is an
5 inherently more reliable and effective crime-solving tool than eyewitness identifications or
6 confessions").

7 (3) Post-Conviction: Newly
8 Discovered Evidence

9 The Commonwealth presented specious fingerprint evidence. During state post-conviction
10 proceedings, Herb MacDonell reviewed fingerprint evidence and Trooper Brant's testimony.⁷⁸ After
11 reviewing the evidence and testimony, Mr. MacDonell made two conclusions: (1) Trooper Brant
12 misidentified the showerhead fingerprint; and (2) Trooper Brant's time-dating testimony was
"absurd" and lacked scientific foundation.

13 With regard to the misidentification, Mr. MacDonell wrote: "I have examined the developed
14 latent fingerprint and compared it to the right thumb print on the known fingerprint card of Kevin
15 Siehl and conclude that the developed latent fingerprint could not have been made by Mr. Siehl's
16 right thumb."⁷⁹ In particular, Mr. MacDonell explained that he identified a "gross dissimilarity"
17 between Mr. Siehl's right thumb print and the latent showerhead print.⁸⁰ In regards to Trooper
18 Brant's time-dating testimony, Mr. MacDonell stated: "I find []his statement absurd."⁸¹ He added:

19
20 How can anyone make a judgement [sic] of an unknown? Specifically how could
21 Brant [sic] know the original condition of the latent fingerprint, which is a
22 requirement to measure its alleged deterioration? Latent fingerprints which were
23 deposited on metal are known to allow excellent processing after months if not years.
24 Brant also stated..., "From my experience and articles I have read on fingerprinting,
25 fingerprints usually start to deteriorate after 24 to 36 hours." **I would like Trooper
26 Brant [sic] to cite his references because that is contrary to the classic reference**

24 ⁷⁷NT, Trial, 5/16/92, at 39.

25 ⁷⁸Ex. 2.

26 ⁷⁹Id.

27 ⁸⁰Id.

28 ⁸¹Id.

1 **in this discipline.**⁸²

2 A leading forensic science textbook concurs with Mr. MacDonell:

3 ... time-dating, is a perturbing perplexity... In fingerprinting, for example, when a
4 latent fingerprint is found at a crime scene that was previously accessible to the
5 person whose inked print matches the latent print, it is imperative to resolve whether
6 the latent print was placed at the location at some other time than when the crime was
7 committed. **But fingerprinting is not yet up to the task of answering this
8 questions.**

9 FORENSIC SCIENCE: AN INTRODUCTION TO SCIENTIFIC AND INVESTIGATIVE TECHNIQUES vii (Stuart
10 H. James & John J. Norby eds. 2d 2005) (emphasis added).⁸³ Likewise, as one recent journal
11 explained, there are simply too many variables to account for to accurately time-date a fingerprint:

12 Examiners in the field know that latent prints are affected by many different factors.
13 However, the intricacies of their combined effects may never be fully understood.
14 Subject factors include stress, metabolism, diet, health, age, sex, occupation, quantity
15 and quality of finger contamination, and so forth. Transfer conditions include the
16 surface texture, physio-chemical structure, curvature, temperature, temperature
17 difference, pressure, contact time, and so forth. Some environmental factors include
18 temperature, humidity, ultraviolet and other radiation, dust, precipitation,
19 condensation, friction (handling or other natural movement), air circulation,
20 atmospheric contamination, and so forth. To reliably test the effects of one variable,
21 all others must be held constant. This is virtually impossible to achieve with so many
22 different factors, many of which are frequently unknown to even the most
23 experienced examiners. Even if the effects of changing just three separate factors
24 could be fully understood and documented, the effects of exposure to variables of all
25 three at the same time would not necessarily be predictable.

26 Kasey Wertheim, *Fingerprint Age Determination: Is There Any Hope?*, 53 J. FORENSIC
27 IDENTIFICATION (Jan./Feb. 2003), at www.crime-scene-investigator.net/AgeOfFingerprints.html (last
28 visited Oct. 15, 2007); accord ANDRE A. MOENSSENS, FINGERPRINT TECHNIQUES 130 (1971) (“It is
not possible to determine accurately how long a latent impression will remain on an object or how
old an impression is.”).

(4) Advancing DNA Technology

⁸²Id. (emphasis added).

⁸³See also *Cook v. State*, Tex. Cr. App. (1996) (“The State’s witness testified they were six to twelve hours old, which placed appellant at the scene at the time the murder was committed. However, the witness, Sgt. Collard, admitted, in writing and in response to a grievance filed against him in 1978, his ‘expert opinion’ regarding the age of the fingerprints was not in fact an expert opinion, was a mistake which could not be supported by any scientific evidence or by any other latent fingerprint expert, and that the district attorney had pressured Collard to present the false and misleading evidence against Collard’s wishes.”) (emphasis added).

1 Trooper Brant's fingerprint testimony—like Mr. Ermlick's serology testimony—was false and
2 misleading; it misled the jury (to Mr. Siehl's detriment) and it raised serious questions regarding Mr.
3 Siehl's guilt. In particular, Mr. MacDonell "cast an extraordinary new light on" the
4 Commonwealth's fingerprint testimony. Miller v. Pate, 386 U.S. 1, 5 (1967) ("the Fourteenth
5 Amendment cannot tolerate a state criminal conviction obtained by the knowing use of false
6 evidence"); accord Napue v. Illinois, 360 U.S. 264 (1959). These questions, however, can now be
7 objectively studied and scientifically answered to determine whether in fact Mr. Siehl actually
8 murdered his wife.

9 2. Defense Case

10 Mr. Siehl denied murdering his wife and asserted an alibi defense. He admitted he had been
11 with Mrs. Siehl earlier in the evening, but that she was alive when he left her residence; he argued
12 she was murdered by someone else. Mr. Siehl's father and a neighbor testified to being on their
13 porches at 1:30 a.m. on the night of the murder. Both testified they saw Mrs. Siehl drive Mr. Siehl
14 up to his parents' home and drop him off at approximately 1:30 a.m.⁸⁴ Mr. Siehl's brother further
15 testified he saw him asleep on his parents' couch at 3 a.m.⁸⁵

16 Mr. Siehl also challenged the Commonwealth's claim he made incriminating statements to
17 other witnesses—particularly Mr. Prebehalla and his girlfriend Tammy Forsythe. Mr. Prebehalla—an
18 initial suspect in the murder—testified that on the morning of July 13, 1991, Mr. Siehl arrived at Mrs.
19 Forsythe's residence and complained about his ex-wife's relations with other men; Mr. Prebehalla
20 (and Mrs. Forsythe) testified Mr. Siehl eventually said he took care of her and removed her from his
21 life.⁸⁶ Mr. Siehl challenged Mr. Prebehalla's damning statements by introducing strong evidence
22 Johnstown Police coerced his statements from him—threatening him with jail time if he did not
23 cooperate. In particular, trial counsel introduced a November 27, 1991 statement signed by Mr.
24 Prebehalla which read in pertinent part:

25 ⁸⁴NT, Trial—Alonzo Siehl, 5/15/92, at 6; NT, Trial—Fred Cooper, 5/12/92, at 19.

26 ⁸⁵NT, Trial—Alonzo Siehl, Jr., 5/15/92, at 30.

27 ⁸⁶NT, Trial—Robert Prebehalla, 5/13/92, at 172-73; NT, Trial—Tammy Forsythe,
28 5/14/92, at 46, 49.

1 My name is Robert Prebehalla. I'm currently incarcerated at Blair County Prison.
2 On Thursday 21, 1991, Sergeant Angelo Cancelliere and Detective Lawrence Wagner
3 came to Blair County Prison and transported me to the Richland Municipal Building.
4 On the way to the building, I was punched several times by Wagner. They wanted
5 me to take a lie detector test. They repeatedly asked me questions like did you kill
6 [Christine Siehl]? Were you partying with Chris on Friday night? I refused to take
7 the test and I told the state police officers I was being forced to take the test. Both
8 Cancelliere and Wagner said if I didn't take the test, they would falsify evidence and
9 trump up charges against me.⁸⁷

6 Trial counsel introduced evidence that shortly after Sgts. Cancelliere and Wagner physically
7 assaulted him, Mr. Prebehalla gave a statement to the police which incriminated Mr. Siehl.⁸⁸ Trial
8 counsel also introduced medical evidence corroborating Mr. Prebehalla's statement—i.e., Blair
9 County jail medical records indicating Mr. Prebehalla requested medical assistance immediately after
10 he met with Sgts. Cancelliere and Wagner.⁸⁹

11 3. Verdict and Sentencing

12 On May 16, 1992 convicted Mr. Siehl of first-degree murder.⁹⁰ On May 18, 1992, the trial
13 judge held a sentencing hearing to determine whether Mr. Siehl would be sentenced to death, life
14 without parole, or life. After deliberating for less than an hour, the jury sentenced Mr. Siehl to life
15 in prison.⁹¹

16 III. Arguments

17 In 2002 the Pennsylvania legislature enacted 42 Pa.C.S.A. § 9543.1 which “permits an inmate
18 to seek DNA testing of evidence used to convict him where such testing may establish his innocence
19 of the crime(s) of conviction.” Commonwealth v. Heilman, 867 A.2d 542 (Pa.Super. 2005);
20 Commonwealth v. McLaughlin, 835 A.2d at 750. To qualify for testing, petitioners must satisfy
21 every prerequisite identified in § 9543.1. E.g., Commonwealth v. Smith, 889 A.2d 582, 583 (Pa.
22 Super. 2005). Mr. Seihl satisfies these prerequisites and is entitled to DNA testing.

23
24 ⁸⁷NT, Trial—Robert Prebehalla, 5/13/92, at 203.

25 ⁸⁸Id. at 205.

26 ⁸⁹Id. at 212-13.

27 ⁹⁰NT, Trial, 5/16/92, at 113-16.

28 ⁹¹NT, Penalty Hrg., 5/18/92, at 127-28.

1 **A. Mr. Siehl Can Specify the Evidence He Wants Tested and Demonstrate**
2 **How Exculpatory Results Would Establish His Innocence**

3 Pursuant to § 9543.1(c)(1)(I) and (c)(3)(ii)(A), Mr. Siehl must identify the evidence to be
4 tested and establish how exculpatory results would establish his innocence. E.g., Commonwealth v.
5 Smith, 889 A.2d 582 (Pa. Super. 2005). Mr. Smith satisfies these requirements. Exculpatory results
6 from the following items of evidence would establish Mr. Siehl's innocence.

7 **1. Bloodstains (item nos. 21, 23-32)**

8 The Commonwealth suggested these bloodstains—which were primarily from the bathroom
9 where the murder occurred—were from a third party—namely Mr. Siehl. STR or Y-STR testing can
10 identify the third party's genetic profile and determine whether in fact Mr. Siehl's blood is present
11 as suggested by Mr. Ermlick's rudimentary serological testing. If STR testing develops an
12 identifiable genetic profile—which excludes Mr. Siehl—the profile can be placed into CODIS and
13 compared with 4 million genetic profiles.⁹² Likewise, an identifiable profile can prove significantly

14
15
16 ⁹²CODIS is an FBI-created, national database that catalogues DNA profiles from
17 numerous sources, including, *inter alia*, federal and state convicts, persons who have been charged
18 in an indictment or information with a crime, DNA samples recovered from crime scenes, and from
19 relatives of missing persons. 42 U.S.C. § 14132(a); Banks v. United States, 490 F.3d 1178, 1181
20 (10th Cir. 2007). CODIS “allows State and local forensics laboratories to exchange and compare
21 DNA profiles electronically in an attempt to link evidence from crime scenes for which there are no
22 suspects to DNA samples of convicted offenders on file in the system.” H.R. Rep. 106-900(I), at 8
23 (2000), 2000 U.S.Code Cong. & Admin.News at pp. 2323, 2324.

24 DNA database systems which use CODIS contain two main criminal indexes and a
25 missing persons index. When a DNA profile is obtained and entered into CODIS's forensic (crime
26 scene) index, “the database software searches thousands of convicted offender DNA profiles
27 (contained in the offender index) of individuals convicted of offenses such as rape and murder.”
28 NAT'L INST. OF JUST., DEP'T OF JUST., USING DNA TO SOLVE COLD CASES (July 2002), *available*
at, www.ncjrs.gov/txtfiles1/nij/194197.txt. Similar to the Automated Fingerprint Identification
System (AFIS), CODIS “generates investigative leads in cases where biological evidence is
recovered from the crime scene. Matches made among profiles in the Forensic Index can link crime
scenes together; possibly identifying serial offenders.” U.S. DEP'T OF JUST., FEDERAL BUREAU OF
INVEST., CODIS: COMBINED DNA INDEX SYSTEM BROCHURE, at 2. As one court noted:

 CODIS can be used in two different ways. First, law enforcement can
match one forensic crime scene sample to another forensic crime
scene sample, thereby allowing officers to connect unsolved crimes
through a common perpetrator. Second, and of perhaps greater
significance, CODIS enables officials to match evidence obtained at
the scene of a crime to a particular offender's profile.

United States v. Kincaid, 379 F.3d 813, 819 (9th Cir. 2004).

1 probative if the same profile is developed from different items of evidence—i.e., a redundancy.⁹³
2 Specifically, redundant results would establish Mr. Siehl’s innocence. Moreover, if an STR profile
3 is developed—which excludes Mr. Siehl—he would the Commonwealth to run the profile through
4 CODIS to see if it can be linked to another offender; if linked to a previously convicted offender, this
5 would establish his innocence as well.

6 2. Fingernail Scrapings (items nos. 2-3)

7 The evidence clearly suggests Mrs. Siehl struggled with her assailant; this is why Dr. Yerger
8 clipped and collected her fingernails.⁹⁴ Mr. Ermlick only tested for the presence of human blood,
9 which he did not detect.⁹⁵ Due to Mr. Ermlick’s inadequate documentation, and trial counsel’s
10 ineffectiveness, Mr. Siehl is uncertain as to what methods Mr. Ermlick used (i.e., visual or chemical)
11 to detect the presence of human blood. STR and Y-STR testing can prove invaluable with fingernail
12 scrapings; Y-STR, in particular, can identify male DNA amidst a large quantity of female DNA—with
13

14 ⁹³A redundancy is when the same genetic profile is recovered from more than one
15 item of evidence. For instance, in Mr. Siehl’s case, if an identifiable profile—which excludes Mr.
16 Siehl—is obtained from Mrs. Siehl’s fingernail scrapings (item nos. 2-3), which matches a male
profile obtained from the hair removed from her fingernail (item no. 8), and a male profile obtained
from a bathroom bloodstain (item nos. 21-32), this would establish Mr. Siehl’s innocence.

17 Indeed, redundant results led to Nicholas Yarris’s death row exoneration; Mr. Yarris
18 spent twenty-two years on Pennsylvania’s death row for a crime he did not commit. Mr. Yarris was
convicted of a rape-murder and the evidence against him at trial included inculpatory statements and
multiple eyewitnesses placing him near the crime scene. See Yarris v. County of Delaware, 465 F.3d
129, 130-32 (3rd Cir. 2006) (describing evidence of guilt at trial in context of Yarris’s subsequent
Section 1983 action for wrongful conviction); Commonwealth v. Yarris, 549 A.2d 513, 518-19 (Pa.
1988) (direct appeal opinion outlines the evidence used to convict Yarris). Post-conviction DNA
20 testing uncovered the same male profile on three items—gloves found in the victim’s car, semen
stains found on the victim’s clothing, and scrapings of the victim’s fingernails. See Yarris v. County
21 of Delaware, 465 F.3d at 133. Faced with redundant proof that another man raped and murdered the
victim, the Delaware County District Attorney requested that Yarris’s conviction be vacated. Id.

22 ⁹⁴Police collected fingernail scrapings well before DNA evidence entered the criminal
23 justice system. E.g., Cupp v. Murphy, 412 U.S. 291, 292 (1973):

24 Suspecting that the spot might be dried blood and knowing that
evidence of strangulation is often found under the assailant’s
25 fingernails, **the police asked Murphy if they could take a sample
of scrapings from his fingernails.** He refused. Under protest and
26 without a warrant, the police proceeded to take the samples, which
turned out to contain traces of skin and blood cells, and fabric from
the victim’s nightgown.

27 (emphasis added).

28 ⁹⁵NT, Trial—Scott Ermlick, 5/12/92, at 21.

1 the male DNA coming from blood or epithelial (or skin) cells. It is likely the assailant's skin cells
2 may have transferred to the underside of Mrs. Siehl's fingernails. Many recent investigations or
3 exonerations have turned on STR or Y-STR tests performed on fingernail clippings.⁹⁶ If an
4 identifiable profile is developed—which excludes Mr. Siehl—this would establish his innocence.
5 Likewise, an identifiable profile—which matches a profile developed from another or several items
6 of evidence—would establish Mr. Siehl's innocence as well. Finally, if an exculpatory STR profile
7 is developed, Mr. Siehl would request the Commonwealth to run the profile through CODIS.

8 **3. Fingernail clippers (item no. 3)**

9 Dr. Yerger used the clippers to clip and collect Mrs. Siehl's fingernails. If Mrs. Siehl's
10 fingerprints had traces of the assailant's DNA, a portion of it may have transferred to the clippers
11 when they clipped the fingernails. Given there may be a minute amount of male DNA, Y-STR
12 testing can be performed to isolate any male DNA; or if there is a sufficient quantity for STR testing,
13 a full STR profile may be developed. If a profile is developed excluding Mr. Siehl, yet
14 corresponding with the profile developed from the actual fingernail scrapings (or other items of
15 evidence), this would establish Mr. Siehl's innocence. Similarly, if an STR profile is developed, Mr.
16 Smith would ask the Commonwealth to run it through CODIS.

17 **4. Hair from Mrs. Siehl's left fingernail (item** 18 **no. 8)**

19 Dr. Yerger collected a hair from underneath one of Mrs. Siehl's left fingernails. Mr. Ermlick
20 concluded it was inconsistent with Mr. Siehl's hair samples, while consistent with Mrs. Siehl's hair

21 ⁹⁶E.g., Prepared Remarks of Attorney General John Ashcroft, *DNA Grant*
22 *Announcements*, Pgh., PA., Sept. 20, 2004, available at,
23 www.usdoj.gov/archive/ag/speeches/2004/ag092004_dna.htm (last visited Oct. 21, 2007) (“Across
24 the country, we have seen critical DNA evidence come from a few cigarette butts, from a child
25 victim's blood on the baby blanket in the offender's possession, **and from underneath a victim's**
26 **fingernails after she fought her assailant in terror.**”) (emphasis added); Anemona Hartcollis,
27 *DNA Testing May Help in 1990 Case*, N.Y. TIMES, Oct. 23, 2007 (discussing how a New York trial
28 judge ordered prosecutors to subject a victim's fingernail scrapings to DNA testing to determine
whether DNA links a defendant to a 1990 murder); *DNA Links Man to 2004 Sex Grab*,
Goldcoast.com, Oct. 7, 2007, at [www.goldcoast.com.au/article/2007/10/04/3432_gold-coast-
news.html](http://www.goldcoast.com.au/article/2007/10/04/3432_gold-coast-news.html) (last visited Oct. 14, 2007); Melissa Vargas, *Man's DNA Was Found Under Nails of*
Victim, FT. WORTH STAR-TELEGRAM, Oct. 10, 2007, at B1; *State Trooper Arrested in 2006*
Blairsville Dentist Murder Case, PGH. TRIB. REV., Sept. 27, 2007, at
www.pittsburghlive.com/x/pittsburghtrib/news/mostread/s_529717.html (last visited Oct. 14, 2007).

1 samples; Mr. Ermlick did not compare the hair with Robert Prebehalla's hair samples.⁹⁷ Thus, it is
2 conceivable the hair came from a third party who Mrs. Siehl had intimate contact with prior to her
3 death—i.e., the assailant's hair could have transferred to her fingernail during the struggle.
4 Depending on whether the hair has a root or not, the hair can be subjected to STR testing (if there
5 is a root) or mtDNA tests (if there is no root).⁹⁸ If a profile is obtained—from either form of
6 testing—which excludes Mr. Siehl, yet corresponds with another profile obtained from another item
7 of evidence, this would establish Mr. Siehl's innocence. If an STR profile is obtained, Mr. Siehl
8 would request the Commonwealth run the profile through CODIS.

9 **5. Green rag (item no. 20)**

10 Trooper Brant collected a green rag “with possible blood” on it from the bathroom trash can.
11 The green rag may be the rag the assailant used to wipe down the bathroom and himself—as the
12 Commonwealth and Trooper Brant suggested.⁹⁹ Trooper Brant submitted the green rag for testing,
13 but Mr. Ermlick failed to test it for the presence of human blood.¹⁰⁰ STR and Y-STR testing could
14 be conducted on the rag. If the assailant in fact wiped his hands with the rag it is likely he transferred
15 his blood and epithelial (or skin) cells to the rag. If he wiped down the scene as well—collecting a
16 greater quantity of Mrs. Siehl's blood than his blood—Y-STR testing may prove critical. If an STR
17 profile is developed—which excludes Mr. Siehl—this would establish his innocence. Likewise, if the
18 STR profile corresponds with another profile obtained from another item of evidence this too would
19 establish his innocence. If an STR profile is obtained, Mr. Siehl would ask the Commonwealth to
20 run it through CODIS.

21 **6. Cigarette butt (item no. 79)**

22
23 ⁹⁷NT, Trial—Scott Ermlick, 5/12/92, at 27.

24 ⁹⁸E.g., Attorney General Ashcroft, *supra* (“In Tennessee in 2004, a woman was
25 convicted for her role in the murder of an antiques dealer. A single strand of hair left behind at the
scene helped establish a connection between her and the crime.”).

26 ⁹⁹Trooper Brant felt the assailant wiped down the scene because he (Brant) was only
27 able to lift very few usable prints from the scene. NT, Trial—Tpr. Brant, 5/11/92, at 166.

28 ¹⁰⁰Mr. Ermlick's August 6, 1991 report indicates he received the green rag (item no.
20), but it appears it was one of the few items not tested by Mr. Ermlick. Ex. 1.

1 Trooper Brant collected a cigarette butt from the bathroom floor; he submitted it to the PSP;
2 and Mr. Ermlick conducted a blood type test and determined the person who smoked the cigarette
3 had blood type A—the same blood type as Mr. Siehl and Mr. Prebehalla.¹⁰¹ At trial, Mr. Ermlick
4 testified Mr. Siehl could not be excluded as the person who smoked and discarded the cigarette in
5 the bathroom; this bolstered the Commonwealth’s argument Mr. Siehl murdered his wife.¹⁰² The
6 cigarette butt can be subjected to STR testing. In recent cold case investigations, cigarette (and even
7 cigar) butts have proved invaluable; the testing produced profiles which ultimately identified the
8 actual perpetrators.¹⁰³ Similar results can be achieved in Mr. Siehl’s case. If STR testing obtains a
9 profile—which excludes Mr. Siehl—yet corresponds to another profile obtained from another item of
10 evidence, such results would establish Mr. Siehl’s innocence. Likewise, Mr. Siehl would ask the
11 Commonwealth to run the profile through CODIS.

12 7. **Telephone and Cable TV Cord**

13 The responding officers noted the telephone and cable TV cords were ripped from the walls.
14 The Commonwealth claimed that Mr. Siehl ripped them from the wall immediately before he
15 attacked and murdered Mrs. Siehl to prevent her from contacting the police. Recent cases show that
16
17
18

19 ¹⁰¹Ex. 1.

20 ¹⁰²NT, Trial—Scott Ermlick, 5/12/92, at 20.

21 ¹⁰³An investigator recently solved a series of burglaries thanks the cigarette butts left
22 behind by the perpetrator. See Kristina Davis, *The DNA Trail*, SAN DIEGO UNION-TRIB., Oct. 21,
2007, available at, www.signonsandiego.com/news/metro/20071021-9999-7m21dna.html:

23 Debbie Kremer, a criminalist with the San Diego County Sheriff's
24 Department's Regional Crime Laboratory in Clairemont, prepared a
25 DNA sample for testing. Days later at the scene of a home burglary
in San Marcos, another discarded cigarette butt was collected and sent
to the lab for analysis. After two months, the DNA results came back
with a match.

26 Former U.S. Attorney General John Ashcroft even recognized the importance of cigarette and cigar
27 butts. E.g., Attorney General Ashcroft, *supra* (“In Texas earlier this year (2004), prosecutors were
28 able to match saliva residue from the plastic tip of a cigar found at the scene of a 1998 armed
robbery. The police got the lead after the convict had to submit his DNA as a consequence of a
parole revocation.”); *id.* (“Across the country, we have seen critical DNA evidence come from a few
cigarette butts...”).

1 the cords could contain the perpetrator's DNA.¹⁰⁴ STR and Y-STR testing could be performed to
2 possibly identify the perpetrator's skin or sweat cells deposited on the cords. If a profile is
3 developed—which excludes Mr. Siehl—this would establish his innocence. Furthermore, if the profile
4 corresponds with a profile developed from another item of evidence, this too would establish Mr.
5 Siehl's innocence. If an STR profile is developed, Mr. Siehl would ask the Commonwealth to run
6 the profile through CODIS.

7 **8. The knife from the kitchen (item no. 11)**

8 Trooper Brant collected a wooden handled knife from the kitchen and submitted it to the PSP
9 for testing. Mr. Ermlick conducted presumptive blood testing on the knife, which tested positive for
10 the possible presence of human blood.¹⁰⁵ Of the twelve knives Trooper Brant collected from the
11 scene and tested by Mr. Ermlick,¹⁰⁶ only item number 11 tested presumptively positive for the
12 presence of human blood. Thus, it is reasonable to conclude the knife may represent the murder
13 weapon, and that the assailant's DNA—either from skin, sweat, or blood—could have been transferred
14 to the knife handle or blade. If a profile is developed—which excludes Mr. Siehl—yet corresponds
15 with a profile developed from another item of evidence, this would establish Mr. Siehl's innocence.
16 If an STR profile is developed, Mr. Siehl would ask the Commonwealth to run the profile through
17 CODIS.

18 **9. Mrs. Siehl's clothing (item nos. 15-17)**

19 Dr. Yerger collected Mrs. Siehl's clothing (item nos. 15-17) during the autopsy and turned
20 them over to Trooper Brant; Trooper Brant submitted her clothing to the PSP for testing. Mr.
21 Ermlick identified human blood on the clothing consistent with Mrs. Siehl and Mr. Prebehalla's
22 blood; in particular, Mr. Prebehalla could not be eliminated as the donor of the blood identified on
23

24 ¹⁰⁴E.g., Prepared Remarks of Attorney General John Ashcroft, *DNA Initiative*, Mar.
25 11, 2003, available at, www.usdoj.gov/archive/ag/speeches/2003/031102dnaremarks.htm (“In
26 Texas... an investigator solved the rape of a local college student by requesting DNA testing on the
phone cord used to choke the woman. A reliable DNA profile was developed from the phone cord
and helped solve the case. It also linked the perpetrator to a similar sexual assault in another city.”).

27 ¹⁰⁵NT, Trial—Scott Ermlick, 5/12/92, at 39.

28 ¹⁰⁶Id. at 37 (listing item nos. 12, 13, 14, 33, 34, 35, 38, 39, 40, 41, 42, 43).

1 item number 16 (Mrs. Siehl's purple shorts).¹⁰⁷ The serological data excluded Mr. Siehl as a possible
2 donor of the blood.¹⁰⁸

3 The evidence clearly suggests Mrs. Siehl struggled with her assailant. Likewise, the
4 Commonwealth argued that whoever murdered Mrs. Siehl bled during the altercation; this is
5 evidenced by the Commonwealth's claim that the bloodstain linked to Mr. Siehl (item no. 22) was
6 deposited there at the time of the murder. Consequently, it is reasonable to assume the assailant's
7 blood may have been transferred to Mrs. Siehl's clothing during the altercation. STR, and
8 particularly Y-STR, can be used to identify minute amounts of male DNA which may be
9 overwhelmed by Mrs. Siehl's (female) DNA. If a profile is developed—which excludes Mr.
10 Siehl—this would establish his innocence. Furthermore, if the profile corresponds to a profile
11 developed from another item of evidence, this too would establish Mr. Siehl's innocence. If an STR
12 profile is developed, Mr. Siehl would ask the Commonwealth to run the profile through CODIS.

13 **10. Sexual Assault Kit**

14 The evidence suggests the assailant may have sexually assaulted Mrs. Siehl; Dennis
15 Kwiatkowski's (the Deputy Coroner) testimony and the autopsy report support this theory because
16 he identified tearing in Mrs. Siehl's rectal and vaginal area.¹⁰⁹ Likewise, detectives and Dr. Yerger
17 commented that Mrs. Siehl did have any underwear when her landlord discovered her body. Thus,
18 under one scenario, the assailant may have sexually assaulted Mrs. Siehl, had her get dressed, and
19 then realized she should take a shower to discard any physical evidence; as he forced her into the
20 bathroom at knife point, a struggle ensued which ultimately led to her stabbing death. Because the
21 evidence suggests this may have occurred, Mr. Siehl would test the following items of evidence
22 collected during the autopsy: the combed and pulled pubic hairs (items nos. 5-6); the vaginal swabs
23 (no item no. because not submitted); and the anal swabs (no item no. because not submitted).

24 Depending on various factors, these items could be subjected to STR, Y-STR, and mtDNA

26 ¹⁰⁷Ex. 1.

27 ¹⁰⁸Id.

28 ¹⁰⁹NT, Trial—Dennis Kwiatkowski, 5/11/92, at 150.

1 tests. With respect to the pubic hairs, mtDNA tests could be performed on the combed (and
2 presumably rootless) hairs, while STR testing could be performed on the pulled hairs—assuming they
3 have a root. If a profile is obtained—which excludes Mr. Siehl—yet corresponds with a profile
4 obtained from the anal or vaginal swabs or other item of evidence, this would establish Mr. Siehl’s
5 actual innocence. The same can be said for the vaginal and anal swabs. If a profile or profiles are
6 obtained—which exclude Mr. Siehl—yet correspond to a profile obtained from another item of
7 evidence, this would establish Mr. Siehl’s innocence. If a profile is obtained, Mr. Siehl would ask
8 the Commonwealth to run it through CODIS.

9 Individually and collectively, when exculpatory results are assumed, the abovementioned
10 results establish Mr. Siehl’s innocence in a variety of ways.

11 **B. The Chain of Custody Regarding the Items Sought to Be Tested Is**
12 **Sufficient to Establish that the Items Have Not Been Altered in Any**
13 **Material Respect**

14 The Court may only grant a petitioner’s DNA testing request if the “evidence to be tested has
15 been subject to a chain of custody sufficient to establish that it has not been altered in any material
16 respect.” 42 Pa.C.S.A. § 9543.1(d)(1)(ii). Mr. Siehl satisfies this criterion.

17 Chain of custody “is an indirect method of proving the identity and integrity of evidence by
18 showing its continuous whereabouts.” Commonwealth v. Briggs, 2005 WL 4309071 (Common
19 Pleas Ct., Bradford Co., Oct. 12, 2005); accord Commonwealth v. Hudson, 414 A.2d 1381 (Pa.
20 1980). Like the Commonwealth, Mr. Siehl is not required to establish “the sanctity of the evidence
21 beyond a moral certainty.” Commonwealth v. Bennett, 827 A.2d 469, 481 (Pa. Super. 2003) (citation
22 omitted). Similarly, Mr. Siehl is not required to identify “every person who came into contact with
23 evidence, nor must every possibility of tampering be eliminated; it is sufficient that evidence, direct
24 or circumstantial, establishes a reasonable inference that identity and condition of the exhibit
25 remained unimpaired” until delivered to its current place of storage. Commonwealth v. Williams,
26 565 A.2d 160, 171 (Pa. Super. 1989); Commonwealth v. Pedano, 405 A.2d 525 (Pa. Super. 1979).
27 Finally, “physical evidence may be properly admitted [and/or subjected to post-conviction DNA
28 testing] despite gaps in testimony regarding its custody.” Commonwealth v. Hudson, 414 A.2d 1381,

1 1387 (Pa. 1980).¹¹⁰

2 Dr. Yerger collected the following items of evidence during his July 14, 1991 autopsy: Mrs.
3 Siehl's fingernails (item nos. 2-3); a hair from Mrs. Siehl's left hand fingernail (item no. 8); and Mr.
4 Siehl's clothing (item nos. 15-17). Dr. Yerger transferred this evidence to Trooper Brant after he
5 completed the autopsy.¹¹¹ On July 16, 1991, Trooper Brant submitted these items of evidence to the
6 PSP for testing.¹¹² Dr. Ermlick tested each item of evidence and submitted his official laboratory
7 report on August 6, 1991.¹¹³

8 On July 15, 1991, Trooper Brant collected the following items of evidence from Mrs. Siehl's
9 residence: the wooden handled knife (item no. 11); the bath towel (item no. 18); the green rag (item
10 no. 20); the twelve bloodstains from the bathroom (item nos. 21-32); and a cigarette butt from the
11 bathroom (item no. 79).¹¹⁴ On July 16, 1991, Trooper Brant submitted items numbers 11, 18, and
12 21 through 32 to the PSP for testing.¹¹⁵ On July 30, 1991, Trooper Brant submitted the cigarette butt
13 to the PSP for testing.¹¹⁶ Mr. Ermlick tested each item of evidence and submitted his official report
14 on August 6, 1991.¹¹⁷

15 C. **The Evidence Which Mr. Siehl Seeks to Test Was Not Subjected to DNA**
16 **Testing Because the Technology for Testing Was Not in Existence at the**
17 **Time**

18 Before the Court may grant a DNA testing request, it must determine that the petitioner could

19 ¹¹⁰Mr. Siehl contends he need only present a *prima facie* case regarding chain of
20 custody simply because he is in no position to adequately track who and what agencies possessed
21 the rape kit. As the Illinois Appellate Court aptly stated: "It asks too much to require petitioning
defendant in these cases to plead and prove proper chain of custody at the outset, for the evidence
at issue will undoubtedly have been in the safekeeping of the State, not the defendant." People v.
Price, 801 N.E.2d 1187, 1199 (Ill. App. Ct. 2003) (citations omitted).

22 ¹¹¹NT, Trial-Tpr. Brant, 5/12/92, at 16.

23 ¹¹²Exs. 4-6.

24 ¹¹³Ex. 1.

25 ¹¹⁴NT, Trial-Tpr. Brant, 5/12/92, at 164-66.

26 ¹¹⁵Exs. 4-6.

27 ¹¹⁶Exs. 4-6.

28 ¹¹⁷Exs. 4-6.

1 not have sought the testing prior to trial because the DNA technology was not available. See 42
2 Pa.C.S.A. § 9543.1(a)(2). Mr. Siehl satisfies this requirement.

3 Mr. Siehl seeks three types of DNA testing: (1) STR testing; (2) Y-STR testing; and (3)
4 mtDNA testing. None of these DNA tests were available in 1991-92 when the Commonwealth
5 prosecuted Mr. Siehl. E.g., JOHN M. BUTLER, FORENSIC DNA TYPING: BIOLOGY, TECHNOLOGY, AND
6 GENETICS OF STR MARKERS 272 (2d 2005).¹¹⁸ While Restriction Fragment Length Polymorphism
7 (RFLP) was generally accepted in many jurisdictions by 1992, see NAT'L INST. OF JUST., DEPT. OF
8 JUST., FUTURE OF FORENSIC DNA TESTING: PREDICTIONS OF THE RESEARCH AND DEVELOPMENT
9 WORKING GROUP 14-16 (2000),¹¹⁹ the Pennsylvania State Police (PSP) had yet to incorporate RFLP
10 testing into its crime laboratory system. According to Mr. Ermlick's trial testimony, the PSP's crime
11 laboratory system was not scheduled to start RFLP testing until August 1992—three months after
12 Mr. Siehl's trial and conviction.¹²⁰

13 **D. Mr. Siehl Consents to Providing a Sample of His Bodily Fluid and**
14 **Acknowledges that it Will Be Entered into a Law Enforcement Database**
Where it May Be Used to Investigate Other Offenses

15 Pursuant to 42 Pa.C.S.A. § 9543.1(c)(1)(i)-(ii), Mr. Siehl consents to providing a sample of
16 his bodily fluids and acknowledges that genetic profiles obtained from his samples may be used to
17 investigate other offenses.¹²¹

18 **E. Mr. Siehl Asserts His Innocence and Has Filed this Timely Motion to**
19 **Seek DNA Testing So He May Conclusively Establish His Innocence**

20 ¹¹⁸See also NAT'L INST. OF JUST., DEPT. OF JUST., FUTURE OF FORENSIC DNA
21 TESTING: PREDICTIONS OF THE RESEARCH AND DEVELOPMENT WORKING GROUP 17-19 (2000); 2
22 PAUL C. GIANNELLI & EDWARD J. IMWINKELRIED, SCIENCE EVIDENCE ch. 18 (3d ed. 1999)
(discussing admissibility of DNA evidence).

23 ¹¹⁹Accord Commonwealth v. Crews, 640 A.2d 395, 400 n.3 (Pa. 1994) (“By 1990
24 more than 2000 U.S. court cases in 49 states and the District of Columbia had used DNA tests for
25 such purposes [identification of criminal suspects]”). Notably, the first Pennsylvania appellate court
26 to recognize RFLP's scientific validity and general acceptance occurred in February 1992—three
months before Mr. Siehl's trial. See Commonwealth v. Rodgers, 605 A.2d 1228, 1235 (Pa. Super.
1992). The Pennsylvania Supreme Court did not officially recognize RFLP's general acceptance
until it decided Crew, *supra*, in 1994.

27 ¹²⁰NT, Trial, 5/12/92, at 47-48.

28 ¹²¹Ex. 3.

1 Pursuant to § 9543.1(d)(1)(iii), Mr. Siehl’s petition for DNA testing is timely, and done so
2 for the sole purpose of establishing his long proclaimed innocence rather than “delay[ing] the
3 execution of sentence or administration of justice.” Mr. Siehl’s motion is timely because the
4 “PCRA’s one-year time bar does not apply to motions for the performance of forensic DNA testing
5 under Section 9543.1.” Commonwealth v. Brooks, 875 A.2d 1141, 1146 (Pa. Super. 2005).¹²²

6 **F. Identity Was At Issue During Mr. Siehl’s Trial**

7 Before the Court can grant Mr. Siehl’s DNA testing request, it must find that identity was
8 at issue during his trial. See § 9543.1(c)(3)(1); Williams v. Erie County Dist. Attorney’s Office, 848
9 A.2d at 972. Mr. Siehl satisfies this requirement.

10 The critical issue at trial was “identity”—i.e., who murdered Mrs. Siehl. For instance, during
11 opening statements, the Commonwealth asserted:

12 We ask you to keep focused really on three things. Did a murder occur; was there a
13 death? **Who committed the murder? And is there evidence that Mr. Siehl is the**
14 **person that committed that murder and killed his wife?** And why was the murder
committed?¹²³

15 Trial counsel’s opening statements also highlight the fact “identity” was the key issue at trial:

16 You won’t hear the District Attorney emphasize these three pieces of evidence
17 because these [three] blood stains did not come from the defendant, Kevin Siehl.
18 And you won’t hear the District Attorney emphasize these three pieces of evidence
because these blood stains did not come from the other two suspects whose blood
was collected for comparison.

19 Ladies and gentlemen, the police don’t know who this blood belongs to. All they can
20 tell you is that those three pieces of evidence most likely came from the same
person.¹²⁴

21 Mr. Siehl’s alibi defense also placed the perpetrator’s “identity” squarely at issue; his alibi defense
22 clearly implied he “render[ed] it impossible for him to be the guilty party.” Commonwealth v.
23 Roxberry, 602 A.2d at 827 (an alibi is “a defense that places the defendant at the relevant time in a
24 different place than the scene involved and so removed therefrom as to render it impossible for him

25 ¹²²Accord Commonwealth v. Heilman, 867 A.2d 542 (Pa. Super. 2005); Williams v.
26 Erie County Dist. Attorney’s Office, 848 A.2d at 971; Commonwealth v. McLaughlin, 835 A.2d at
750.

27 ¹²³NT, Trial-Scott Ermlick, 5/11/92, at 17 (emphasis added).

28 ¹²⁴Id. at 19.

1 to be the guilty party.”).

2 **VI. Conclusion**

3 The Commonwealth premised its case on rudimentary and misleading serological evidence,
4 and erroneous and false fingerprint evidence. As such, not only are there questions which
5 rudimentary serological tests could not answer, the Commonwealth created additional questions by
6 presenting misleading and unsubstantiated blood and fingerprint evidence. While these questions
7 could not be resolved with DNA testing prior to trial, they surely can be resolved now with today’s
8 DNA technology.

9 The Pennsylvania General Assembly enacted 42 Pa. C.S.A. § 9543.1 for cases such as Mr.
10 Siehl’s—where DNA testing can resolve critical questions surrounding a convicted defendant’s guilt
11 or innocence. Moreover, Mr. Siehl satisfies § 9543.1’s prerequisites. First, he specified which items
12 of evidence he wants tested. Second, he consented to provide bodily fluid samples and
13 acknowledged that law enforcement may use these samples “in the investigation of other crimes and
14 may be used as evidence against the [him] in other cases.” § 9543.1 (1)(iii). Third, he asserted he
15 is actually innocent of the crime for which the jury convicted him—i.e., first-degree murder. Fourth,
16 he easily demonstrated that the perpetrator’s identity “was at issue in the proceedings that resulted
17 in [his] conviction and [life] sentence.” § 9543.1 (3)(i). Fifth, he proved his trial occurred before
18 January 1, 1995, and the DNA technology he seeks to employ was not available when the
19 Commonwealth prosecuted him in May 1992. See § 9543.1(a)(2). And sixth, he thoroughly
20 explained how exculpatory DNA results would establish his “actual innocence of the offense for
21 which [he] was convicted.” § 9543.1 (3)(ii)(A).

22 Mr. Siehl is entitled to post-conviction DNA testing in order to answer the questions (and
23 remedy the harm) produced by the Commonwealth’s questionable and exaggerated blood and
24 fingerprint evidence.

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Respectfully submitted this ____ day of January 2008.

/s/ Craig M. Cooley
Craig M. Cooley
Staff Attorney
The Innocence Project
Illinois Bar No. 6282688
100 Fifth Avenue, 3rd Floor
New York, New York 10011

Robert J. Freeman, Esq.
P.O. Box 593
123 S. Main St.
Carrolltown, PA 15722
Pennsylvania Attorney ID number 68000

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- Ex. 1 Pennsylvania State Police, Laboratory Division Rpt., Dated August 6, 1991,
By Forensic Scientist Scott Ermlick
- Ex. 2 Herb L. MacDonnell's Affidavit, Director, Laboratory of Forensic Science,
Corning, New York, 14830, To Chris Rand Eyster, Esq., 100 Ross Street,
Pittsburgh, Pennsylvania 15219, Dated January 5, 2003
- Ex. 3 Kevin Siehl's Verification, Dated December 17, 2007
- Ex. 4 Pennsylvania State Police, Evidence Submission and Request for Forensic
Analysis Form, Dated July 16, 1991, By Trooper Merrill Brant
- Ex. 5 Pennsylvania State Police, Evidence Submission and Request for Forensic
Analysis Form, Dated July 23, 1991, By Trooper Merrill Brant
- Ex. 6 Pennsylvania State Police, Evidence Submission and Request for Forensic
Analysis Form, Dated July 30, 1991, By Trooper Merrill Brant
- Ex. 7 Photograph of Items Numbers 21 and 22; Two Bloodstains Collected From
Door Frame of Bathroom
- Ex. 8 Herb L. MacDonnell's Affidavit, Director, Laboratory of Forensic Science,
Corning, New York, 14830, To Christian A. Fisanick, Esq., Chief Deputy,
Appellate Division, Office of the Cambria County District Attorney,
Regarding Commonwealth v. Donald Kelly (92-85), Dated February 2, 1993

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Certificate of Service

I HEREBY CERTIFY that on the ___ day of January 2008, I mailed a copy of the foregoing
MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR POST CONVICTION DNA
TESTING PURSUANT TO 42 Pa. C.S.A. § 9543.1

to:

Hon. Patrick T. Kiniry
Cambria County Office of the District Attorney
Cambria County Courthouse
200 South Center Street
Ebensburg PA 15931

Robert J. Freeman, Esq.
P.O. Box 593
123 S. Main St.
Carrolltown, PA 15722
Pennsylvania Attorney ID number 68000

EXHIBITS

1 (9-89)
PENNSYLVANIA STATE POLICE
LABORATORY DIVISION
GREENSBURG REGIONAL LABORATORY
P O Box "P"
Greensburg, PA 15601-0436

LAB REPORT: G91-3945-C
REPORT DATE: August 6, 1991
INCIDENT NO: A1-696437

HOMICIDE
Christine Rose SIEHL

Johnstown, Cambria County, Pennsylvania
July 12, 1991

Johnstown Police Department, Johnstown, Pennsylvania
July 16, 23, 30, 1991

1. Two (2) vials (purple cap) blood from victim at autopsy.
2. Victim's fingernails, left hand.
3. Victim's fingernails, right hand, plus nail clippers used to cut same.
4. Victim's head hair.
5. Victim's pubic hair and comb used to comb hair.
6. Victim's pulled pubic hair.
7. Hair removed at autopsy from right leg of victim.
8. Hair removed from victim's fingernail at autopsy by Dr. John YERGER.
9. Hair retained from crime scene, located on floor thirty two (32) inches in front of bathroom door. *Handwritten: Hair from crime scene*
10. Wooden handle knife seven (7) inches long, from coffee table. *Handwritten: coffee table*
11. Thirteen (13) inch wooden handle knife located in kitchen.
12. Ten (10) inch wooden handle knife located in kitchen.
13. Nine (9) inch metal handle knife located in kitchen.
14. Six (6) inch metal handle knife located in kitchen.
15. Size thirty six (36) Bestform brassiere, white in color.
16. One (1) pair of purple shorts, "Upper Level", size M. *Handwritten: In 3 3/4*

EXHIBIT

1

August 6, 1991

A1-696437

- ITEMS:
17. One (1) pink tank top, Parrireillo.
 18. One (1) 23 inch by 36 inch white towel with possible blood located in bathroom.
 19. One (1) 19 inch by 28 inch white towel with possible blood located in bathroom.
 20. Green rag with possible blood located in Victim's trash can in bedroom.
 21. Blood patch collected from door frame of bathroom, living room side, right side.
 22. Blood patch collected from door frame of bathroom, living room side, right side.
 23. Blood patch collected from bathroom door jam edge right side.
 24. Blood patch collected from bathroom wall behind door beside radiator.
 25. Blood patch collected from bathroom wall behind door beside radiator.
 26. Blood patch collected from wall behind commode.
 27. Blood patch collected from back of bathroom door.
 28. Blood patch collected from broken full length mirror.
 29. Blood patch collected from cat litter box.
 30. Blood patch collected from bathroom tub (front).
 31. Blood patch collected from bathroom floor behind door.
 32. Blood patch collected from bathroom floor center of floor.
 33. Eight (8) inch wooden handle knife, knife drawer.
 34. Eight and one half (8½) inch wooden handle, knife drawer.
 35. Seven (7) inch wooden handle knife, knife drawer.
 36. Seven (7) inch metal handle knife, knife drawer.
 37. Eight and one half (8½) inch wooden handle knife, knife drawer.

Al-696437

ITEMS:

38. Eight (8) inch wooden handle knife, knife drawer.
39. Eight and one half (8½) inch wooden knife, knife drawer.
40. Nine (9) inch wooden handle knife, knife drawer.
41. Twelve (12) inch wooden handle knife, knife drawer.
42. Fifteen (15) inch plastic handle knife, knife drawer.
43. Eleven and one half (11½) inch plastic handle knife, knife drawer.
44. White panties, size 7, Fruit of the Loom, located on bathroom floor under towels.
45. White print dress "Mister Noah", located on bathroom floor under towels.
46. Two (2) vials (purple cap) of blood from Kevin SIEHL.
47. Two (2) swabs of saliva from Kevin SIEHL.
48. Head hair (combed) from Kevin SIEHL.
49. Head hair (plucked) from Kevin SIEHL.
50. Pubic hair (combed) from Kevin SIEHL.
51. Pubic hair (plucked) from Kevin SIEHL.
53. Two (2) vials (purple cap) of blood from Robert PREBEHALI
54. Two (2) swabs of saliva from Robert PREBEHALLA.
55. Head hair (combed) from Robert PREBEHALLA.
56. Head hair (plucked) from Robert PREBEHALLA.
57. Pubic hair (combed) from Robert PREBEHALLA.
58. Pubic hair (plucked) from Robert PREBEHALLA.
60. Two (2) vials (purple cap) of blood from Frank WILLS.
61. Two (2) swabs of saliva from Frank WILLS.

August 6, 1991

A. 696437

ITEMS:

62. Head hair (combed) from Frank WILLS.
63. Head hair (plucked) from Frank WILLS.
64. Pubic hair (combed) from Frank WILLS.
65. Pubic hair (plucked) from Frank WILLS.
67. One (1) pair of white leather, LA Gear sneakers.
68. One (1) pair of gold rimmed glasses.
69. One (1) hunting knife in leather sheath with approximately 3" blade.
70. One (1) pair mens tan, casual shoes.
71. One (1) hunting knife in leather sheath with approximately 5" blade.
72. One (1) straight razor knife.
73. One (1) machetti.
74. One (1) pair men's blue jeans found in dining room closet.
75. One (1) pair men's blue jeans found in middle bedroom.
76. One (1) pair men's grey casual shoes.
77. Two (2) "Kool" cigarette butts smoked by Kevin SIEHL.
78. Three (3) cigarette butts smoked by Robert PREBEHALLA.
79. One (1) cigarette butt found on the floor of the bathroom at scene.
80. One (1) crack pipe.

ITEMS:

62. Head hair (combed) from Frank WILLS.
63. Head hair (plucked) from Frank WILLS.
64. Pubic hair (combed) from Frank WILLS.
65. Pubic hair (plucked) from Frank WILLS.
67. One (1) pair of white leather, LA Gear sneakers.
68. One (1) pair of gold rimmed glasses.
69. One (1) hunting knife in leather sheath with approximately 3" blade.
70. One (1) pair mens tan, casual shoes.
71. One (1) hunting knife in leather sheath with approximately 5" blade.
72. One (1) straight razor knife.
73. One (1) machetti.
74. One (1) pair men's blue jeans found in dining room closet.
75. One (1) pair men's blue jeans found in middle bedroom.
76. One (1) pair men's grey casual shoes.
77. Two (2) "Kool" cigarette butts smoked by Kevin SIEHL.
78. Three (3) cigarette butts smoked by Robert PREBEHALLA.
79. One (1) cigarette butt found on the floor of the bathroom at scene.
80. One (1) crack pipe.

1. Human blood displaying the following genetic markers was detected on items:

<u>ITEM NO.</u>	<u>ABO</u>	<u>PGM</u>	<u>EST</u>	<u>EAP</u>	<u>AK</u>	<u>ADA</u>
15	A	1+	1	B	1	1
16	A	1+	1	-	-	1
17	A	1+	1	B	1	1
18	A	1+	1	-	1	1
19	A	-	-	-	-	-
21	-	1+	1	-	1	1
22	A	1+	1	B	1	2-1
23	A	1+	1	B	1	1
24	A	1+	1	B	1	1
25	A	1+	1	B	1	1
26x	A	1	1	B	1	1
27	A	1+	1	B	1	1
28x	A	1	1	B	1	1
29x	A	1	1	B	1	1
30	A	1+	1	B	1	1
31	A	1+	1	B	1	1
32	A	1+	1	B	1	1
44x	A	-	-	-	-	1
45x	-	-	-	-	-	1
79x	A	-	-	-	-	-

2. The blood profile of the Victim and Suspects are as follows:

<u>ITEM NO.</u>	<u>ABO</u>	<u>PGM</u>	<u>EST</u>	<u>EAP</u>	<u>AK</u>	<u>ADA</u>
1 (Victim SIEHL)	A	1+	1	B	1	1
46 (Suspect SIEHL)	A	1+	1	B	1	2-1
53 (Suspect PREBEHALLA)	A	1+	1	BA	1	1
60 (Suspect WILLS)	O	1+1-	2-1	B	1	1

The blood from item 22 and item 46 (Suspect SIEHL) match item 22 was expended in analysis.

RESULTS:

3. Items 11 (knife) and 67 (tennis shoes) were tested and found to be presumptively positive for blood; however they were of insufficient quantity to determine the species or to individualize the stain.

No blood was detected on items 2, 3, 10, 12, 13, 14, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 68, 69, 70, 71, 72, 73, 74, 75 or 76.

5. Hair from items 7, 8, 9, 17, 18, and 44 was either consistent with the Victim or not suitable for analysis.
6. Items 16, 44 and 45 were examined for seminal material however none was detected.
7. Items 47, 48, 50, 51, 54, 55, 57, 58, 61, 62, 64, 65, 77, and 78 were noted as present.
8. Item 5 was examined and found to be unremarkable.
9. The contents of item 80 (pipe) contained Cocaine, a Schedule II substance. This item was transferred to Latent Prints.
10. The cigarette from item 79 was identified as a Marlboro cigarette.

DISPOSITION: PLEASE ARRANGE FOR DISPOSITION OF EVIDENCE WITHIN THIRTY (30) DAYS.

Scott F. Ermlick
Scott F. Ermlick
Forensic Scientist Supervisor

cad

COPIES:

Chief, Johnstown Police Department
ATTN: Sgt. Angelo Cancelliere
Inv. Lawrence Wagner



LABORATORY OF FORENSIC SCIENCE



HERBERT LEON MacDONELL, DIRECTOR
POST OFFICE BOX 1111
CORNING, NEW YORK 14830

TELEPHONE NO. (607) 962-6581
FAX (607) 936-6936

Please refer to Case 02-046

Mr. Chris Rand Eyster, Esq.
100 Ross Street
Pittsburgh, Pennsylvania 15219

5 January 2003

Re: Warren Stewart Bennett (02-046)

AFFIDAVIT

Herbert Leon MacDonell, the undersigned affiant, of lawful age, being duly sworn, states that he resides in the township of Corning, New York; that he was graduated from Alfred University in 1950 with the degree of Bachelor of Arts with a major in chemistry; that he was graduated from the University of Rhode Island in 1956 with the degree of Master of Science with a major in analytical chemistry; that he held the position of a Graduate Assistant at both of these universities in analytical chemistry, spectroscopy, microscopy and criminalistics; that he is a graduate of many training programs held in Rhode Island, New York and Pennsylvania; that in 1951 he was employed as Assistant Spectrographer for the New York State College of Ceramics; that he was Professor and Head of the Department of Chemistry at Milton College in Milton, Wisconsin from 1951 to 1954; that he was a Research Analytical Chemist for DuPont Company in Philadelphia from 1956 to 1957; that he was a Research Analytical Chemist for Corning Glass Works from 1957 to 1972 during which he measured physical properties and determined the chemical composition of numerous glass types; that he was an Instructor in Police Science from 1960 to 1967 and later Adjunct Professor of Criminalistics from 1972 to 1992 at Corning Community College; that he was also Adjunct Professor of Criminalistics at Elmira College from 1972 to 1983; that he has been the Director of the Laboratory of Forensic Science since 1970; that he has been retained hundreds of times as a consultant by law enforcement agencies, prosecutors and defense attorneys in both criminal and civil cases in all 50 states, the District of Columbia and twenty-one foreign countries since 1950.

Affiant further states that as Instructor of Police Science, and later Adjunct Professor of Criminalistics, he taught Criminalistics to hundreds of law enforcement officers since 1960 at both Corning Community College and Elmira College. Criminalistics deals with the application of science to the investigation of crime which is primarily concerned with the examination of physical evidence and how it can be used to reconstruct prior events.

EXHIBIT

Affiant further states that as Adjunct Professor of Criminalistics at Elmira College he taught several forensic subjects in addition to Basic Criminalistics. These included: Personal Identification (90% fingerprints), Firearms Identification, Forensic Photography, Death Investigation, Forensic Microscopy, Investigation of Contemporary Homicide and Breathalyzer Operator Certification.

Affiant further states that he has presented over 700 lectures on the subject of scientific crime investigation before hundreds of technical societies, universities and police training academies in the United States and many foreign countries. He has spoken before forensic meetings in Australia, Canada, England, Germany, Holland, Hungary, Iceland, Italy, New Zealand, Puerto Rico, Scotland, Switzerland, and Taiwan. He has conducted independent forensic research sponsored by the National Institute of Law Enforcement and Criminal Justice, United States Department of Justice, and has conducted and participated in many institutes for law enforcement officers under the sponsorship of the Law Enforcement Assistance Administration.

Professor MacDonell founded the Bloodstain Evidence Institute in March 1973. To date he has instructed this one week program sixty-one times in twelve states, the District of Columbia, Australia, Holland, England and Sweden. Over fourteen hundred students from forty-six states and twenty-one foreign countries have attended the Institute. In addition, he has directed over sixty seminars of one to four days duration on bloodstain evidence and has given over six hundred lectures on the significance of bloodstain patterns in many foreign countries.

Affiant was elected a Fellow in the American Academy of Forensic Science in 1964 after being a Past Secretary and Past Chairman of the Criminalistics Section of that society; Fellow and Past President of the Police-Law Society; the founder, Distinguished Member, and Historian of the International Association of Bloodstain Pattern Analysts; Life Member, Distinguished Member, and Past Chairman of the Science and Practice Committee of the International Association for Identification; Former Fellow of the Fingerprint Society (England); member of the Canadian Identification Society; one of the Founding Members of the Association of Firearm and Toolmark Examiners; member and former President of the New York State Division of the International Association for Identification; Life Member of the Canadian Society of Forensic Sciences; member of the Forensic Science Society (England), member of the Midwest Association of Forensic Scientists, member of the Northeastern Association of Forensic Scientists, member of Sigma Xi, and Life Member of the American Chemical Society.

Affiant has been the author of over one hundred original papers on both analytical chemistry and forensic science. His articles have been published in England, Canada, Taiwan, and the United States. He is the author of *BLOODSTAIN PATTERN INTERPRETATION* (1983), a revision of his 1971 LEAA report *FLIGHT CHARACTERISTICS AND STAIN*

PATTERNS OF HUMAN BLOOD, a study which was sponsored by the United States Department of Justice; *BLOODSTAIN PATTERNS* (1993); and its revision, *BLOODSTAIN PATTERNS - REVISED EDITION* (1997). His latest book has been translated into German, Spanish, and Dutch. Affiant is the subject and a co-author of the book, *THE EVIDENCE NEVER LIES* (1984). Affiant holds patents on chemical separation processes and methods of personal identification.

Affiant is the inventor of the MAGNA Brush, a propriety device for processing latent fingerprints. This device has been adopted by identification bureaus on a worldwide basis. In recognition of his contributions to the field of forensic science affiant has received the Dondaro award from the International Association for Identification in 1974, the first American Institute of Applied Science Award in 1979 and various other awards both foreign and domestic. Affiant was designated the first Distinguished Member of the International Association of Bloodstain Pattern Analysts in 1985.

Affiant has been accepted as an expert witness in many forensic disciplines and has testified in thirty-five states at all levels of jurisdiction including federal and military courts. Affiant has also presented expert testimony in various Canadian courts, and in 1994 he was asked to testify before the highest Appellate Court in the province of Quebec. He has also presented expert testimony in courts in Australia, Bermuda, Germany, and Grand Cayman.

In July 1970 affiant was appointed by the then President of the International Association for Identification to serve on a select committee whose objective was "to review at length the principles upon which friction ridge identification is predicated and, based upon the result of its findings, submit a technical resolution setting forth such minimal requirements." Following their three year study, the committee's final report was presented to and adopted by the International Association for Identification during their 1973 annual conference. That report was subsequently accepted by every major identification bureau in the world, including the Federal Bureau of Investigation.

Affiant is certified by the International Association for Identification as a Senior Crime Scene Analyst.

THE CASE OF KEVIN C. SIEHL (02-046)

On 19 November 2002 I received a telephone call from Alonzo Siehl with the request that I examine certain fingerprint evidence in the case of his brother, Kevin C. Siehl. Kevin had been convicted of murder in 1991. Mr. Alonzo Siehl came to this laboratory on 22 November 2002 and we discussed his brother's case. At that time he gave me copies of a developed latent fingerprint that was allegedly found on a shower head and also a copy of his brother's fingerprint card. He also gave me copies of the charted fingerprints that were used as evidence during his brother's trial and other documents.

FINGERPRINT EVIDENCE - IDENTIFICATION:

I have examined the developed latent fingerprint and compared it to the right thumb print on the known fingerprint card of Kevin Siehl and conclude that the developed latent fingerprint could not have been made by Mr. Siehl's right thumb. The reasons for my conclusion may be best understood by referring to the three comparison charts which are included as a part of this affidavit.

- 1) **COMPARISON CHART ONE:** Point #1 on the developed latent fingerprint is three friction ridges above point #2, however, on Mr. Siehl's fingerprint card point #1 is four friction ridges above point #2. Refer to Figures 1-3.
- 2) **COMPARISON CHART TWO:** A comparison between the twelve points that are charted on the two exhibits shows that:

<u>POINT</u>	<u>DEVELOPED LATENT</u>	<u>FINGERPRINT CARD</u>
1	Ending Ridge	Ending Ridge
2	Not Clear?	Ending Ridge
3	Bifurcation	Bifurcation
4	Ending Ridge	Ending Ridge
5	Ending Ridge/ Bifurcation	Ending Ridge/ Bifurcation
6	Ending Ridge	Ending Ridge
7	Not Clear?	Not Clear?
8	Not Clear?	Not Clear?
9	Not Clear?	Bifurcation
10	Ending Ridge	Ridge
11	Not Clear?	Not Clear?
12	Not Clear?	Ending Ridge

Only five points, 1, 3, 4, 5, and 6, are valid. This is not sufficient to conclude that a positive identification has been made. Refer to Figures 4-6. Even when twice this number of points of similarity have been identified and charted there may still be a false identification as shown in Figure 7.

- 3) **COMPARISON CHART THREE:** A study of the overall geometry of the developed latent fingerprint and the fingerprint card shows a gross dissimilarity as may be seen in Figures 8-10. Observe in these figures that:
 - A) The long dimension of the oval geometry of the central portion of the developed latent fingerprint is at an angle of approximately fifty-one degrees to the right of vertical.
 - B) The long dimension of the oval geometry of the central portion of the fingerprint on the fingerprint card is at an angle of approximate;lt forty-two degrees to the left of vertical.

- C) The oval geometry of the central portion of the developed latent fingerprint is a sixty degree oval.
- D) The oval geometry of the central portion of the fingerprint on the fingerprint card is a forty-five degree oval.

Elasticity of human skin permits a small degree of geometric distortion between fingerprints that are made with the same finger. However, this can not explain the gross discrepancies between these two fingerprints. This further confirms the fact that they could not have been made by the same finger.

FINGERPRINT EVIDENCE - DURABILITY OF LATENT FINGERPRINTS:

It is my understanding that the fingerprint in question in this case was processed and lifted from a metal shower head. On page 31 of testimony of Trooper Brant, on line 8 and 9, he stated that, "In my opinion, it [the fingerprint] had not started to deteriorate yet." I find this statement to be absurd. How can anyone make a judgement of an unknown? Specifically, how could Brant know the original condition of the latent fingerprint, which is a requirement to measure its alleged deterioration? Latent fingerprints which were deposited on metal are known to allow excellent processing after months if not years. Brant also stated on page 174, lines 3-5, "From my experience and articles I have read on fingerprinting, fingerprints usually start to deteriorate after 24 to 36 hours." I would like Trooper Brant to cite his references because that is contrary to the classic references in this discipline.

For example, B.C. Bridges wrote, "But despite the time element, fingerprints may be developed, under certain favorable conditions, and by the proper methods, even when the moisture has dried; this may be years after they were recorded."¹ Walter R. Scott wrote, "The latents in this case were known to be four months old and they could have been as old as seven months."² More recently, Professor Andre A. Moenssens, who I consider the current living authority on this subject, wrote, "It is not possible to determine accurately how long a latent impression will remain on an object or how old an impression is."³

¹ Bridges, B. C., PRACTICAL FINGERPRINTING, New York, Funk & Wagnalls, 1942, p. 224-225.

² Scott, Walter R., FINGERPRINT MECHANICS, Springfield, Charles C. Thomas, 1951, p.40.

³ Moenssens, Andre A., FINGERPRINT TECHNIQUES, Philadelphia, Chilton, 1971, p. 130.

My experience with processing latent fingerprints spans more than fifty years, I know first hand that the surface upon which a latent fingerprint is deposited is a most crucial factor. Smooth steel, such as a chrome plated shower head, is an ideal surface as far as durability is concerned. Glass and smooth metal can retain latent fingerprints for years. In addition to my personal research during my several years of teaching personal identification at two colleges I had students perform exercises wherein they deposited their fingerprints on a wide variety of surfaces and developed them later at specific time intervals. They confirmed that fingerprints placed on glass, smooth plastic, and smooth metal yielded excellent results months after they were deposited. Therefore, even if the fingerprint on the shower head had been left there by Mr. Siehl there is no way of determining how long it had been there before it was discovered and processed.

It is my understanding that at some time prior to the trial the defense retained Mr. Warren Stewart Bennett to review the physical evidence in this case. I know Mr. Bennett because he was a student of mine at Elmira College during the period from 1978 to 1980.

Although I dislike criticizing former students, in the interest of justice I feel I must make the following comments on Warren Stewart Bennett. It would be an understatement to only say that he has been a disappointment to me. When I first knew him he was a deputy sheriff who, through my courses, gained some knowledge in forensic science. Unfortunately, and from first hand knowledge, I am aware that he has portrayed himself to be far more qualified in forensic science than his knowledge of this discipline will allow.

My following comments are made about Mr. Bennett's curriculum vitae dated 1990 although they also apply to various versions I have seen over the past several years. A copy of Mr. Bennett's curriculum vitae is attached to this affidavit as Appendix A.

I) Curriculum vitae: Current Occupation:

- 1) Mr. Bennett lists his current occupation as a "Forensic Reconstruction Consultant." This title is not recognized as a forensic discipline by any forensic organization with which I am familiar. *FORENSIC SERVICES DIRECTORY*⁴, lists over ten thousand topics but "Forensic Reconstruction Consultant" is not one of them.
- 2) On the bottom of his first page Mr. Bennett lists one of his areas of expertise as being, "Forensic Pathology and Laboratory Services." Since this is his curriculum vitae it would be interesting to know what qualifications he

⁴ National Forensic Center, *FORENSIC SERVICES DIRECTORY*, 12th Edition, Princeton, 1995, p. lxxii.

has to act in the capacity of a forensic pathologist? If he consults with a pathologist on the subject of pathology then he should not include medical advertising on his own curriculum vitae.

II) Curriculum vitae: Academic - Experience and Educational Background, Educational:

- 3) On page two, the first line under "Academic-Experience and Educational Background", Mr. Bennett indicated that he has "Major in Forensic Science." It was impossible for him to "major" in forensic science at Elmira College because they have never had such a major! It should also be noted that he never graduated from Elmira College.
- 4) There are several mistakes in the listing of courses that Mr. Bennett claims to have taken at Elmira College. His minor errors will be ignored but the following are not:
 - a) Under Forensic Photography Mr. Bennett identifies two topics as being a part of that course. They were not. The terms, "Macro" and "Micro" photography reflect his lack of knowledge of the subject. "Macro" photography is simply normal photography while "Micro" photography is usually the reduction of a document, such as a newspaper to "microfilm" for storage. Photomacrography and photomicrography in forensic science were covered, however.
 - b) Although Mr. Bennett had two opportunities to register for the course "Forensic Microscopy" or take an "Independent Study" on a topic of his choosing, which could have been microscopy, he did not do so. The listing of "Forensic Microscopy" as a subject he took in June of 1982 is inaccurate. This subject was not offered in June of 1982 and he never took it at Elmira College when it was offered.
 - c) There has never been a course offered at Elmira College titled, "Advanced Criminalistics, Personal Identification, Hairs, Fibers, Finger Prints." The course I gave in personal identification did not include a study of hairs and fibers. It did include fingerprints as the major topic of study. Mr. Bennett obviously did not learn this subject very well as "fingerprint" is one word, not two. The coverage of fingerprint identification and processing evidence for latent fingerprints in this course was by no means adequate to qualify any student as an expert in this subject. Rather, it was just an introduction to several kinds of personal identification.

- d) Listing "United States Army Military Police Academy" under his courses at Elmira College is incorrect. The date given, "Mar. 1966", is a dozen years before he took courses at Elmira College.

III) Curriculum vitae: Academic - Experience and Educational Background, Teaching:

- 5) Mr. Bennett's first listing states that he was a "Professor's Assistance [sic]" under me at Elmira College from 1980-1981. This is incorrect for two reasons. First, the only duty that he performed was to occasionally help out in the laboratory. He did no actual lecturing and only acting in the capacity of a laboratory assistant on a part-time basis for a single semester of fifteen weeks, not one or two years as his dates suggest. Nevertheless, he has testified, "... I taught at Elmira College in criminalistics and advanced criminalistics."⁵
- 6) How many of Mr. Bennett's "Teaching" qualifications were nothing more than a lecture he gave during a seminar or conference is not known? It is doubtful that he has ever offered a college course anywhere for academic credit?

IV) Curriculum vitae: Academic - Experience and Educational Background, Achievements:

- 7) Mr. Bennett's listing of his "Achievements" reflects his ignorance of the meaning of this term. His letters from persons for whom he has provided a service certainly can not be considered "achievements." These are but praise. Listing his membership in the International Association of Bloodstain Pattern Analysts as an "achievement" is incorrect. This listing properly belongs under memberships in professional associations. Although he was a member of this association for a brief period, he never attended a meeting. Three of its annual meetings were held in Corning, New York, which was well within an easy driving distance from his home at the time.
- 8) Although Mr. Bennett did not specifically mention letters from former professors under his "Achievements" category, I feel that I should comment on the letter of recommendation he requested me to write for him in 1985. Regarding that letter, I am aware he has duplicated and displayed it several times. However, it should be noted that:

⁵ Transcript of Proceedings, Preliminary Hearing, before Jacqueline Leister, D.J., Port Royal, Pennsylvania, 4 February 1993, W. Stewart Bennett, witness, p. 96, l. 21-22.

- a) This letter was written from the information provided to me by Mr. Bennett at the time. He wanted such a letter quickly and, unfortunately, I did not go back to check my class records. If I had I am sure I would have discovered that he never studied forensic microscopy under me as he claims. Elmira College records do not show him enrolled in this course nor are they on his transcript. The listing of this course in my letter of 19 December 1985 is an error which was based upon what I believed to be accurate information provided to me by Mr. Bennett. I should have checked it but I did not have time.
- b) It is interesting to note that Mr. Bennett did not remind me that he was a "Professor's Assistance [sic]" when he asked me to prepare my letter of recommendation. He knew it was very insignificant.
- c) Mr. Bennett did prepare photographic exhibits for me on more than one occasion. He did so twice. I was not very pleased either time so I never asked him to prepare any more exhibits for me.
- d) I feel it is important to realize the limitations that were placed in my letter of 19 December 1985. I made it very clear that I was recommending him for, "whatever investigative task he may be required to undertake." At that time he was, as far as I recall, still employed as a Deputy Sheriff in Tioga County, New York. Knowing his limited understanding of science, I never anticipated that he would attempt to represent himself as anything more than a law enforcement investigator. My students were taught that my courses did not make experts of them, however, they were expected to learn what an expert could do for them.
- e) The last line of paragraph four in my letter of recommendation dated 19 December 1985 reads, in part, as follows: "...and prepare it in an understandable report.." At that time I did not include any reference to the possibility of Mr. Bennett presenting expert testimony. I was very surprised when I learned that he had been allowed to give expert testimony. Such testimony should only be accepted from well qualified forensic experts, something that Mr. Bennett definitely is not.

In addition to the above comments, which are directly related to items Mr. Bennett has listed on his Curriculum Vitae, it should be noted that he does not list membership in:

- A) The American Academy of Forensic Sciences
- B) The International Association for Identification
- C) The Canadian Society of Forensic Science

At one time Mr. Bennett belonged to the International Association of Bloodstain Pattern Analysts, however, approximately ten years ago he was dropped from membership.

It is unfortunate that Mr. Bennett considers himself a forensic scientist. In reality, he does not qualify for even provisional membership status in any of the three organizations listed above.

Some of Mr. Bennett's more recent curriculum vitae show he has made a few spelling corrections, however, many still may be found. This is surprising when considering how important it is to have all of the information in your personal history as accurate as possible.

VII) OVERALL CONCLUSION REGARDING WARREN STEWART BENNETT:

I have read Warren Stewart Bennett's curriculum vitae, reviewed many of his trial transcripts and read many of his "forensic" reports. After careful consideration I must conclude that:

- 1) Warren Stewart Bennett is unqualified to give opinion evidence on the subject of fingerprint identification.
- 2) Warren Stewart Bennett is unqualified to give opinion evidence on the subject of bloodstain pattern interpretation.
- 3) Warren Stewart Bennett is unqualified to give opinion evidence on the subject of firearms identification, ballistics, or wound ballistics.
- 4) Warren Stewart Bennett has repeatedly overstated his qualifications to such a degree that his errors are far beyond simple carelessness and might even constitute perjury. I feel that this possibility should be investigated thoroughly.
- 5) Warren Stewart Bennett has repeatedly testified overstating not only his knowledge of science but also most of his basic "qualifications". He testified that he was a member of the "International Association of Blood Stain Analysts" [sic], which is actually "...Bloodstain Pattern Analysts." but such a mistake is excusable. However, when he misrepresented the membership of that organization, "There's approximately 2,000 of us in the world."⁶ when the membership at that time was between 200 and 250, such gross exaggeration is inexcusable.

⁶ Transcript of Proceedings, Preliminary Hearing, before Jacqueline Leister, D.J., Port Royal, Pennsylvania, 4 February 1993, W. Stewart Bennett, witness, p. 97, l. 6-7.

- 6) I reviewed Mr. Bennett's report on the Kevin Siehl case but since I did not receive either a cover or title page I do not know the date it was issued. I find his report to be a gross overinterpretation of the bloodstain patterns. His remark, which was based only on his examination of photographs, "The stains are contemporaneous in time, in that, the drying time and color of the stains are very similar." is not something that could be determined. The drying time of a bloodstain is dependant on several factors and the photograph of a dried bloodstain can not possibly provide information on its drying time. His statement, "This print does match the rolled inked impression on the finger print [sic] card bearing the name of Kevin Charles Siehl." is in error as has been previously shown on pages 4 and 5.

Mr. Bennett did make one statement in his report with which I agree, at least in part. His last line, "The alleged suspect, Kevin Siehl, had access to his apartment, therefore, the print could have been made well before the homicide occurred."

VIII) APPENDED COPIES:

- 1) The 1982 class roster for Forensic Microscopy, the year in which Warren Stewart Bennett testified he was a student. He was not in that course in 1982 class or any other year. I was present in Juniata County Court in Mifflintown, Pennsylvania on 18 and 19 June 1993 and listened when Mr. Bennett testified before Judge Keith B. Quigley that he took this course from me at Elmira College. That was not true. He never took it. A copy of the class roster is attached as Figure 11.
- 2) Telephone record of a call I made to Richard Reynolds of the Illinois Department of Attorney General on 5 January 1993. Also, the remarks he made in a return telephone call on 13 January 1993 wherein he said he could not find any record of Mr. Bennett's association with his office whatsoever. A copy of my notes on his telephone call is attached as Figure 12.
- 3) Comments on the testimony of Warren Stewart Bennett which were published in Conference Proceedings of the Canadian Society of Forensic Science Annual Conference held in Edmonton, Alberta 16-21 November 1999. A copy of the significant pages (253 and 254, combined) of this publication are attached as Figure 13.
- 4) During the summer of 2002 one of my graduate interns, Angela Ungvarsky, conducted a study titled "FINGERPRINT DURABILITY" as partial fulfillment of the requirements for an additional degree at the University of Buffalo, Buffalo, New York. She did all of her experiments here in the Laboratory of Forensic Science. I was her program chairperson and as such I observed her work. For a period of three months Angela processed latent fingerprints which were deposited on a variety of surfaces.

One set of results she obtained for latent fingerprints which had "aged" on a smooth hard surface for seventy-eight days before they were processed by two different dusting techniques is shown as Figure 15.

BLOODSTAIN PATTERN EVIDENCE - QUESTIONABLE ORIGIN:

In addition to the alleged fingerprint identification I can not accept the findings regarding the two bloodstains, #21 and #22, that were present to the left of a cane chair as shown in Figure 14. It has been reported that the characteristics of the blood in these two bloodstains is different and, therefore, they must have come from two different individuals. While this is a very remote possibility, I find it so unlikely as to seriously question the accuracy of that determination. Both of these two bloodstains struck the wall with a near parallel left to right configuration. Furthermore, the internal angle of impact to the wall or door casing is very acute. The very small size of the two bloodstains suggests that they were the result of their being cast off from an instrument or, less likely, the result of an impact that occurred at the same place in space, with the same impact force, and with identical directionality.

Based upon my experience I conclude that two small bloodstains are the result of a single event and they came from the same source. Therefore, I question the accuracy of any report that concluded these two bloodstains came from two different individuals. The probability that whatever mechanism produced one of these bloodstains from one individual could be duplicated by some mechanism by another individual's movement to duplicate the same size and impact angle to the wall of the second bloodstain is so unlikely that for all intent and purpose it is an impossibility. I feel that it is far more likely that there was some kind of contamination to one or both of these samples prior to their being tested than it is that they actually came from two different individuals.

I know David Merrill Brant, the individual who reportedly collected these two bloodstains at the time. He was a student of mine in 1993 when he attended the Bloodstain Evidence Institute in Corning, New York. That Institute is a basic 40 hour course of study for the interpretation of bloodstain patterns. He also attended an Advanced Bloodstain Evidence Institute in Corning in 1997. I am confident that if he were asked today about the likelihood of the two bloodstains, #21 and #22, having been produced at two different times and by two separate events, he would question that as a real possibility.

Inasmuch as his investigation of the Siehl case was conducted two years prior to his taking my basic Institute in bloodstain pattern recognition and interpretation, his knowledge of that subject in 1991 must be considered. In 1991 Mr. Brant may well not have known very much about the dynamics of blood and would not have recognized

the significance of the near identical geometry of these two small bloodstains.

This affidavit is based upon information and/or physical evidence that has been made available at this time and could be expanded and/or modified if and when additional information becomes available.

State of: New York
County of: Steuben
Signed this 14th day
of January, 2003.

Martha L. Force

MARTHA L. FORCE
Notary Public, State of New York
Qualified in Steuben County
My Commission Expires June 27, 2006
Registration # 01F04920775

Respectfully submitted,

Herbert Leon MacDonell
Herbert Leon MacDonell, Director
LABORATORY OF FORENSIC SCIENCE

MORE THAN A REASONABLE DOUBT

COMPARISON CHART ONE

- 1) POINT #1 ON THE DEVELOPED LATENT FINGERPRINT IS THREE FRICTION RIDGES ABOVE POINT #2.
- 2) POINT # 1 ON THE FINGERPRINT ON THE FINGERPRINT CARD IS FOUR FRICTION RIDGES ABOVE POINT #2.

FIGURE 1

DEVELOPED LATENT

1

2

1
2
3
4

COMPARISON CHART ONE

FIGURE 2



FINGERPRINT CARD



COMPARISON CHART ONE

FIGURE 3

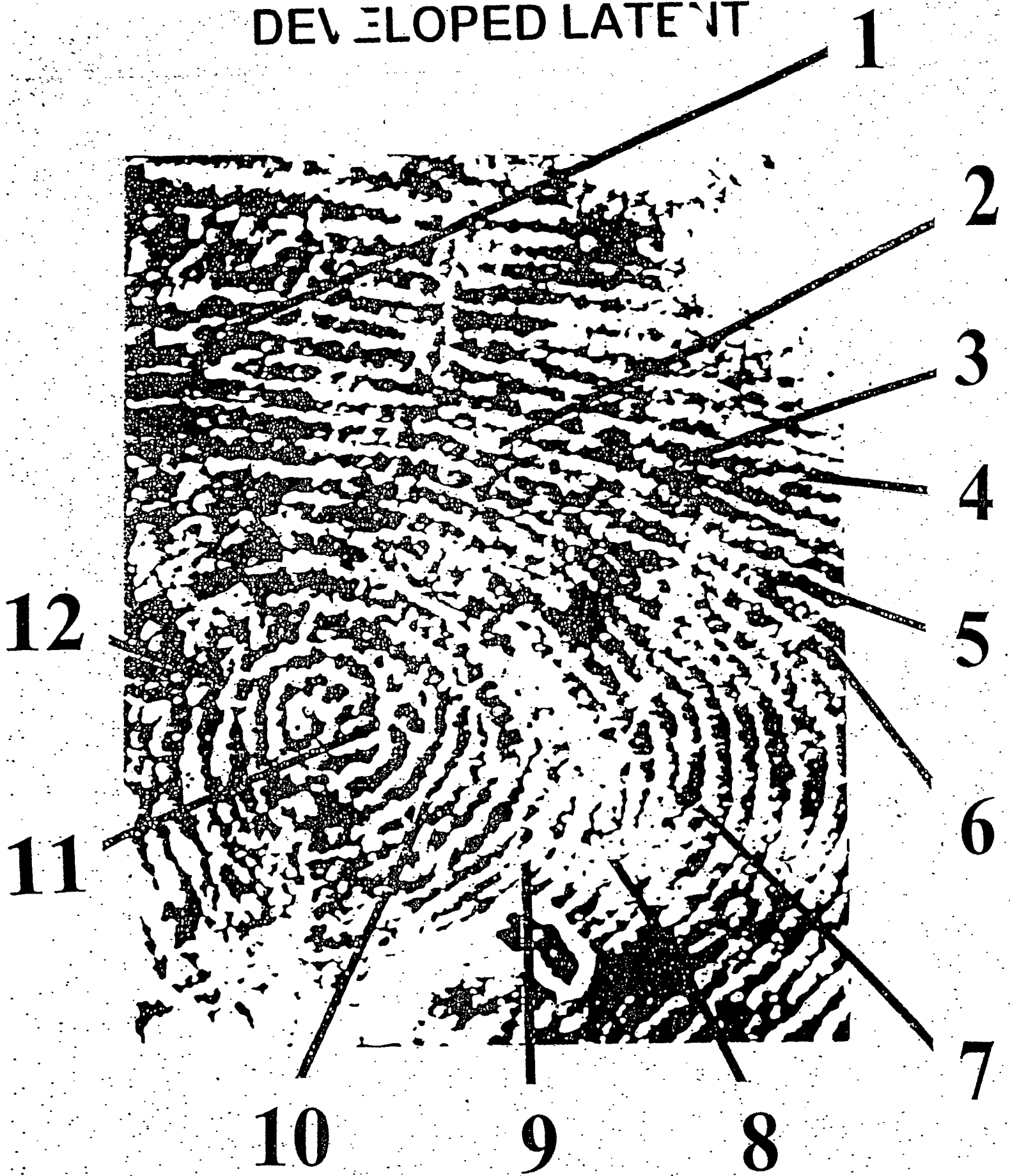
MORE THAN A REASONABLE DOUBT

COMPARISON CHART TWO

<u>POINT</u>	<u>DEVELOPED LATENT</u>	<u>FINGERPRINT CARD</u>
1	ENDING RIDGE	ENDING RIDGE
2	NOT CLEAR?	ENDING RIDGE
3	BIFURCATION	BIFURCATION
4	ENDING RIDGE	ENDING RIDGE
5	ENDING RIDGE/ BIFURCATION?	ENDING RIDGE/ BIFURCATION?
6	ENDING RIDGE	ENDING RIDGE
7	NOT CLEAR?	NOT CLEAR?
8	NOT CLEAR?	NOT CLEAR?
9	NOT CLEAR?	BIFURCATION
10	ENDING RIDGE?	RIDGE
11	NOT CLEAR?	NOT CLEAR?
12	NOT CLEAR?	ENDING RIDGE?

FIGURE 4

DEVELOPED LATENT

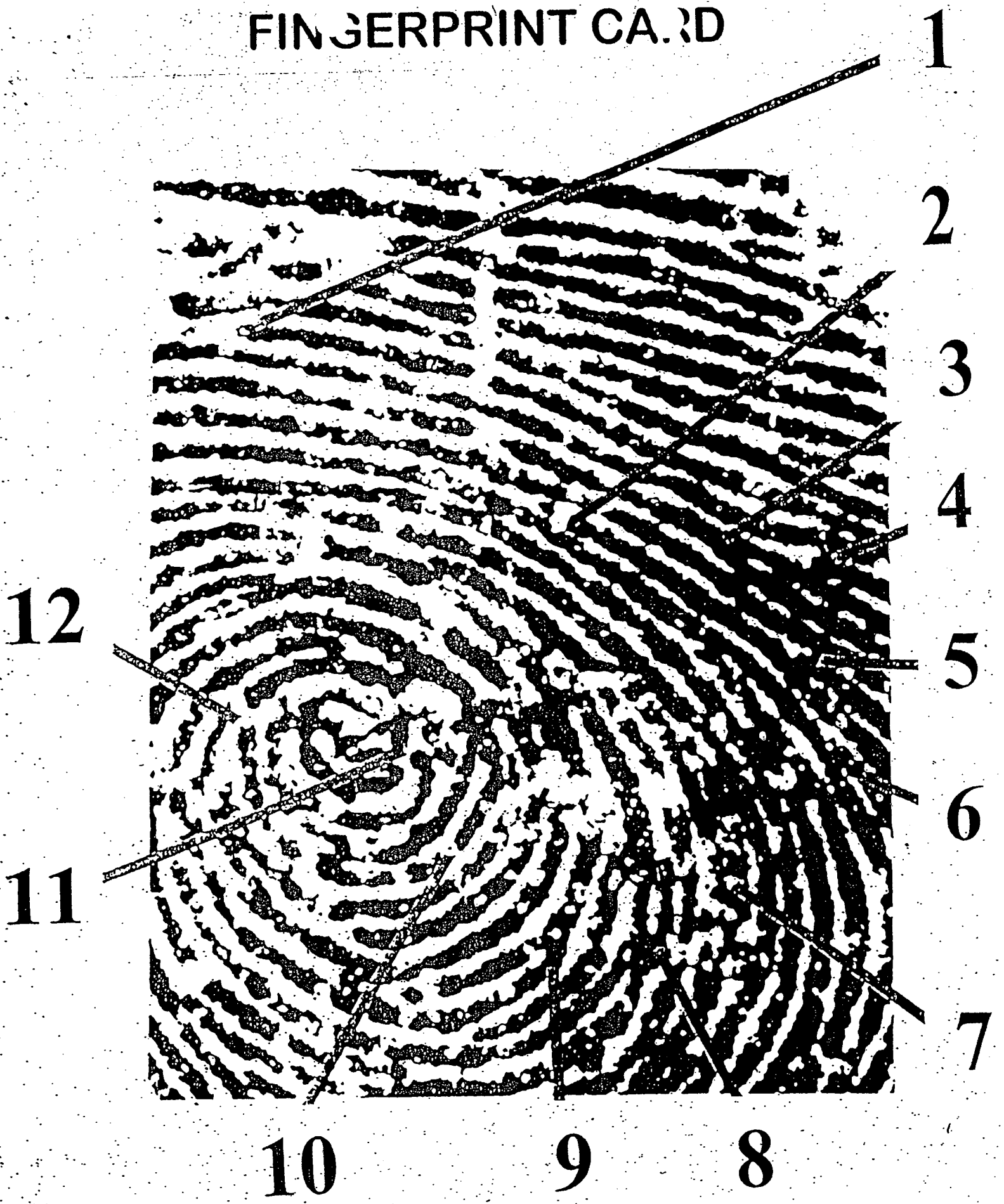


COMPARISON CHART TWO

for

FIGURE 5

FINGERPRINT CARD



COMPARISON CHART TWO

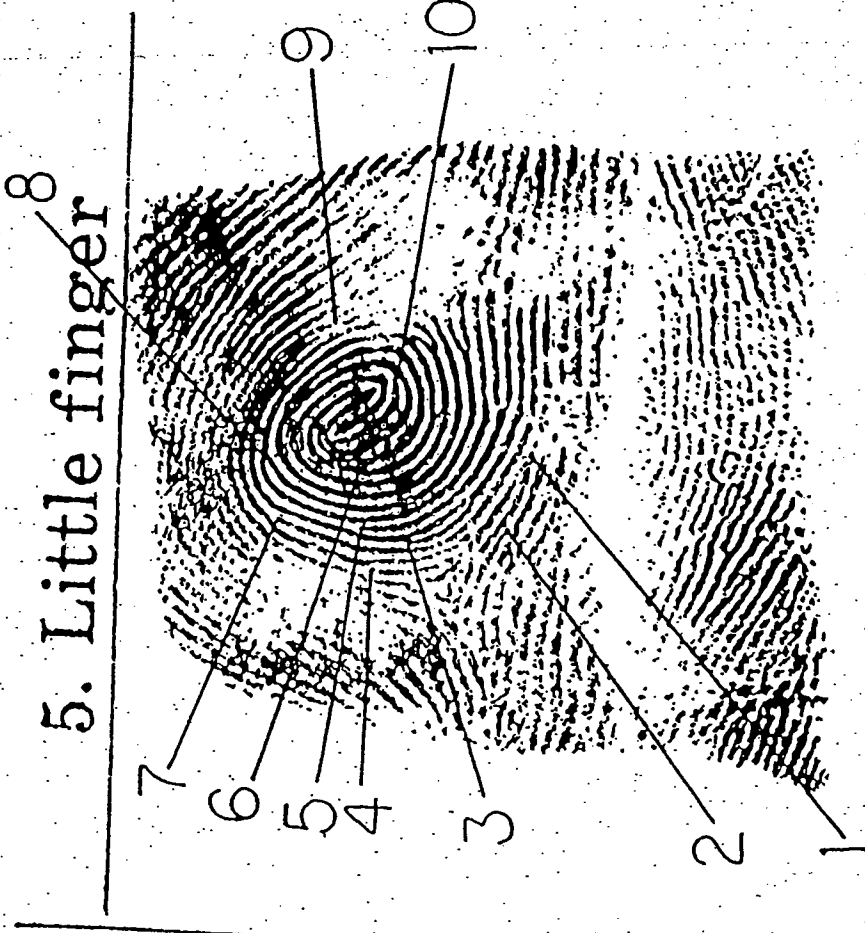


FIGURE 2—Right little finger of James Doe, identical twin brother of John Doe.

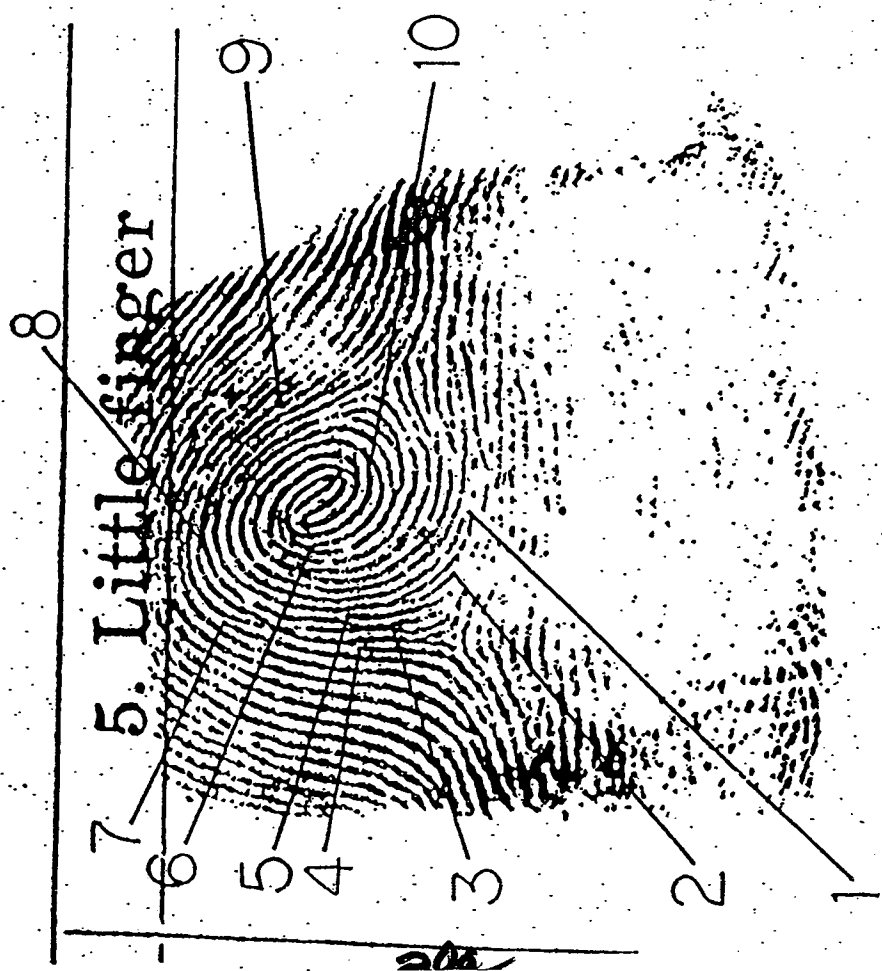


FIGURE 1—Right little finger of John Doe, identical twin brother of James Doe.

MORE THAN A REASONABLE DOUBT

COMPARISON CHART THREE

- 1) OVAL GEOMETRY OF THE CENTRAL AREA OF THE DEVELOPED LATENT FINGERPRINT IS AT AN ANGLE OF APPROXIMATELY FIFTY-ONE DEGREES TO THE RIGHT OF VERTICLE.
- 2) OVAL GEOMETRY OF THE CENTRAL AREA OF THE FINGERPRINT ON THE FINGERPRINT CARD IS AT AN ANGLE OF APPROXIMATELY FORTY-TWO TO THE LEFT OF VERTICLE.
- 3) OVAL GEOMETRY OF THE CENTRAL AREA OF THE DEVELOPED LATENT FINGERPRINT HAS A SIXTY DEGREE GEOMETRY.
- 4) OVAL GEOMETRY OF THE CENTRAL AREA OF THE FINGERPRINT ON THE FINGERPRINT CARD HAS A FORTY-FIVE DEGREE GEOMETRY.

THE ELASTICITY OF HUMAN SKIN PERMITS A SMALL DEGREE OF GEOMETRIC DISTORTION IN FINGERPRINTS THAT WERE MADE BY THE SAME FINGER. THIS CAN NOT EXPLAIN THE GROSS DISCREPANCIES BETWEEN THESE TWO FINGERPRINTS, HOWEVER.

FIGURE 8

2/a

DEVELOPED LATENT



COMPARISON CHART THREE

FINGERPRINT CARD



COMPARISON CHART THREE

Verification of Kevin Siehl

1. My name is Kevin Siehl; I am currently incarcerated in the State Correction Institution-Huntington. I make the following statements under penalty of perjury.
2. In May 1992 a Cambria County jury convicted me of first-degree murder (Case No. 1058-1991); the trial judge sentenced me to life in prison.
3. Under 42 Pa. Cons. Stat. § 9543.1, I am moving for DNA testing to prove my actual innocence.
4. After consulting with my attorneys, I consent to provide a sample of bodily fluid for the purpose of DNA testing.
5. After consulting with my attorneys, I understand that, if the Court grants my request, any data obtained from bodily fluid sample (DNA or otherwise) may be entered into law enforcement databases, may be used in the investigation of other crimes, and may be used as evidence against me in other cases.
6. I am actually innocent of the crime for which I stand convicted; I did not murder my wife—Christine Siehl—in July 1991. I have continuously maintained my actual innocence for the past fifteen years.
7. I seek DNA testing for one purpose only—to prove my actual innocence with objective, scientific DNA evidence. As such, my DNA testing request is not made for dilatory reasons.

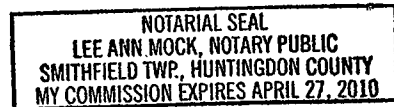
Dated: Dec 17, 2007

Sworn to by: Lee Ann Mock

Notary Public: Lee Ann Mock

Commission Expires: April 27, 2010

Kevin C. Siehl



EXHIBIT

3

PENNS. STATE POLICE

REQUEST FOR FORENSIC ANALYSIS

NAME OF LAB/TROOP <input type="checkbox"/> BETHLEHEM <input type="checkbox"/> ERIE <input checked="" type="checkbox"/> GREENSBURG <input type="checkbox"/> HARRISBURG <input type="checkbox"/> LIMA <input type="checkbox"/> WYOMING <input type="checkbox"/> TROOP _____ I.D. UNIT	TYPE OF ANALYSIS <input type="checkbox"/> AFIS <input type="checkbox"/> BALLISTICS <input checked="" type="checkbox"/> CHEMISTRY <input type="checkbox"/> DOCUMENTS <input type="checkbox"/> LATENT PRINTS	FOR LAB USE DATE RECEIVED: <u>7/16/91</u> LAB NO.: <u>B91-3945-C</u> RECEIVED FROM: <u>TIP MERRILL BRANT</u> RECEIVED BY: <u>CAD</u> EVIDENCE STORAGE: _____	FOR TROOP USE DATE RECEIVED: _____ TROOP NO.: _____ RECEIVED FROM: _____ RECEIVED BY: _____ EVIDENCE STORAGE: _____
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SUBMIT REPORT TO (INVESTIGATOR'S AGENCY ADDRESS) Johnstown Police Dept. 401 Washington St. Johnstown, Pa. 15902	2. INVESTIGATOR'S NAME (TYPE/PRINT) Sgt. Angelo CANCELLIERE	814 TELEPHONE NO. 533 2078	3. INCIDENT NO. A1-696437
4. <input type="checkbox"/> RESUBMISSION PREVIOUS LAB NO. _____		5. PROP. INV. NO. _____	
6. DATE OCCURRED 07012-91			

OFFENSE Homicide	8. DRUG REL. <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	9. LOCATION (CITY-BOROUGH-TOWNSHIP) Johnstown City	10. COUNTY Cambridia
VICTIM Christine Rose SIEHL		12. ACCUSED SUSPECT <input type="checkbox"/> <input type="checkbox"/>	

PART II EVIDENCE INFORMATION (FOR EVIDENCE SUBMITTED TO ANY SECTION OTHER THAN AFIS)

ITEM NO.	DESCRIPTION	LAB
1	Two vials (purple cap) blood from victim at autopsy	PSP Lab
2	Victim fingernails left hand.	
3	Victim fingernails right hand, Plus nail clippers used to cut.	
4	Victim head hair.	
5	Victim pubic hair and comb used to comb hair.	
6	Victim pulled pubic hair	
7	Hair removed at autopsy from Right leg of victim.	
8	Hair removed from victim fingernail at autopsy by Dr. John YERGER.	
9	Hair retained from crime scene. Located on floor 32 inches in front of bathroom door.	
10	Wooden handle knife 7 inch long, on coffee table.	

19. REMARKS/ADDITIONAL INFORMATION
 Victim was killed in her residence no forced entry approximately 21 stab wounds.
 Check clothing for seminal fluid, blood stains foreign hair, fiber etc.etc.
 Victim was a white female, 28 years

PART III AFIS INFORMATION (FOR EVIDENCE SUBMITTED TO AFIS SECTION COMPLETE THE FOLLOWING)

14. DATE STATUTE OF LIMITATIONS EXPIRES	16. AGE OF ACTOR (IF KNOWN)	17. SEX OF ACTOR (IF KNOWN) <input type="checkbox"/> M <input type="checkbox"/> F	18. CHECK ALL OF THE FOLLOWING THAT HAVE BEEN COMPLETED <input type="checkbox"/> ELIMINATION PRINTS SEARCH CONDUCTED <input type="checkbox"/> LATENT ENTRY CRITERIA MET <input type="checkbox"/> SKETCH SHOWING PLACEMENT OF LATENT ATTACHED
---	-----------------------------	--	---

LATENT NO.	HAND R/L IF KNOWN	FINGER	COMMENTS	AFIS RESULTS (FOR LAB USE)		
				IDENTIFIED YES	NO	ULP REG.
1						
2						
3						
4						
5						
6						

20. REMARKS/ADDITIONAL INFORMATION

EXHIBIT
4

EVIDENCE DISPOSITION (FOR LAB/TROOP USE)

RELINQUISHED BY (SIGNATURE)	RELINQUISHED TO (SIGNATURE)	DEPT.
-----------------------------	-----------------------------	-------

NOTE: All evidence is available for pick-up upon receipt of Report

PENNS. STATE POLICE
REQUEST FOR FORENSIC ANALYSIS

NAME OF LAB/TROOP BETILEHEM ERIE GREENSBURG HARRISBURG LIMA WYOMING TROOP _____ I.D. UNIT	TYPE OF ANALYSIS <input type="checkbox"/> AFIS <input type="checkbox"/> BALLISTICS <input checked="" type="checkbox"/> CHEMISTRY <input type="checkbox"/> DOCUMENTS <input type="checkbox"/> LATENT PRINTS
--	---

FOR LAB USE		FOR TROOP USE	
DATE RECEIVED 7/16/91	LAB NO. 891-2945	DATE RECEIVED	TROOP NO.
RECEIVED FROM T/M MERRILL BEAN		RECEIVED FROM	
RECEIVED BY CAD	EVIDENCE STORAGE	RECEIVED BY	EVIDENCE STORAGE

REPORT TO (INVESTIGATOR'S AGENCY ADDRESS) Johnstown Police Dept. 401 Washington St Johnstown, Pa. 15902	2. INVESTIGATOR'S NAME (TYPE/PRINT) Sgt. Angelo CANCELLIERE	TELEPHONE NO. 533 2078	3. INCIDENT NO. A1-696437
4. <input type="checkbox"/> RESUBMISSION PREVIOUS LAB NO.	5. PROP. INV. NO.	6. DATE OCCURRED 07-12-91	

8. DRUG REL. <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	9. LOCATION (CITY-BOROUGH-TOWNSHIP) Johnstown City	10. COUNTY Cambria
12. ACCUSED SUSPECT <input type="checkbox"/> <input type="checkbox"/>		1008 SID NO.

II EVIDENCE INFORMATION (FOR EVIDENCE SUBMITTED TO ANY SECTION OTHER THAN AFIS)

13.	DESCRIPTION
13	13 inch wooden handle knife located in kitchen.
14	10 inch wooden handle knife located in kitchen.
15	9 inch metal handle knife located in kitchen.
16	6 inch metal handle knife located in kitchen.
17	Size 36 Bestform brassiere, white.
18	One pair of purple shorts, "UPPER LEVEL", Size M.
19	One pink tank top, Parrirello.
20	One 23 inch by 36 inch white towel with possible blood. Located in bathroom.
21	One 19 inch by 28 white towel with possible blood. Located in bathroom.
22	Green rag with possible blood, located in victim's bedroom. trash can.

III AFIS INFORMATION (FOR EVIDENCE SUBMITTED TO AFIS SECTION COMPLETE THE FOLLOWING)

14. STATE OF EXPIRES	16. AGE OF ACTOR (IF KNOWN)	17. SEX OF ACTOR (IF KNOWN) - <input type="checkbox"/> M <input type="checkbox"/> F	18. CHECK ALL OF THE FOLLOWING THAT HAVE BEEN COMPLETED <input type="checkbox"/> ELIMINATION PRINTS SEARCH CONDUCTED <input type="checkbox"/> LATENT ENTRY CRITERIA MET <input type="checkbox"/> SKETCH SHOWING PLACEMENT OF LATENT ATTACHED
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IDENT NO.	HAND R/L IF KNOWN	FINGER	COMMENTS	AFIS RESULTS (FOR LAB USE)		
				IDENTIFIED YES	NO	ULP REG.

REMARKS/ADDITIONAL INFORMATION

EVIDENCE DISPOSITION (FOR LAB/TROOP USE)

RELINQUISHED BY (SIGNATURE)	RELINQUISHED TO (SIGNATURE)	DEPT.	DATE
-----------------------------	-----------------------------	-------	------

NOTE: All evidence is available for pick-up upon receipt of Report of Analysis by the investigator and shall be retrieved within 30 days.

REQUEST FOR FORENSIC ANALYSIS

NAME OF LAB/TROOP

TYPE OF ANALYSIS

FOR LAB USE

FOR TROOP USE

- BETHLEHEM
- ERIE
- GREENSBURG
- HARRISBURG
- LIMA
- WYOMING
- TROOP I.D. UNIT

- AFIS
- BALLISTICS
- CHEMISTRY
- DOCUMENTS
- LATENT PRINTS

DATE RECEIVED: 7/16/91 LAB NO.: 691-3945

RECEIVED FROM: TPR MERRILL BRANT

RECEIVED BY: [Signature]

EVIDENCE STORAGE

REPORT TO (INVESTIGATOR'S AGENCY ADDRESS)
 Johnstown Police Dept.
 401 Washington St.
 Johnstown, Pa. 15902

2. INVESTIGATOR'S NAME (TYPE/PRINT): Sgt. Angelo CANCELLIERE
 TELEPHONE NO.: 814 533 2078
 3. INCIDENT NO.: A1-696437
 4. RESUBMISSION PREVIOUS LAB NO.:
 5. PROP. INV. NO.:
 6. DATE OCCURRED: 7/12/91

8. DRUG REL. Y N
 9. LOCATION (CITY-BOROUGH-TOWNSHIP): Johnstown City
 10. COUNTY: Cambria
 11. NAME: Christine Rose SIEHL
 12. ACCUSED SUSPECT

II EVIDENCE INFORMATION (FOR EVIDENCE SUBMITTED TO ANY SECTION OTHER THAN AFIS)

NO.	DESCRIPTION
13.	Blood patch collected from door frame of bathroom, living room side. right side
	Blood patch collected from door frame of bathroom, living room side. right side
	Blood patch collected from bathroom door jam edge right side.
	Blood patch collected from bathroom wall behind door beside radiator.
	Blood patch collected from bathroom wall behind door beside radiator.
	Blood patch collected from wall behind commode.
	Blood patch collected from back of bathroom door.
	Blood patch collected from broken full length mirror.
	Blood patch collected from cat litter box.
	Blood patch collected from bathroom tub (front)

MARKS/ADDITIONAL INFORMATION

III AFIS INFORMATION (FOR EVIDENCE SUBMITTED TO AFIS SECTION COMPLETE THE FOLLOWING)

14. STATUTE OF LIMITATIONS EXPIRES
 15. AGE OF ACTOR (IF KNOWN)
 16. SEX OF ACTOR (IF KNOWN) M F
 17. CHECK ALL OF THE FOLLOWING THAT HAVE BEEN COMPLETED
 ELIMINATION PRINTS SEARCH CONDUCTED
 LATENT ENTRY CRITERIA MET
 SKETCH SHOWING PLACEMENT OF LATENT ATTACHED

IDENT NO.	HAND R/L IF KNOWN	FINGER	COMMENTS	AFIS RESULTS (FOR LAB USE)		
				IDENTIFIED YES	NO	ULP REG.
1						
2						
3						
4						
5						
6						

MARKS/ADDITIONAL INFORMATION

EVIDENCE DISPOSITION (FOR LAB/TROOP USE)

RELINQUISHED BY (SIGNATURE) _____ RELINQUISHED TO (SIGNATURE) _____ DEPT. _____ DATE _____

NOTE: All evidence is available for pick-up upon receipt of Report of Analysis by the investigator and shall be retrieved within 30 days.

PART I SUBMITTED TO

SP 2-212 (10-70)

PA STATE POLICE
REQUEST FOR FORENSIC ANALYSIS

- NAME OF LAB/TROOP
- BETHLEHEM
 - ERIE
 - GREENSBURG
 - HARRISBURG
 - LIMA
 - WYOMING
 - TROOP I.D. UNIT

- TYPE OF ANALYSIS
- AFIS
 - BALLISTICS
 - CHEMISTRY
 - DOCUMENTS
 - LATENT PRINTS

FOR LAB USE FOR TROOP USE

DATE RECEIVED LAB NO. DATE RECEIVED TROOP NO.

7/12/91 691-3945

RECEIVED FROM RECEIVED FROM

SP. MERRILL BRANT

RECEIVED BY EVIDENCE STORAGE RECEIVED BY EVIDENCE STORAGE

CAD

1. SUBMIT REPORT TO (INVESTIGATOR'S AGENCY ADDRESS)

Johnstown Police Dept.
401 Washington St.
Johnstown, Pa. 15902

2. INVESTIGATOR'S NAME (TYPE/PRINT) TELEPHONE NO. 3. INCIDENT NO.

Sgt. Angelo CANCELLIERE 533 2078 Al-696437

4. RESUBMISSION 5. PROP. INV. NO. 6. DATE OCCURRED

PREVIOUS LAB NO. 7/12/91

7. OFFENSE 8. DRUG REL. 9. LOCATION (CITY-BOROUGH-TOWNSHIP) 10. COUNTY

Homicide Y N Johnstown City Cambria Co.

11. VICTIM 12. ACCUSED 1008 1510 NO.

Christine Rose SIEHL SUSPECT

PART II EVIDENCE INFORMATION (FOR EVIDENCE SUBMITTED TO ANY SECTION OTHER THAN AFIS)

ITEM NO.	DESCRIPTION
31	Blood patch collected from bathroom floor behind door.
32	Blood patch collected from bathroom floor center of floor.
33	
35	
36	
37	
38	
39	

14. NAME 15. DATE 16. INITIALS 17. SIGNATURE 18. SKETCH SHOWING

LATENT NO.	HAND R/L IF KNOWN	FINGER	COMMENTS	RESULTS (FOR LAB USE)		
				IDENTIFIED YES	NO	ULP REG.
1						
2						
3						
4						
5						
6						

19. REMARKS/ADDITIONAL INFORMATION

EVIDENCE DISPOSITION (FOR LAB/TROOP USE)

RELINQUISHED BY (SIGNATURE) RELINQUISHED TO (SIGNATURE) DEPT. DATE

NOTE: All evidence is available for pick-up upon receipt of Report of Analyst by the investigator and shall be retrieved within 30 days.

REQUEST FOR FORENSIC ANALYSIS

LAB/TROOP

BETHLEHEM
 ERIE
 GREENSBURG
 HARRISBURG
 LIMA
 WYOMING
 TROOP I.D. UNIT

TYP ANALYSIS

AFIS
 BALLISTICS
 CHEMISTRY
 DOCUMENTS
 LATENT PRINTS

FOR LAB USE

DATE RECEIVED: 7/23/91 LAB NO.: G91-3945-C

RECEIVED FROM: TPR MERRILL I.P.P.M.T.

RECEIVED BY: [Signature] EVIDENCE STORAGE

FOR TROOP USE

DATE RECEIVED: TROOP NO.:

RECEIVED FROM:

RECEIVED BY: EVIDENCE STORA:

SUBMIT REPORT TO (INVESTIGATOR'S AGENCY ADDRESS)

Johnstown Police Dept.
 401 Washington St.
 Johnstown, Pa. 15902

INVESTIGATOR'S NAME (TYPE/PRINT): Sgt. Angelo CANCELLIERE

TELEPHONE NO.: 814 533 2078

INCIDENT NO.: A1-696437

4. RESUBMISSION PREVIOUS LAB NO.:

5. PROP. INV. NO.:

6. DATE OCCURRED:

OFFENSE: Homicide

8. DRUG REL. Y N

9. LOCATION (CITY-BOROUGH-TOWNSHIP): Johnstown City

10. COUNTY: Cambria

11. VICTIM: Christine Rose SIEHL

12. ACCUSED SUSPECT: DOB: SID NO.:

PART II EVIDENCE INFORMATION (FOR EVIDENCE SUBMITTED TO ANY SECTION OTHER THAN AFIS)

ITEM NO.	DESCRIPTION
41	Twelve inch wooden handle knife, Knife drawer
42	15 inch plastic handle knife, Knife drawer
43	11 1/2 inch plastic handle knife, Knife drawer
44	White panties, size 7, Fruit of Loom. Located on bathroom floor under towels.
45	White print dress "MISTER NOAH". Located on bathroom floor under towels.
6	
7	
8	
9	
7	

13. MARKS/ADDITIONAL INFORMATION

check for blood

PART III AFIS INFORMATION (FOR EVIDENCE SUBMITTED TO AFIS SECTION COMPLETE THE FOLLOWING)

15. DATE STATUTE OF LIMITATIONS EXPIRES:

16. AGE OF ACTOR (IF KNOWN):

17. SEX OF ACTOR (IF KNOWN): M F

18. CHECK ALL OF THE FOLLOWING THAT HAVE BEEN COMPLETED:

ELIMINATION PRINTS SEARCH CONDUCTED

LATENT ENTRY CRITERIA MET

SKETCH SHOWING PLACEMENT OF LATENT ATTACHED

LATENT NO.	HAND R/L IF KNOWN	FINGER	COMMENTS	AFIS RESULTS (FOR LAB USE)		
				IDENTIFIED YES	NO	ULP REG.
1						
2						
3						
4						
5						
6						

19. REMARKS/ADDITIONAL INFORMATION

EVIDENCE DISPOSITION (FOR LAB/TROOP USE)

RELINQUISHED BY (SIGNATURE): RELINQUISHED TO (SIGNATURE): DEPT.:

NOTE: All evidence is available for pick-up upon receipt of Report of Analysis by the investigator and shall be retrieved with

LABORATORY/TROOP

EXHIBIT 5

PENNSYLVANIA STATE POLICE
REQUEST FOR LABORATORY ANALYSIS

TO Greensburg Regional Lab
NAME OF LAB FACILITY - SEE REVERSE SIDE

- BALLISTICS
- CHEMISTRY
- DOCUMENTS
- LATENT PRINT

DATE RECEIVED 7/30/91
LABORATORY NO. G91-3945-

DATE OCCURRED
7-13-91

1. OFFENSE Homicide
2. LOCATION (CITY-BOROUGH-TOWNSHIP) Johnstown
3. COUNTY C

7. VICTIM
Christine Siehl

10. TYPE OF EXAMINATION REQUESTED
Chemical analysis of items submitted to determine if they match any of those previously submitted items.

11. SU In
12. IN J
13. IN J
DES

DATE
7-30-91

14. ITEM NO.

- 46. Two (2) vials (purple caps) of blood from Kevin Siehl
- 47. Two (2) swabs of saliva from Kevin Siehl
- 48. Head hair (combed) from Kevin Siehl
- 49. Head hair (plucked) from Kevin Siehl
- 50. Pubic hair (combed) from Kevin Siehl
- 51. Pubic Hair (plucked) from Kevin Siehl
- 52. ~~Two (2) fingerprint cards of Kevin Siehl~~
- 53. Two (2) vials (purple Caps) of blood from Robert Prebehalla
- 54. Two (2) swabs of saliva from Robert Prebehalla
- 55. Head hair (combed) from Robert Prebehalla
- 56. Head hair (plucked) from Robert Prebehalla
- 57. Pubic hair (combed) from Robert Prebehalla
- 58. Pubic hair (plucked) from Robert Prebehalla
- 59. ~~Four (4) fingerprint cards of Robert Prebehalla~~
- 60. Two (2) vials (purple caps) of blood from Frank Wills
- 61. Two (2) swabs of saliva from Frank Wills
- 62. Head hair (combed) from Frank Wills
- 63. Head hair (plucked) from Frank Wills
- 64. Pubic hair (combed) from Frank Wills
- 65. Pubic hair (plucked) from Frank Wills
- 66. ~~Three (3) fingerprint cards of Frank Wills~~

Compare Items 46 - 66 to Items 1 - 45 which were previously submitted. This request for analysis should be referred to Lab Report No. G91-3945-C

16. REMARKS

EVIDENCE DISPOSITION - FOR CRIME LABORATORY USE

RELINQUISHED BY (SIGNATURE)

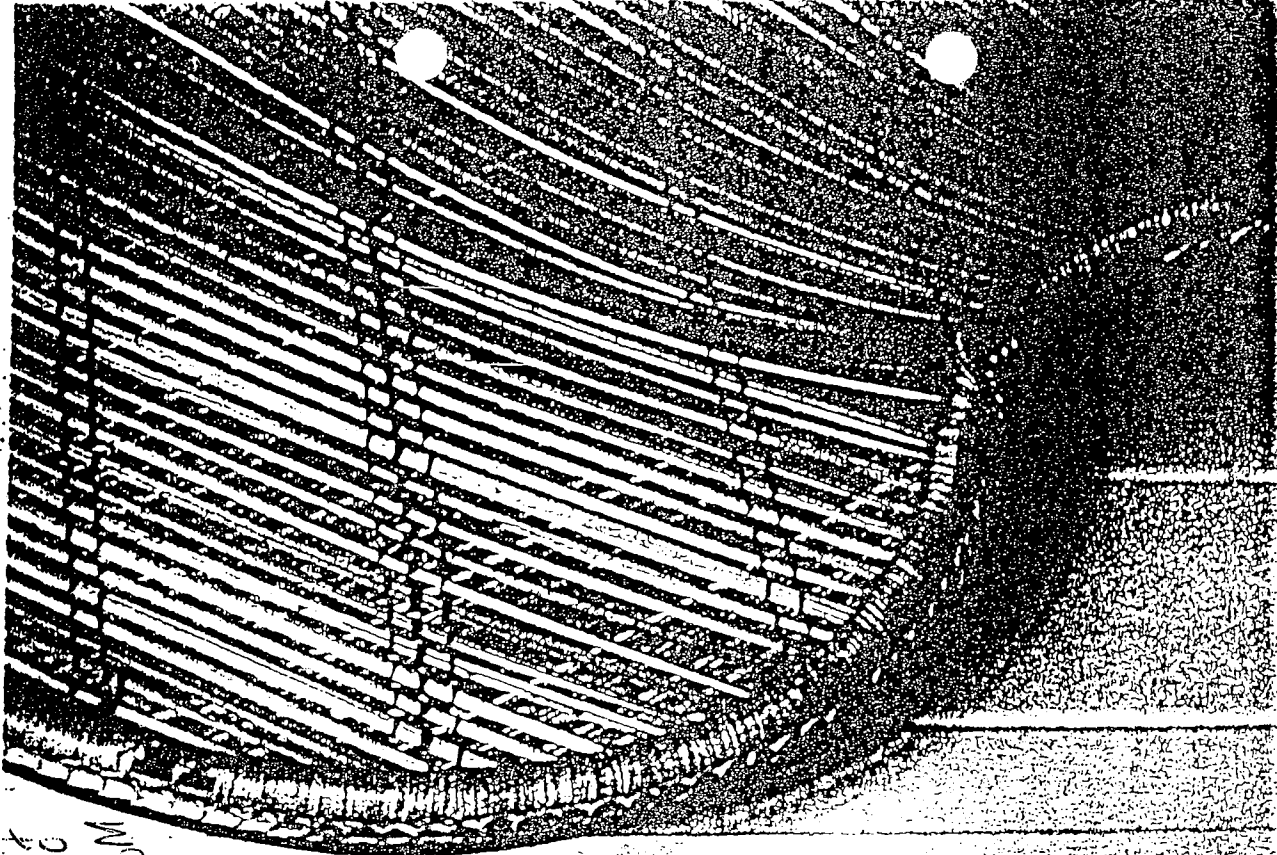
RELINQUISHED TO (SIGNATURE)
DEPARTMENT

DATE
EXHIBIT

NOTE: All evidence is available for pick-up upon receipt of Report of Laboratory Analysis by the investigator within 30 days.

6

Blood



Microscopic
View

Blood

Blood

The Above Blood Stiches, (Aspirates)

were not properly fixed and the
stiches containing Blood which were
then in high concentration

21822
Two different
stiches
above

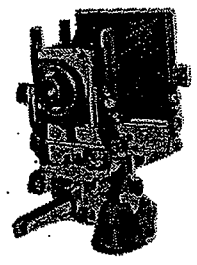
EXHIBIT

7

A



LABORATORY OF FORENSIC SCIENCE



HERBERT LEON MacDONELL, DIRECTOR
POST OFFICE BOX 1111
CORNING, NEW YORK 14830

TELEPHONE NO. (607) 962-6581
FAX (607) 936-6936

Please refer to Case No.

Mr. Christian A. Fisanick, Esq.
Chief Deputy, Appellate Division
Office of the District Attorney
Camberia County Courthouse
Ebensburg, Pennsylvania 15931

92-85

2 February 1993

Re: Commonwealth v. Donald Kelly (92-85)

WORK NOTES FOR YOUR INFORMATION, NOT A REPORT

I have received and reviewed the curriculum vita, trial transcript and the 30 May 1990 "Reconstruction and Analysis Report" of Warren Stuart Bennett. My comments on these documents are as follows:

I) Curriculum vitae: Current Occupation:

- 1) He lists his current occupation as being that of a "Forensic Reconstruction Consultant." This interesting title is not a recognized discipline by any forensic organization of which I am aware. In fact, there are well over ten thousand different areas of forensic disciplines listed in the *FORENSIC SERVICES DIRECTORY*, but "Forensic Reconstruction Consultant" is not one of them. I shall enclose a copy of the page wherein this topic would appear if it were recognized as a specific discipline.
- 2) On the bottom of his first page he lists "Forensic Pathology and Laboratory Services." Since this is his curriculum vitae it would be interesting to know what qualifications he has to act in the capacity of a forensic pathologist? If he consults with a pathologist on the subject of pathology then he should not include medical advertising on his curriculum vitae.

II) Curriculum vitae: Academic - Experience and Educational Background, Educational:

- 3) On page two, the first line under "Academic-Experience and Educational Background", Mr. Bennett indicated that he has "Majored in Forensic Science." It was impossible for him to "major" in forensic science at Elmira College because they have never had such a major! It should be noted that he never graduated from Elmira College.

EXHIBIT

8

370

4) There are several mistakes in the listing of courses that Mr. Bennett claims to have taken at Elmira College. Minor errors will be ignored, however, the following are significant:

- a) Under Forensic Photography he identifies two topics that were not part of that course. These headings, "Macro and Micro" photography reflect his lack of knowledge of the main subject. "Macro" photography is simply normal or, in forensic applications, crime scene photography. The term "Macro" is improper and was never used as a term to describe normal photography. Nevertheless, Mr. Bennett is totally incorrect in suggesting "Micro" photography.
- b) Although he had two opportunities to register for the course "Forensic Microscopy" or take an "Independent Study" on a topic of his choosing, he did not do so. The listing of "Forensic Microscopy" as a subject he took in June of 1982 is inaccurate. This subject was not offered in June of 1982 and he never took it at Elmira College when it was offered.
- c) There has never been a course offered at Elmira College titled, "Advanced Criminalistics, Personal Identification, Hairs, Fibers, Finger Prints." The course given in personal identification did not include a study of hairs and fibers. It did include fingerprints as the major topic of study. Mr. Bennett obviously did not learn this subject very well as "fingerprint" is one word, not two.
- d) Listing "United States Army Military Police Academy" under his courses at Elmira College is incorrect. The date given, "Mar. 1966", is a dozen years before he took courses at Elmira College.

III) Curriculum vitae: Academic - Experience and Educational Background, Teaching:

- 5) Mr. Bennett's first listing states that he was a "Professor's Assistance [sic]" under me at Elmira College from 1980-1981. This is incorrect for two reasons. First, the only duty that he performed was to occasionally assist me in the laboratory. He did no actual lecturing at all. Second, he was only acting in the capacity of a laboratory assistant on a part-time basis for a single semester of fifteen weeks, not one or two years as his dates seem to suggest.
- 6) How many of Mr. Bennett's "Teaching" qualifications were more than a lecture given during a seminar or conference? How many courses has he offered at recognized colleges or universities for academic credit?

IV) Curriculum vitae: Academic - Experience and Educational Background, Achievements:

- 7) Mr. Bennett's listing of "Achievements" reflects his ignorance of the meaning of this term. Letters from persons for whom he has provided a service are not "achievements." These are awards. Listing his membership in the International Association of Bloodstain Pattern Analysts as an "achievement" is incorrect. This listing properly belongs under memberships in professional associations. Incidentally, although he is a member of this association, he has never attended a meeting. Three of these meetings were held in Corning, New York, well within easy driving distance of his home.
- 8) Although Mr. Bennett did not specifically mention letters from former professors under his "Achievements" category, I feel that I must comment on a letter of recommendation that he requested me to write for him in 1985. Regarding that letter, which he has duplicated and displayed several times, it should be noted that:
 - a) This letter was written from the information provided by Mr. Bennett at the time. He wanted the letter quickly and, unfortunately, I did not go back and check my class records or I would have discovered that he never studied forensic microscopy as he claims. Elmira college records do not show him enrolled in this course nor are they on his transcript. The listing of this course in my letter of 19 December 1985 is an error which was based upon what I believed to be accurate information provided to me by Mr. Bennett. I should have checked it at that time but, in the interest of time, I did not.
 - b) In fairness to Mr. Bennett he could not have taken the course in Breathalyzer Operation as I did not offer this course while he was a student at Elmira College. Had he wanted to study this subject it was available as a course in Independent Study, however.
 - c) It is interesting to note that Mr. Bennett did not remind me that he was a "Professor's Assistance [sic]" when he asked me to prepare my letter of recommendation. Both he and I knew how insignificant this position really was.
 - d) Mr. Bennett did prepare photographic exhibits for me on more than one occasion. He did so twice.
 - e) I feel it is important to realize the limitations that were placed in my letter of 19 December 1985. I made it very clear that I was recommending him for, "whatever investigative task he may be required to undertake." At that time he was, as far as I recall, still employed as

a Deputy Sheriff in Tioga County, New York. Knowing his limited understanding of science, I never anticipated that he would attempt to represent himself as anything other than a law enforcement investigator. He should have known when to recommend a qualified forensic expert if one were needed. My students were always taught that my courses did not make them experts, however, they were expected to learn what an expert could do for them.

- f) The last line of paragraph four in my letter of recommendation dated 19 December 1985 reads, in part, as follows: ". . .and prepare it in an understandable report. . ." At that time I did not include any reference to the possibility of Mr. Bennett presenting expert testimony. I was very surprised when I learned that he had been allowed to give expert testimony. Such testimony should only be accepted from well qualified forensic experts, something that Mr. Bennett is definitely not.

In addition to the above comments, which are directly related to what Mr. Bennett has listed on his Curriculum Vitae, it should be noted that he does not list membership in:

- A) The American Academy of Forensic Sciences
- B) The International Association for Identification
- C) The Canadian Society of Forensic Science

It is unfortunate that Mr. Bennett considers himself qualified as a forensic scientist. In reality, he does not qualify for even provisional membership status in any of the above organizations.

One positive point concerning Mr. Bennett's current curriculum vitae should be recognized. As compared to an earlier version the number of misspelled words has decreased.

V) Trial Transcript:

- p. 5) line 6: Mr. Bennett did not take every course in forensic science that was offered while he was a student.

line 13: Inasmuch as Mr. Bennett has not been an active member of the International Association of Bloodstain Pattern Analysts it is not surprising that he neither knows the correct name of the organization nor its membership. The membership is approximately two hundred and fifty, not two thousand.

- p. 7) line 24: Rather than, "liquid ballistics of blood" I am sure Mr. Bennett means, "ballistics of liquid blood." He is either misquoted or simply doesn't know physics.

p. 8) line 2: This entire paragraph is completely incorrect. To state that, "For example, water itself does not have a viscosity to it." is ridiculous. Any physical scientist should know that water is the standard for all viscosity measurement comparisons. At 20° Centigrade water has a viscosity of 1.00, the standard. Further, water does not drop in an elongated formation.

line 7: No liquid can drop in "circles" as a volume can not be expressed in a two dimensional figure. His entire answer is poorly organized and essentially incorrect.

p. 9) line 2: When blood strikes a surface at other than ninety degrees it will become elongated. It does not have to be ruptured to become elongated.

p. 10) line 12: Mr. Bennett has the "swipe" and "wipe" patterns confused. His statement is incorrect.

p. 12) line 3: The leucomalachite reagent is a non-specific test for blood. It is only a screening test. It definitely is not a "positive test for blood."

line 13: Mr. Bennett uses the term "cast-off" here and many times throughout his testimony to describe some bloodstains on the bedroom wall. There are no cast-off bloodstains present in this bedroom, whatsoever! He even defines these stains as "cast-off" on page 14, line 11.

p. 14) line 15: This shooting was accomplished using birdshot, number 6 birdshot. There is no "bullet" involved.

p. 15) line 24: This shooting was accomplished using birdshot, number 6 birdshot. There were on "BB" pellets involved.

p. 16) line 3: The victim's right hand was not "up over his face" when he was shot. His right hand was under his chin on the left side of his face.

line 5: The victim's head was either horizontal or he was tilting his head slightly upward at the moment he was shot. Mr. Bennett testified that, "His head was slightly tilted downward." Mr. Bennett is incorrect unless the shotgun was fired below the level of the victim's head at the time. When he continues, "We can say ..." it raises a question as to who the "we" he refers to includes? Is he giving testimony for a group or himself only?

line 11: The victim was not sitting upright when he was shot. He was bracing himself on his left elbow and may or may not have actually been holding the blanket in his right hand when he was shot.

line 14: The victim's head was not blown backwards as a result of receiving the shotgun blast. Possibly, Mr. Bennett has seen too many "Dirty Harry" movies and is of the opinion that great energy is transferred to a victim in the direction of the projectiles' trajectory. This is not true. Continuing, "...the arch pattern of bloodstains travels with him in the cast-off." This is a meaningless statement. Patterns do not travel. They are stationary on the wall. The ending, "...with him in the cast-off." has no meaning whatsoever to me?

- p. 17) line 2: Mr. Bennett states, "...he was aware of the shot being delivered to him by the means of pulling the blanket up over his head." It is speculation to suggest what anyone else might or might not have been thinking or that of which they may or may not have been aware.
- p. 19) line 10: The suggestion is made that the autopsy report shows that there is "smudging or powder but not tattooing.." but this is incorrect. Mr. Bennett should reread the autopsy report which states that the appearance of the skin is consistent with close range gun shot wound and that there are "small powder particles present over the skin."
- p. 20) line 2: This paragraph is pure speculation. It is wrong to suggest that bloodstains on the blanket are the result of a high velocity impact. Spatter of this type can not be resolved from scene photographs that show the blanket. Unless Mr. Bennett has microscopically examined this blanket he can not know if spatter of this type is on the blanket. The larger bloodstains that are visible are not consistent with high velocity impact spatter. To make the suggestion that blood would strike a specific area or a person as a result of backspatter is folly.
- p. 21) line 4: There is no number seven birdshot available today although it was made around 1900 or so. There has never been any number six and a half birdshot made.

line 6: The testing described by Mr. Bennett on this page clearly demonstrates his ignorance of the subject. His remarks, that tend to excuse his failure to use the shotgun in question loaded with the same ammunition, simply do not justify his poorly designed experimental test firings, if he ever actually made any. He describes some of the experiments I have published and of which I am sure he was shown in class. I seriously question whether or not he actually duplicated my work as he has testified. (Mr. Bennett refers to the book *GUNSHOT WOUNDS* by Dr. Vincent J.M. Di Maio in his report. Had he studied this book carefully he would have known better)

- p. 23) line 4: The statement, "It does not make any difference with the shot that you use either." is not only untrue, it is ridiculous. Does he feel that a number twelve pellet, whose diameter is 0.05 inches, would make the same edge pattern as a 000 Buckshot pellet that has a diameter of 0.35 inches? Nonsense.

line 15: The plastic sleeve that surrounds the pellets in modern ammunition opens up almost immediately after it leaves the muzzle of a shotgun. It does not always open into four sections as Mr. Bennett has stated. Some shotgun shells contain plastic sleeves that only open into three sections. Also, it is the air resistance, not the air velocity that effects the expansion of the plastic sleeve. This is in the Di Maio book he quotes.

- p. 27) line 23: This answer is incorrect. The trajectory within the body was slightly upward, not downward.
- p. 28) line 3: I did not realize how far below average I must be as my chest is slightly less than ten inches anterior to posterior. Of course, I am only over six feet tall and weigh over one hundred and ninety-five pounds. If I were the average Mr. Bennett has suggested and had a sixteen to eighteen inch chest I wonder how much I would weigh?
- p. 35) line 11: Mr. Bennett does not understand the instrumental methodology for the analysis and interpretation of primer components in gunshot residue. Depending upon manufacturer, the ratio of barium to antimony will vary but it is never in equal proportion. Some primers do not contain both of these elements. Also, the paraffin test for nitrates, to which he makes reference, has not been used since about 1964.

Overall, I must state that, if this transcript is relatively free from typographical and other minor errors, it is the worst trial testimony I have read in many years.

VI) Reconstruction and Analysis Report:

- p. 1) line 18: It is unclear as to what Mr. Bennett means when he states that "...she positioned him next to the wall beside her." Figuratively, or physically, speaking?
- p. 2) line 18: There was only one gunshot wound. There is no excuse for writing wounds in a technical report.

line 21: The "footprint on the doorway" was a sneaker print on the door. These errors are repeated later.

- p. 4) line 7: The characterization of medium velocity impact spatter bloodstains is inaccurate. Only high velocity bloodstains result from high velocity impact. It is difficult to understand how a student with all of the qualifications Mr. Bennett claims to have could write a report with so blatant an error. As his instructor in this subject I must conclude that he has forgotten what I taught him.

line 11: The victim's head was probably between eighteen and twenty-four inches above the mattress at the time he was shot. It is unlikely that he could have raised up to twenty-eight inches on his left elbow alone.

- p. 5) line 3: No bloodstains showing a right to left directionality are present in the photograph shown on this page.

- p. 6) line 2: Could Mr. Bennett quote any law of physics that he claims are violated regarding the ballistics of liquid travel? Could he quote an accurate, acceptable definition of ballistics?

line 6: The x-rays do not show a downward angle. Quite to the contrary, they show an upward trajectory.

- p. 7) line 5: It is difficult to understand how anyone could even remotely suggest that after they had reviewed the firearms reports could state that they are only consis-
tent with what they believe was a 12 gauge caliber [sic] weapon. Ignorance of terminology and firearms in general is obvious from this statement in his report. Even more importantly, his reference to using "various" shotguns at "various" distances using a "variety" of ammunition have nothing to do with evaluating the shooting death being investigated. The same shotgun, with identical ammunition should have been used. He made no mention of the effect of barrel length when all the other "variations" were being identified. Does he consider barrel length to be of no significance?

- p. 8) line 2: Mr. Bennett may know a Dr. Vincent J.M. Dimaio [sic] identified as a "...well known Forensic Pathologist from Dallas, Texas.", but he is not the Dr. Vincent J.M. Di Maio I know. My Dr. Di Maio is from San Antonio and has been for the last twenty plus years that I have known him.

line 9: While shotgun ammunition does, indeed, use a wide range of "numbers of shot", Mr. Bennett is referring to shot size. Could he explain what he means by different makes and manufacturers.

p. 10) line 2: Mr. Bennett copied what must be sixth generation copies from Dr. Di Maio's book, *GUNSHOT WOUNDS*, page 184 and 192. His statement, "The following two photographs illustrated the activity of the shot pattern at a distance of up to four feet with a twelve gauge shotgun." is wrong for two reasons. First, the maximum distance shown in the photograph on the bottom of this page only extends to approximately twelve to eighteen inches, not four feet. Second, there is no "activity" to a shot pattern. A shot pattern is the static aftermath of the impact from shot. A good copy of Di Maio's figure 8-15 A-D is being included for comparison.

p. 11) The photograph on page 11 is so poor that a good copy of Di Maio's figure 8-25 is also included.

Mr. Bennett did not give credit to Dr. Di Maio for the figures he reproduced and could, therefore, give the impression that these photographs were his own.

In general, after reading Mr. Bennett's report I have the feeling that much of what he suggests he did in firing shotguns and using pig skin targets may never have been done by him at all. I submit that he may well be writing on what he has seen me present in my lectures and/or from reading Dr. Di Maio's book. I suggest that he be asked, "candidly, Mr. Bennett, how many actual test firings did you, yourself, conduct?" Further, "where did you obtain the pig skin you used?" "Did you know that Dr. Di Maio did not use pig skin? (He used rabbit skin). Finally, who are the two forensic pathologists Mr. Bennett claims to have on his staff?"

VII) OVERALL CONCLUSION:

In conclusion, after reading the curriculum vitae, trial transcript, and "forensic" report of Mr. Warren Stuart Bennett, I must conclude that:

- 1) he is not qualified to give opinion evidence on the subject of bloodstain pattern interpretation.
- 2) he is not qualified to give opinion evidence on the subject of firearms identification, ballistics, or wound ballistics.
- 3) he has overstated his qualifications to such a degree that his errors are beyond forgiveness, and could possibly constitute perjury? This should be investigated thoroughly.

Respectfully submitted,

Herbert Léon MacDonell, Director
LABORATORY OF FORENSIC SCIENCE

COMMONW. TH
Vs.

IN THE COURT OF COMMON PLEAS
OF
CAMBRIA COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

DONALD JOSEPH KELLY

ON CALL

JURY TRIAL

No. 1388-1989

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF CAMBRIA

TO: HERBERT LEON MACDONELL, Post Office Box 1111, Corning, New York,
14830 (607-962-6581)

1. You are hereby ordered by the Court to come to the Cambria County Courthouse at
Ebensburg, Pennsylvania on the 28th day of April THROUGH April 30, 1993 next at
9:00 o'clock, A.M., prevailing time, to testify on behalf of the Commonwealth in the above
captioned case, and there to remain until excused by the Court.

2. You are also required to bring with you the following:

April 16, 19 93

BY THE COURT:

BY James M. McVerty
Clerk of Courts

(Affix Court Seal Here)

Testified on 4/29/93 on
fingerprints, bloodstains,
firearms, shoeprints, and
pathology.

46a