



JANUARY 9, 2002

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4  
5 THE CLERK: FOR THE RECORD, CRIMINAL DOCKET  
6 NUMBER EIGHTY-THREE DASH THREE THREE NINE ONE,  
7 COMMONWEALTH VERSUS BENJAMIN LAGUER. THIS MATTER IS  
8 HERE FOR MOTIONS BY DEFENDANT FOR VIEW OF PROSECUTOR'S  
9 TRIAL BRIEF, DEFENDANT'S MOTION TO ASSIGN COSTS FOR  
10 TESTS, OBSERVATION. LET THE RECORD REFLECT THAT THE  
11 DEFENDANT IS PRESENT WITH COUNSEL. COUNSEL, PLEASE  
12 STATE YOUR NAMES FOR THE RECORD AND WHO YOU REPRESENT.

13 MR. SIEGEL: IF IT PLEASE THE COURT, DAVID  
14 SIEGEL ON BEHALF OF MR. LAGUER, AND I'D LIKE TO  
15 INTRODUCE, YOUR HONOR--WITH ME IS STEVEN KASTEN OF  
16 McDERMOTT, WILL AND EMERY, HE WAS ON THE CASE AS WELL,  
17 K-A-S-T-E-N.

18 THE COURT: GOOD AFTERNOON.

19 MR. KASTEN: GOOD AFTERNOON, YOUR HONOR.

20 MR. SIEGEL: I'D ASK THAT MR. LAGUER HAVE  
21 THE CUFFS REMOVED SO HE CAN LOOK AT SOME PAPERS.

22 (AFFIRMATIVE RESPONSE.)

23 MS. HAUTENEN: AND I'M SANDRA HAUTENEN FOR  
24 THE COMMONWEALTH, AND WITH ME IS JOE REILLY.

1 THE COURT: THANK YOU. GENTLEMEN AND LADY,  
2 I HAVE READ YOUR SUBMISSIONS AND I APPRECIATE THEM AND  
3 THEY WERE VERY HELPFUL. I INTEND TO GIVE YOU TEN  
4 MINUTES EACH AND NOT ANY MORE. MR. SIEGEL, I'LL HEAR  
5 YOU FIRST.

6 MR. SIEGEL: THANK YOU, YOUR HONOR. IF IT  
7 PLEASE THE COURT, WITH RESPECT TO THE MOTION--

8 THE COURT: OH, BY THE WAY, JUST RESTRICT  
9 YOUR ARGUMENTS TO THE MOTION TO ASSIGN COSTS AND THEN  
10 WE'RE GOING TO GO AND SPEND A LITTLE TIME DISCUSSING  
11 HOW WE'RE GOING TO HANDLE THE MOTION FOR THE  
12 PROSECUTOR.

13 MR. SIEGEL: YES, YOUR HONOR. WITH RESPECT  
14 TO THE MOTION TO ASSIGN COSTS FOR TESTING, WE DIDN'T  
15 ACTUALLY ANTICIPATE THIS WOULD BE SUBJECT TO  
16 LITIGATION, YOUR HONOR HAD ORDERED THAT EACH SIDE WAS  
17 TO BEAR ITS OWN COSTS. THESE ARE THE COSTS THAT ARE  
18 IMPOSED WITH HAVING AN EXPERT FROM THE OTHER SIDE  
19 PRESENT BECAUSE OF THE WORK THAT OUR EXPERT CAN'T DO,  
20 THAT HE HAS TO DELAY, THAT HE HAS TO SET ASIDE AND  
21 BECAUSE HE HAS TO DIRECT PEOPLE TO SHEPHERD THIS  
22 PERSON AROUND THE WHOLE TIME SHE'S THERE, THAT'S IT,  
23 AND WE ASSUMED THAT THAT WOULD BE A FAIRLY  
24 STRAIGHTFORWARD MATTER. WHEN IT BECAME CLEAR THAT IT

1. WASN'T I FELT THE NEED TO FILE SOMETHING BECAUSE THESE  
2. FEES WERE GOING TO COME, THE TESTS WERE GOING TO  
3. HAPPEN AND THE BILL WAS GOING TO COME, AND SOMEBODY  
4. NEEDS TO PAY IT.

5. THE COURT: TELL ME WHY IT COSTS A THOUSAND  
6. DOLLARS A DAY TO BABYSIT THE COMMONWEALTH'S  
7. DESIGNATED--

8. MR. SIEGEL: BECAUSE THE COST OF BABYSITTING  
9. THE COMMONWEALTH'S REPRESENTATIVE, YOUR HONOR, IS THAT  
10. OTHER TESTS THAT COULD BE DONE SIMULTANEOUSLY IN OTHER  
11. CASES CAN'T BE DONE.

12. THE COURT: WHY?

13. MR. SIEGEL: BECAUSE WHILE SHE'S THERE  
14. TRYING TO GET THIS CASE DONE AS QUICKLY AS POSSIBLE  
15. THE LAB PUTS ASIDE ALL OTHER WORK AND DOESN'T TEST  
16. OTHER CASES AT THE SAME TIME SO ESSENTIALLY HE HAS TO  
17. FOREGO OTHER WORK FOR THE TIME THAT THE EXPERT IS  
18. PRESENT.

19. THE COURT: YOU'RE LOSING ME ON PROXIMATE  
20. CAUSE.

21. MR. SIEGEL: WELL, IF IT PLEASE THE COURT,  
22. THERE ARE PARTS OF THESE TESTS IN WHICH DIFFERENT  
23. TESTS, DIFFERENT CASES CAN BE RUN SIMULTANEOUSLY--

24. THE COURT: 'mM HMH.

1 MR. SIEGEL: . . . AND THAT'S TYPICALLY A  
2 LAB'S PRACTICE BECAUSE THERE'S AN ECONOMY IN DOING  
3 DIFFERENT PARTS OF--I MEAN, THE SAME PART, DIFFERENT  
4 CASES, SIMULTANEOUSLY. THAT CAN'T BE DONE WHILE THEY  
5 HAVE AN OBSERVER OUT THERE WATCHING AND WHILE SHE'S  
6 THERE WAITING FOR THIS CASE AND THIS CASE ALONE TO GET  
7 DONE, AND EVERYTHING--THAT THE ORDINARY PROCEDURES OF  
8 THE LAB HAVE TO BE CHANGED AS A RESULT OF HER PRESENCE  
9 FOR EVERYTHING THAT HAPPENS. THIS IS EXACTLY THE SAME  
10 PRACTICE THAT THE COMMONWEALTH LAB USES, IT'S THE SAME  
11 POLICY THAT THEY HAVE AND IT'S THE SAME COSTS THAT  
12 THEY CHARGE, AND SO THE--

13 THE COURT: BY THE COMMONWEALTH'S LAB DO YOU  
14 MEAN CELLMARK?

15 MR. SIEGEL: THAT'S CORRECT, YOUR HONOR.  
16 PREVIOUSLY THERE MIGHT HAVE BEEN SOME QUESTION AS TO  
17 WHO PAYS THIS COST, BUT WHEN THE SUPREME JUDICIAL  
18 COURT AMENDED RULE 30 TO PROVIDE THAT IN AN  
19 APPROPRIATE CASE THE COSTS OF THE PREPARATION AND  
20 PRESENTATION OF A MOTION FOR A NEW TRIAL CAN BE TAXED  
21 TO THE GOVERNMENT THE ONLY ISSUE REALLY OUGHT TO BE  
22 NOT WHETHER THE COSTS OF HAVING THE GOVERNMENT'S  
23 EXPERT THERE GET PAID BY THE GOVERNMENT BUT WHETHER  
24 THE ENTIRE COSTS OF THE TESTING BE PAID BY THE

1 GOVERNMENT BECAUSE THAT'S WHAT THE RULES NOW PROVIDE  
2 AS OF OCTOBER FIRST, TWO THOUSAND AND ONE, AND THE  
3 RULE WAS AMENDED SPECIFICALLY--

4 THE COURT: WHICH RULE IS THAT?

5 MR. SIEGEL: THIS IS RULE 30C (5) OF THE  
6 RULES OF CRIMINAL PROCEDURE WHICH NOW PROVIDE THAT THE  
7 COURT AFTER NOTICE TO THE COMMONWEALTH AND OPPORTUNITY  
8 TO BE HEARD MAY ALSO EXERCISE DISCRETION TO ALLOW THE  
9 DEFENDANT COSTS ASSOCIATED WITH THE PREPARATION AND  
10 PRESENTATION OF A MOTION UNDER THIS RULE, AND THE  
11 COMMENTS TO THAT READ AS FOLLOWS, YOUR HONOR: "WHERE  
12 THE REQUEST CONCERNS SCIENTIFIC TESTING OF EVIDENCE IN  
13 THE COMMONWEALTH'S POSSESSION, AS WITH D-N-A ANALYSIS,  
14 THE COURT SHOULD CONSIDER A REQUEST FOR FUNDS IN  
15 CONJUNCTION WITH THE APPROPRIATE DISCOVERY MOTION  
16 UNDER SUBSECTION C-4 SEEKING ACCESS TO THE EVIDENCE IN  
17 QUESTION.", AND, YOU KNOW, THIS CASE, FRANKLY, YOUR  
18 HONOR, HAS LASTED LONG ENOUGH SO THE LAWS HAVE  
19 CHANGED, SO A YEAR AND A HALF AGO OR A YEAR AND NINE  
20 MONTHS AGO I WOULD ATTACH A MOTION FOR COSTS--THE  
21 MOTION DEALS WITH COSTS FOR COUNSEL AS WELL AS WELL AS  
22 FOR THE MOTION FOR EXPENSES--I WOULD ATTACH THAT TO  
23 THE ORIGINAL MOTION FOR DISCOVERY THAT DIDN'T EXIST  
24 BECAUSE COMMONWEALTH VERSUS DAVIS WAS THE LAW. THIS

1 RULE WAS AMENDED TO DEAL WITH THAT AND NOW YOUR HONOR  
2 NOW ONLY HAS--I MEAN, IT'S NOT ONLY DISCRETION OF THE  
3 APPOINTED LAWYER, WE'RE NOT ASKING FOR THAT, DON'T GET  
4 ME WRONG, BUT THERE'S DISCRETION TO PAY THE COSTS OF  
5 PREPARING THE PRESENTATION--PRESENTING THE MOTION FOR  
6 A NEW TRIAL, AND, YOU KNOW, IF WE WANT TO HAVE SOME  
7 SORT OF AN ACCOUNTING DEAL WHERE THE GOVERNMENT SAYS  
8 YOU PAY THE THOUSAND DOLLARS A DAY AND THEY PAY THE  
9 ACTUAL COSTS OF THE TESTING, THE SEVENTY-FIVE HUNDRED  
10 DOLLARS, THAT'S UP TO THEM, I MEAN THAT'S FINE, BUT  
11 THERE OUGHT NOT TO BE ANY QUESTION ABOUT WHAT THE LAW  
12 PROVIDES FOR THIS.

13 WITH RESPECT TO THE (UNINTELLIGIBLE, TAPE  
14 CHANGE)--

15 THE COURT: LET ME GO ON AFTER THAT. I  
16 DON'T WANT TO CUT ANYBODY OFF AND I JUST WANT TO GET A  
17 SENSE OF--

18 MR. SIEGEL: YES. IF IT PLEASE THE COURT,  
19 I'VE GOT COPIES OF THAT RULE AS WELL AS THE COMMENTS  
20 BOTH FOR YOUR HONOR BECAUSE IT IS A RELATIVELY NEWLY  
21 PRINTED OR PUBLISHED FOR YOUR HONOR AND FOR THE  
22 COMMONWEALTH.

23 THE COURT: PASS IT UP. PASS IT UP.

24 MR. REILLY: WE'VE GOT IT.

1 MR. SIEGEL: OKAY.

2 (DOCUMENT HANDED.)

3 THE COURT: ALL RIGHT, THANK YOU, MR.  
4 SIEGEL.

5 YES, SIR? MR. REILLY OR MISS HAUTENEN?

6 MS. HAUTENEN: YOUR HONOR, THAT'S ME AGAIN,  
7 YOUR HONOR. LET'S START WITH RULE 30 BECAUSE THAT'S  
8 WHERE MR. SIEGEL ENDED.

9 THE COURT: YEAH.

10 MR. HAUTENEN: IF YOU DO TAKE A LOOK AT THAT  
11 RULE, YOUR HONOR, YOU'LL SEE IT'S IN THE PARAGRAPH  
12 THAT DEALS WITH THE APPOINTMENT OF COUNSEL, AND I WAS  
13 ON THE SUBCOMMITTEE THAT DEALT WITH THIS ISSUE. THIS  
14 AMENDMENT BY THE S-J-C WAS MEANT TO ADDRESS DIRECTLY  
15 THE ISSUE ADDRESSED IN CHAPTER 261, SECTION 27C OF THE  
16 GENERAL LAWS WHICH IS TALKED ABOUT IN COMMONWEALTH  
17 VERSUS DAVIS CITED IN OUR MEMO WHICH DEALS  
18 SPECIFICALLY WITH INDIGENT DEFENDANTS WHO CANNOT  
19 AFFORD TESTING. BECAUSE THE LEGISLATURE HAS SAID IN  
20 261 27C THAT INDIGENT DEFENDANTS WERE NOT ABLE TO GET  
21 COSTS FROM THE TRIAL COURT SUCH AS THE COST OF TRIAL  
22 COUNSEL TO DO ANYTHING OTHER THAN PREPARE FOR TRIAL OR  
23 AN APPEAL, ANYONE WHO WANTED TO DO ANY TESTING FOR A  
24 MOTION FOR A NEW TRIAL IN THAT STATUTE WAS OUT OF



1 LUCK.

2 IN THIS REGARD THEN THE S-J-C HELD A--  
3 ESTABLISHED A COMMITTEE AND FILED THIS AMENDMENT TO  
4 THE RULE WHICH DEALS SPECIFICALLY WITH INDIGENT  
5 DEFENDANTS. MY UNDERSTANDING IS THAT MR. LAGUER IS  
6 NOT INDIGENT BUT WE DON'T REALLY KNOW THE STATUS OF  
7 HIS FINANCIAL SITUATION SO EVEN THOUGH MR. SIEGEL MAY  
8 SAY THIS ALLOWS THE DISTRICT ATTORNEY'S OFFICE TO PAY  
9 FOR TESTING, THAT IS NOT THE CASE, NUMBER ONE, BECAUSE  
10 HE IS NOT INDIGENT AND, NUMBER TWO, HE'S NOT ADDRESSED  
11 IT TO THE DISTRICT ATTORNEY'S OFFICE PER SE, WHICH IF  
12 YOU LOOK AT THE PROPOSED RULE OR ORDER THAT MR. SIEGEL  
13 HAS ATTACHED TO HIS MOTION, HE WANTS US TO PAY THAT.

14 NEXT I WOULD ASK THE COURT TO LOOK AT THE  
15 ATTACHMENT TO OUR OPPOSITION WHICH IS IN A MOTION  
16 HEARING BEFORE JUDGE MCHUGH THAT WAS HELD IN 1997 WHEN  
17 DR. BLAKE AGAIN WAS A DEFENSE EXPERT. IN THAT CASE AS  
18 WELL DR. BLAKE CAME FORWARD AND SAID I NEED FIVE  
19 HUNDRED DOLLARS EXTRA BECAUSE I'M GOING TO BE WATCHED,  
20 AND JUDGE MCHUGH SAID THE SAME THING YOU'RE SAYING,  
21 YOU KNOW, ISN'T THIS SORT OF ARBITRARY, AND WHAT IS  
22 YOUR ACTUAL OPPORTUNITY COST HERE? MR. SIEGEL HAS  
23 POINTED TO THE CELLMARK WRITTEN POLICY WHICH WAS PUT  
24 IN EFFECT IN 1997 IN SPECIFIC RESPONSE TO THE O.J.

1 SIMPSON CASE WHERE MY UNDERSTANDING IS THE ENTIRE  
2 DREAM TEAM WANTED TO COME TO WATCH DR. BLAKE FROM  
3 CELLMARK DO THE TESTING. MY CONVERSATIONS WITH  
4 CELLMARK HAVE BEEN THAT THEY PUT THIS THOUSAND DOLLAR  
5 AMOUNT IN PLACE PRIOR TO THE DETERMINING IF THE LEGAL  
6 TEAM CAN COME AND WATCH TESTING AND NOT REALLY HAVE  
7 TO. WE HAVE A VERY DIFFERENT SITUATION IN THIS CASE  
8 BECAUSE OF THE SINGLE SAMPLES THAT WILL BE DESTROYED  
9 THROUGH TESTING.

10 IF INDEED ANY MONEY IS OWED I WOULD ASK FOR  
11 SOME SPECIFICS FROM DR. BLAKE AS TO HOW MUCH MONEY  
12 INDEED HE WILL BE LOSING, WE DON'T KNOW. THE SAME  
13 THING IS EXACTLY WHAT JUDGE MCHUGH ASKED. IF YOU LOOK  
14 AT PAGES 31 AND 32 IN THE MOTION FOR A TRANSCRIPT  
15 JUDGE MCHUGH INDEED WAS ASKING, "I DON'T UNDERSTAND  
16 SOMETHING, OR IT MUST BE THAT THESE CHARGES, DR.  
17 BLAKE'S CHARGES--", SAYS JUDGE MCHUGH, ". . . REALLY  
18 AREN'T FIVE HUNDRED DOLLARS BUT CAN BE NEGOTIATED  
19 SUBSTANTIALLY DOWNWARD, A THOUSAND DOLLARS IS  
20 ARBITRARY."

21 NUMBER ONE, OUR POSITION IS EITHER--IN MR.  
22 LAGUER'S COSTS FOR TESTING THERE IS NOTHING  
23 STATUTORILY OR CONSTITUTIONALLY THAT REQUIRES THE  
24 COMMONWEALTH TO PAY HIS COSTS FOR TESTING, AND WE

1 DON'T KNOW WHAT THESE ACTUAL COSTS ARE, YOUR HONOR,  
2 IT'S SIMPLY DR. BLAKE SAYING IT'S THE CUSTOM OF THE  
3 INDUSTRY TO PAY A THOUSAND DOLLARS, SO THERE'S NO  
4 EVIDENCE OF THAT AND WE DON'T KNOW WHERE THAT CAME  
5 FROM AND WE'D ASK THE COURT TO DENY THE COSTS FOR MR.  
6 SIEGEL.

7 THE COURT: THANK YOU. WHAT IS THE--HAVE  
8 YOU FOLKS DISCUSSED HOW YOU WANT TO HANDLE THE  
9 DEFENDANT'S MOTION TO VIEW PROSECUTOR'S TRIAL FILE?

10 MR. SIEGEL: IF IT PLEASE THE COURT, THE  
11 GOVERNMENT'S POSITION HAS BEEN THERE'S NOTHING TO SEE.  
12 THE BEST--

13 THE COURT: IN THAT THERE'S NO SUCH THING OR  
14 IN THAT IT'S BEEN DESTROYED OR IN THAT THEY'RE NOT  
15 GOING TO LET YOU LOOK AT IT?

16 MR. SIEGEL: NO. WELL, A LOT HAS HAPPENED--

17 THE COURT: YUP.

18 MR. SIEGEL: . . . AND I'LL SPEAK TO THAT,  
19 BUT WHAT MY UNDERSTANDING IS FROM WHAT SHE SAYS IS SHE  
20 DOES NOT KNOW THE EXISTENCE OF IT OR IT MAY NOT EXIST  
21 ANY MORE BUT THERE IS OBVIOUSLY DOCUMENTATION. THIS  
22 CASE HAS BEEN IN LITIGATION SINCE 1983 WITHOUT STOP  
23 AND THERE ARE OBVIOUSLY DOCUMENTS--I MEAN, THERE IS A  
24 PERSON WHO TRIED THE CASE IN THE OFFICE RIGHT NOW WHO

1 COULD ANSWER MANY OF THESE QUESTIONS, AND THIS SEEMS  
2 TO US THE MOST EFFICIENT WAY TO GET AT THIS RATHER  
3 THAN SUBPOENA ALL THESE PEOPLE AND HAVE HEARINGS TO  
4 TRY AND FIND OUT ABOUT IT. IT SEEMED MOST EFFICIENT  
5 TO TRY AND GATHER ALL DOCUMENTS TOGETHER AND WE'LL  
6 LOOK AT THEM, AND I'M PERFECTLY HAPPY TO SPEND AS LONG  
7 AS IT TAKES LOOKING AT THEM MYSELF, BUT WE NEED TO DO  
8 THIS BECAUSE THERE IS IN NO WAY A FULL ACCOUNTING OF  
9 THE TRUTH, AND THIS INFORMATION OR THIS FINGERPRINT  
10 STUFF IS THINGS THAT, I MEAN, THEY SHOULD HAVE BEEN  
11 DISCLOSED YEARS AGO, SHOULD HAVE BEEN DISCLOSED THE  
12 DAY MR. LAGUER WAS ARRESTED. IN THIS KIND OF THING  
13 THERE IS NO WAY TO DETERMINE UNLESS YOU ACTUALLY SEE  
14 IT HOW MUCH ELSE THERE WAS.

15 I JUST WANT TO ADDRESS ONE POINT IN RESPONSE  
16 TO OUR FIRST MOTION. MR. LAGUER IS INDIGENT, HE  
17 DOESN'T HAVE A SOURCE OF INCOME AND HIS LAWYERS AREN'T  
18 BEING PAID AND THE ONLY MONEY THAT IS PAYING THIS IS  
19 BY PEOPLE WHO THINK THAT JUSTICE HASN'T BEEN DONE AND  
20 WANT TO SEE THE TRUTH COME OUT IN THIS CASE.

21 THE COURT: MISS HAUTENEN, ON THE--HOW DO  
22 YOU WANT TO HANDLE THE MOTION TO DO THE PROSECUTOR'S  
23 TRIAL FILE?

24 MS. HAUTENEN: WELL, AS A PRELIMINARY



1 SCHEDULED TO START NEXT WEEK--

2 THE COURT: YEAH.

3 MR. SIEGEL: . . . AND, YOU KNOW, I WOULD  
4 EXPECT WITHIN A FEW WEEKS AFTER THAT WE'LL HAVE SOME  
5 REPORT AND SOME RESULTS. I DON'T KNOW FOR SURE, BUT  
6 APART FROM THE TESTING, I MEAN, THE FINGERPRINTS--

7 THE COURT: YEAH. NO, I--

8 MR. SIEGEL: . . . ARE AN INDEPENDENT BASIS  
9 FOR A NEW TRIAL AND--

10 THE COURT: STOP, STOP. I WILL COME BACK TO  
11 YOU ON THIS, I'M JUST TRYING TO GET A SENSE OF WHERE  
12 WE'RE GOING.

13 MR. SIEGEL: YES.

14 THE COURT: DO WE NEED A HEARING ON THIS  
15 MOTION OR DO YOU GUYS NEED TO SIT AND TALK A LITTLE  
16 FURTHER AND--MISS HAUTENEN, IS THERE ACTUALLY A TRIAL  
17 FILE SOMEPLACE?

18 MS. HAUTENEN: AS I TOLD MR. SIEGEL, THERE  
19 ARE REMNANTS OF A TRIAL FILE. BECAUSE OF THE NUMEROUS  
20 PROCEEDINGS IN THIS CASE OVER THE YEARS THE TRIAL FILE  
21 ITSELF IN APPEARANCE TO ME BECAUSE I'VE ONLY BEEN ON  
22 THIS CASE FOR TWO YEARS HAS BEEN TAKEN APART AND PUT  
23 TOGETHER MULTIPLE TIMES. PART OF THE TRIAL FILE  
24 EXISTS, SOME NOTES EXIST, AND MY UNDERSTANDING FROM

1 THE TRIAL PROSECUTOR IS THAT THERE WERE MORE THINGS IN  
2 THERE AND THEY AREN'T THERE ANY MORE. I MAKE THIS  
3 REPRESENTATION TO THE COURT, THAT IT'S OUR  
4 UNDERSTANDING THAT THERE WAS NOTHING WITHHELD FROM MR.  
5 LAGUER'S COUNSEL, THAT WE, THE PROSECUTION, KNOW  
6 ABOUT, EVERYTHING WAS HANDED OVER, EVERYTHING THAT WE  
7 KNEW ABOUT, EVERY PIECE OF PAPER, EVERY REPORT. WE  
8 DIDN'T KNOW ABOUT THIS REPORT EITHER UNTIL IT JUST  
9 CAME UP IN THE COURSE OF THIS CURRENT PROCEEDING.

10 THE COURT: HOW DID THIS REPORT COME TO  
11 LIGHT?

12 MS. HAUTENEN: MY UNDERSTANDING, YOUR HONOR,  
13 IS THAT MR. SIEGEL HAD ASKED FOR FINGERPRINT EVIDENCE  
14 AND IN FULL DISCLOSURE WE HAD GONE BACK TO THE  
15 FINGERPRINT PEOPLE AT THE STATE POLICE WHO ACTUALLY  
16 TRIED TO DO A MATCH. THEY GOT A REQUEST, WENT THROUGH  
17 ALL THE OLD RECORDS FROM 1983 WHICH WERE AT THIS POINT  
18 UP AT FORT DEVENS HAVING BEEN AT THE LEOMINSTER STATE  
19 POLICE BARRACKS BEFORE THEN. MY UNDERSTANDING IS  
20 THREE TO FIVE STATE TROOPERS SPENT MORE THAN A DAY  
21 GOING THROUGH EVERY PIECE OF PAPER THEY HAD INCLUDING  
22 BARRELS IN THE SHED THAT WERE ABOUT TO BE SHREDDED AND  
23 THE ONLY PIECE OF PAPER THEY WERE ABLE TO FIND WAS THE  
24 ONE THAT HAS BEEN BROUGHT TO THE COURT WHICH THE TRIAL

1 PROSECUTOR TELLS ME HE NEVER SAW.

2 IT APPEARS FROM WHAT IS WRITTEN ON IT--

3 THE COURT: WHO IS TRIAL PROJECTOR, LEMIRE?

4 MS. HAUTENEN: ASSISTANT DISTRICT ATTORNEY  
5 JAMES LEMIRE, YOUR HONOR, AND IT APPEARS FROM WHAT IS  
6 WRITTEN ON THAT PIECE OF PAPER, TYPED--AND IT'S A  
7 CARBON COPY IS THE ONLY THING WE HAVE--IS THAT THE  
8 RESULTS OF THE STATE POLICE TESTING WERE REPORTED  
9 TELEPHONICALLY TO THE LEOMINSTER POLICE, WERE THEN  
10 REPORTED TELEPHONICALLY TO MR. LEMIRE WHO THEN  
11 REPORTED TELEPHONICALLY TO DEFENDANT'S COUNSEL, SO  
12 BECAUSE THERE WAS NO MENTION OF MATCHING FINGERPRINTS  
13 AT ALL IT APPEARS FROM MY UNDERSTANDING AT THIS POINT  
14 THAT THE REPORT WAS NEVER IN THE PROSECUTOR'S  
15 POSSESSION.

16 MR. SIEGEL: MAY IT PLEASE THE COURT--

17 THE COURT: SURE.

18 MS. HAUTENEN: YOUR HONOR, AND ALSO THIS IS  
19 IT FROM MY UNDERSTANDING AT THIS POINT, IT APPEARS  
20 THERE PROBABLY WILL BE SOME SORT OF AN EVIDENTIARY  
21 HEARING. THE DEFENDANT IS CLAIMING THESE WERE  
22 COMPLETE FINGERPRINTS, INDEED, THEY WERE NOT, THEY  
23 WERE PARTIAL. THEY AREN'T EVEN SUBSTANTIALLY--THERE  
24 ARE FACTUAL ISSUES THAT NEED TO BE IRONED OUT BEFORE



1 NOTWITHSTANDING THE FACT THAT HE NEVER HAD A POLICE  
2 REPORT, BUT, I MEAN, IT RAISES AN AWFUL LOT OF  
3 QUESTIONS.

4 THE COURT: WELL, I GUESS THAT WHAT I NEED  
5 FOR YOU TO--MAYBE WHAT WE OUGHT TO DO IS THIS, I'M  
6 WAITING FOR THE FINAL JUDICIAL SCHEDULE SO I WILL KNOW  
7 WHERE I'M GOING TO BE SOON, SO WHEN I GET THAT WHY  
8 DON'T I SCHEDULE A HEARING ON THE MOTION TO VIEW THE  
9 PROSECUTOR'S FILE--

10 MS. HAUTENEN: YOUR HONOR, WE WOULD ASK THAT  
11 THAT DECISION ABOUT A HEARING BE PUT OFF UNTIL AFTER  
12 THE RESULTS OF THE TESTING.

13 THE COURT: WELL, I'M GOING TO PUT IT DOWN  
14 THE ROAD A BIT, BUT I DON'T WANT TO LOSE THE BUBBLE.  
15 IF THE RESULTS OF THE TESTS--IT'S MY EXPECTATION THE  
16 RESULTS FROM THE TESTS WILL BE BACK BEFORE WE HAVE  
17 THIS HEARING. IT'S NOT GOING TO BE THIS MONTH BECAUSE  
18 I'M ALREADY JAMMED, AND YOU SAID, WHAT, ABOUT SIX  
19 WEEKS YOU FIGURED?

20 MR. SIEGEL: I DON'T KNOW HOW LONG, BUT THE  
21 TESTING IS GOING TO TAKE PLACE NEXT WEEK, IT SHOULD  
22 TAKE ONE, POSSIBLY INTO THE SECOND--ONE WEEK--ONE MORE  
23 WITH THE POSSIBILITY INTO THE SECOND, ONE MORE WEEK,  
24 THE POSSIBILITY OF A SECOND, BUT IF IT PLEASE THE

1 COURT WE WOULD VERY MUCH LIKE TO AVOID SORT OF  
2 PIECEMEAL LITIGATION.

3 THE COURT: SO WOULD I, THAT'S WHY I'M--

4 MR. SIEGEL: DON'T MISUNDERSTAND ME, YOU  
5 KNOW, MR. KASTEN I'M SURE AND I ENJOY YOUR COMPANY,  
6 BUT, YOU KNOW, IT'S BEEN A LONG, LONG TIME FOR MR.  
7 LAGUER IN THIS MATTER AND THESE PIECES OF EVIDENCE, I  
8 MEAN THESE FINGERPRINTS, THERE'S JUST NO EXCUSE FOR  
9 THIS NOT COMING OUT--

10 MS. HAUTENEN: YOUR HONOR, OUR UNDERSTANDING  
11 WAS THIS WAS NOT GOING TO BE A HEARING TODAY--

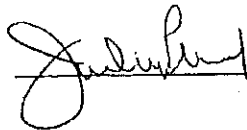
12 THE COURT: YEAH. NO, I'M NOT--WE'RE NOT  
13 GETTING INTO--I'M JUST TRYING TO FIGURE OUT WHEN WE'RE  
14 GOING TO GET INTO THIS AND IN WHAT FORM WE'RE GOING TO  
15 DO THAT, THAT'S WHAT I NEED TO DO--

16 MR. SIEGEL: YES, SIR.

17 THE COURT: . . . SO I THINK WHAT WE'RE GOING  
18 TO DO IS THIS, I AM GOING TO WAIT UNTIL I GET MY  
19 SCHEDULE, I'M GOING TO SET ASIDE A DAY OR HOWEVER MUCH  
20 YOU FEEL WE'RE GOING TO NEED AND I WILL DO IT AFTER  
21 THE TESTING HAS COME BACK SO THAT WE CAN OBIVATE THE  
22 NECESSITY OF A HEARING PERHAPS, OR IF THE RESULTS ARE  
23 INCONCLUSIVE THEN YOU GUYS CAN PLAN FOR ME HOWEVER YOU  
24 WANT TO DO THIS AND WE'LL JUST TEE IT UP AND DO IT

C E R T I F I C A T E

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6  
7 I, JUDITH K. PEISACH, CERTIFY THAT I AM AN  
8 OFFICIAL COURT REPORTER IN THE MASSACHUSETTS SUPERIOR  
9 COURT AND THAT THE FOREGOING VOLUME, CONSISTING OF 23  
10 PAGES, INCLUSIVE, CONSTITUTES A TRUE AND ACCURATE  
11 TRANSCRIPT OF MY NOTES IN CASE NO. 83-3391,  
12 COMMONWEALTH VS. BENJAMIN LAGUER, TAKEN AT WORCESTER,  
13 MASSACHUSETTS, BEFORE HILLMAN, J. ON JANUARY 9, 2002,  
14 TO THE BEST OF MY SKILL, KNOWLEDGE AND ABILITY.  
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