



South Carolina Bar

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Section Seminar (Civil Law Update)**

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**The South Carolina Bar
Continuing Legal Education Division**

SC Supreme Court Commission on CLE Course No. 170449



**South
Carolina
Bar**

Brush Up on Recent Cases

Meliah Bowers Jefferson
Greenville, SC



**South
Carolina
Bar**

**The Voice as an Instrument of
Persuasion**

Charles L. Becton
Durham, NC

THE VOICE AS AN INSTRUMENT OF PERSUASION

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I. INTRODUCTION

**"It is not enough to know what we ought to say;
We must also say it as we ought."**

-- Aristotle

Thou shalt be credible! That's the first commandment of persuasion. As Aristotle put it, "Persuasion is achieved by the speaker's personal character when the speech is so spoken as to make us think him [and her] credible."¹ Little wonder then that Quintilian defined rhetoric as "the science of speaking well."² Indeed, personality is often defined as "the pattern of collective character, behavioral, temperamental, emotional, and mental traits of an individual . . . especially those distinguishing personal characteristics that make one socially appealing."³

"Jurors gauge character largely by sound"⁴ and style. To drive home his point that the word "personality" also means "by the sound," David Ball in his book, Theater Tips and Strategies for Jury Trials, challenges us to notice how much we conclude about strangers within

¹The Works of Aristotle, Vol. II, p. 595 (Encyclopedia Britannica, Great Books of the Western World, 1982).

²Renato Barilli, Rhetoric 35 (1989) (footnote omitted).

³The American Heritage Dictionary, 2nd College Edition, at 926 (1985).

⁴David Ball, Theater Tips and Strategies for Jury Trials, at 11 (NITA, 1994).

the first thirty seconds after they call us on the telephone.⁵ An equally compelling litmus test is to reflect on your thoughts and reactions every time you hear a CLE presenter for the first time. This presentation is no exception.

We have all been irritated by voices that are nasal, twangy, whiny, shrill, hoarse, harsh, flat, gruff, or raspy. And we have been moved by melodious, mellifluent voices with breathtaking ranges. Most of us know the deep, rich sonorous voice of James Earl Jones. And many of us with gray hair would have no trouble picking out the voices of Alfred Hitchcock, Vincent Price, Orson Welles, Jimmy Stewart, Barbara Walters, Barbara Jordan, and Howard Cosell. The younger among you readily recognize the voices of Dick Vitale, Martin Luther King, and Paul Harvey. And, as you can tell from the examples just given, sometimes a person's image is tied to his or her voice.

Aristotle's admonition that we must "say it as we ought" means that our voice must not only express emotion and character, but it must also correspond to the subject discussed.

Correspondence to subject means that we must neither speak casually about weighty matters, nor solemnly about trivial ones; nor must we add ornamental epithets to commonplace nouns. . . . To express emotion, you will employ the language of anger in speaking of outrage; the language of disgust and discreet reluctance to utter a word when speaking of impiety or foulness; the language of exultation for a tale of glory, and that of humiliation for a tale of pity; and so in all other cases. This aptness of language is one thing that makes people believe in the truth of your story. . . .⁶

Aristotle's admonition also means, for example, that we should never say "it was big" while gesturing small and using a weak voice.

⁵Id.

⁶Aristotle, Rhetoric, at Chapter 7.

Our voice tones tell jurors what's important, what's touching, what's exciting, what's repulsive.

"In some circumstances the voice (sound, not content) carries nearly 40% of a speaker's 'real' message."⁷ When that is true, people are listening to the speaker, not the speaker's words. So, depending on how you use your voice, your courtroom presentation "can be perceived as a lack-luster lecture or as an effective, persuasive, memorable presentation."⁸ Your closing argument can be a "soaring performance or plodding drudgery."⁹ Understanding why people listen will help you soar.

II. WHY PEOPLE LISTEN¹⁰

A. Self-Interest

We do what we do because it is good for us, fun for us, exciting, useful, valuable, fulfilling, aggrandizing, alluring, or problem-solving for us.

B. Who's Telling It

If the lawyer is perceived as a palatable leader or information-giver, and is able to capture the jurors by force of personality or subject matter, jurors will listen. We like people who are warm, friendly, interesting, exciting, and knowledgeable. We do not like

⁷Jeff Scott Cook, The Elements of Speechwriting and Public Speaking at 104 (1989).

⁸Morleen Rouse, "The Art of Effective Communication, at _____ (NITA, 1984).

⁹Richard Lischer,

¹⁰See, Sonya Hamlin, What Makes Juries Listen, 17-20 (1985) for discussion on self interest, whose telling, and how they tell.

people who are pompous, dull, removed, formal, stuffy, complex, vague, or irrelevant.

C. How They Tell It

The next thing that makes people listen is technique. We all know people who mesmerize us with their speaking technique. But their technique -- rhythm, pace, drama, energy level, and commitment - is not beyond any of your abilities. Your style may differ. You may not be a fire and brimstone preacher, but you can be just as effective in your own way. Work on pace. You have a full range of emotions. You cry, you smile, you laugh, you whine, you grunt, you sigh. You can hit "high A," and you can hit low notes too. What's important is the conscious and effective use of your voice. I refer to a voice that's energetic, varied, authoritative, and sincere. I am told that a rising inflection or pitch on the end of a word or sentence usually implies doubt or raises a question; that a lowered inflection expresses finality; that a sentence delivered with a lower pitch usually indicates seriousness or sadness; and that by deliberately lowering the pitch of your voice or slowing down the rate of delivery, you can create a somber mood and make your point.

Simply put, you must be able to communicate the strength of your conviction in your client's cause to the jury. You must understand that jurors, like all people, are hopelessly and helplessly willing to suspend their beliefs to get emotionally involved. You get sad every time you see that death-bed scene in your favorite play even though you know no one dies. Tear jerk movies tear your hearts out.

Before going further, let me emphasize that this manuscript has a narrow focus -- the voice as an instrument in closing argument -- and let me issue these caveats:

- 1. Eloquence is no substitute for preparation. If you have not mastered the facts and legal arguments, your voice may not**

make a difference.

- 2. "To be effective, a message must meet some subjective standard of reasonableness. . . . People want to make decisions that make sense." Therefore, "arguments must be psychologically sound and must appeal to the instincts and experiences of jurors."¹¹**
- 3. Wordsmithing -- choosing the right word -- is as important as the way you use your voice.**
- 4. Overly dramatic, hyperbolic, high pressured used-car-salesperson techniques should be avoided.**
- 5. Develop your own persuasive style, not some theatrical style. In fact, "nobody is less theatrical than . . . Jimmy Stewart, yet we believe him."¹²**

Using your voice to ensure that your message is clearly understood is neither acting nor psychological trickery. You have not represented your client ably or well if you monotonically drone:

And when she hobbles into a room people stop what they are doing and they just stare at her. She has no nose, no ears, and no left hand. . . . She suffered the pain that we will never ever imagine.

Rather, you must intone so that each juror's heart shudders: On a tone and pace scale, consider saying it this way:

And when she--hobbles--

¹¹James Barnum, "Effective Communication," Trial, at 42 (December 1984).

¹²Joshua Karton, speaking at ATLA, National College of Advocacy Program, San Diego, California, July 1990.

into a room --
people
stop what they are doing --
and t-h-e-y – j-u-s-t – s-t-a-r-e ---
at her.

She has—
no – nose – no – ears -- and no left hand

She suffered pain that we will never – ever – ima --
gine.

The rate of speech or cadence, the pauses, and the intonation should produce "chills." And to show you how much the voice can "carry the day," note this: None of you have questioned the words "when she hobbles in a room." I never mentioned an injury to her legs. I only mentioned her nose, ears and left hand.

"The best style of delivery for most ... advocates, is a combination of the logical and the emotional delivery styles. . . . The advocate employing the combination style fortifies his [or her] argument with direct references to the evidence; at the same time, he [or she] keeps his [or her] argument lively and entertaining with anecdotes, analogies, and stories of personal experience. [The advocate] is both technician and artist [who] modifies . . . the voice pattern to correspond to the nature of the message he [or she] wants to convey."¹³

¹³Jim M. Perdue, Who Will Speak For the Victim, at 43 (1989).

III. THE VOICE AS AN INSTRUMENT

A. Music to the Ear

How do you communicate the strength of your conviction in your client's cause to the jury? How do you show jurors "that your work is driven by your feelings, not by your professional obligation?"¹⁴ You do so by the conscious and effective use of your voice. Your voice should have a "musical power, which . . . so choose[s] the 'notes' or sounds of words, and sets them in such a sequence of harmony, that they [charm] the ear with music at the same time that they [delight] the mind with meaning."¹⁵ Your voice should have a soaring power that depicts "scenes and actions and secret feelings with an exact fidelity."¹⁶ When you can wax with full orchestral sounds paying proper homage to timber, pitch, tone intensity, tone color, tempo, and rhythm jurors will listen with rapt attention. When you can feel phrasing and chord changes, your closing argument will have a compelling flow.

Your closing argument notes or outline should have the markings of sheet music: eighth notes, quarter notes, dotted notes, half notes and full notes; rests; accent marks; and mood notations (crescendo; diminuendo; allegro; cantabile; con brio; con moto).

If you believe exhibits are important, then your voice is Exhibit #1. Use your voice to punctuate, to emphasize and italicize, to highlight and underscore, and to accent and bold face print. "Aside from adding variety of rhythm to your sentences, vocal emphasis

¹⁴Ball, at 22 and 23.

¹⁵The Complete Play of William Shakespeare, Introduction at xx (Chatham River Press Paperback Library, 1984).

¹⁶Id.

bolsters clarity. Vocal emphasis is easily accomplished by slightly greater volume on the specific word or phrase. 'Where were you Saturday night?' 'Where were you when the lights went out?'"¹⁷

"Of all the kinds of external stimuli on human beings, we are more responsive to rhythm than almost anything else. From the rocking cradle through the rock concerts onward to the rocking chair, we are constantly influenced by rhythms."¹⁸ "Sensitivity to rhythm alteration even works in our sleep! Lighthouse keepers sleep soundly through the racket of their rotating beacons, but they jerk awake if the rhythm alters or stops (stopping is change). The brain is attuned to alteration, not constancy."¹⁹

Rhythmic closing arguments create and sustain juror attention. A monotonic delivery causes jurors to lose attention. [Remember how you could not get through those 50 minute law school lectures?] Consequently, you must alter your rhythm by using pace, tempo, volume, intensity and tone quality. "For an example of rhythm's controlling power, read any sentence aloud. Then read it aloud again exactly the same way -- but pause before any word. This long pause is a rhythm break, and, as such, it emphasizes the next word or phrase because a pause is a . . . change and thus attracts attention. . . . If you combine the short pause with vocal emphasis on the desired word or phrase, you both clarify the point of your sentence . . . and you increase its impact. . . . Variety is the spice of life and the key to jury attention."²⁰

B. Techniques to Ensure Vocal Variety

¹⁷Ball, at 14.

¹⁸Id. at 87.

¹⁹Id. at 88.

²⁰Id. at 87 and 88.

When people tell stories or jokes, when people use anecdotes and analogies, when people use rhetorical questions and metaphors (or, for that matter, any other figurative speech), they not only become more animated, but also their voices have a refreshingly broad conversational range. They pause appropriately, giving listeners an opportunity to digest what has been said. They change pitch levels appropriately, creating heightened emphasis.

Consequently, you should first craft a closing argument that requires you to use gestures, movement, mimicry, figurative speech, and the full dynamism of your voice. The "Three Little Pigs" is structured so that you must really "Huff and Puff" in order to blow the straw house down. It takes even more huffing and puffing with the stick house. And you should be, literally, out of breath as you demonstrate to your kids how the wolf tried to blow that brick house down.

Second, consciously use your voice as a storyteller would and create a verbal picture that impels jurors to become involved. Consider how the first five paragraphs of the closing argument for the defendant Toiler Savage Co. (the tug boat company that tried heroically to prevent the oil tanker from grounding) forces you and the jury to: (1) look at your watch; (2) look at the ceiling; (3) visualize nature's uncontrollable fury; and (4) understand how, despite the efforts of the tug boat Superior crew, nothing could be done to save the oil tanker which was "12,000 feet -- four football fields -- long."

Day: Ladies and gentlemen, at this very time, three years and 33 days ago, the J.B. John was being tossed and pitched as if it was a cork in a whirlpool, by waves that got as high as 40 feet. It lasted all afternoon.

Evening: And when the sun went down that evening, even men who loved the sea lay restless in their bunks listening to the howling wind. Little harbor tugs were at port, being boarded up and tied securely.

Night: And as nature unfurled its fury throughout the night, Captain Griffin strained to see through the sheets of rain as the ocean poured across the J.B. John. He, too, finally went to his bunk, but the weather was so bad that even he had no sleep that night.

Morning: And when the winds whirled at more than 50 m.p.h. that next morning, the sun rose, but there was no day. And as the sea pounded, the inventions of man gave in. Chains broke; 50-gallon oil drums rolled like children's toys. The rudder broke, and the steering gear failed. The storm was awful! Not quite a hurricane, but waves were higher than this building. It was so bad that Captain Griffin would not let his crew go on deck that day to drop the 26,000 pound anchor.

No Ordinary Boat: And when the crew of the tug boat Superior approached the J. B. John, it saw not an ordinary ship but the world's largest ship -- a ship so long that it blocked out the horizon. Now, the Superior is a big tug -- 234 feet long. It's an ocean-going tug, not a little harbor tug. But the J.B. John is 1200 feet -- four football fields -- long! But as the storm raged, even this big ship disappeared when the waves separated it from the tug boat Superior.

....

Third, ask questions -- rhetorical questions and other questions -- during the closing argument. Questions create emphasis. More importantly, questions force you to vary your voice pattern. Consider the following beginning of a closing argument in United States v. Fred Peters, a drug conspiracy case:

**Ladies and gentlemen of the jury, you've heard the evidence!
And I ask you:**

1. How many times did Fred Peters sell cocaine for William

Howell?

-- Zero! Nada! Not one time!

2. Did the government produce one shred of evidence that Fred Peters and William Howell had been partners before?

-- "No!"

3. How many times were Laura Hobson and William Howell partners in cocaine sales?

-- 20 times, by her own admission. And one more time, your mind, heart, and common sense tell you, based on the evidence in THIS case.

This case is about Laura Hobson hustling and flim-flamming the government so that Fred Peters who had no reputation as a drug dealer and who had never before sold for William Howell becomes "the partner" instead of her as she had been on 20 other previous occasions.

The structure of this closing argument forces you to exclaim "Zero! Nada! Not one time!"

Fourth, purposeful movement or play-acting (for example, mimicking witnesses or pretending to call witnesses back to the stand) during closing arguments forces you to use your full vocal range. Indeed, to highlight the theme in the drug conspiracy case mentioned above – "One on One, Ladies and Gentlemen: Fred Peters against Laura Hobson" -- and to show that the entire case turns on the credibility of one government witness, mimic witnesses in the following way:

The only two candidates the government had as William Howell's partner were Laura Hobson and Fred Peters. After Laura

Hobson's immunity, there was only one candidate -- Fred Peters, my client.

Now, Laura Hobson, you say that Fred Peters was involved. Who can corroborate you? Who can support you? Well, let's call the witnesses back to the stand. Frank Lucco, come up here and have a seat. You have been sworn to tell the truth.

Frank Lucco, can you corroborate Laura Hobson? "No, Sir! I never saw, talked to, or even heard of the subject prior to arresting him that night." Remember ladies and gentlemen, this is a government drug agent with three years of experience. He even has confidential informants who run the streets. Yet, Fred Peters had no reputation as a drug dealer.

Let's call another witness.

Richard Louis, can you corroborate Laura Hobson? "No." But Richard Louis, you deal in drugs. Surely you've heard of the man who, the government contends, can get one-half pound of cocaine in a couple of hours? "No." But Mr. Louis, I'm talking about the man the government contends can deliver a kilo worth \$48,000. "I'm sorry, ladies and gentlemen of the jury, I've tried to be cooperative. I even called my lawyer that night. I turned state's evidence. But I can't tell you anything about Fred Peters."

What about Thomas Falk and William Howell? Can they corroborate Laura Hobson? Oops! They didn't testify! Was I supposed to say that? Was I supposed to say that? You bet your bottom dollar I was! You must remember, the burden of proof is on the government. They have the duty to produce evidence. Remember also that a reasonable doubt can be based on the evidence or the lack of evidence. And if you think that's just lawyer's talk, if you think that's just Becton pulling a fast one on you, listen to the judge when he gives you instructions on reasonable doubt.

....

When you use artificial memory devices to highlight your themes, jurors won't forget. More important, you will be animated as necessary, and your voice will change as it naturally should.

IV. CONCLUSION

In circa 400 B.C., Democritus said that the voice is "the image of life." In the first century B.C., Publilius Syrus said that the voice is "the mirror of the soul." Your voice can be music to jurors' ears if you speak with passion.

I cannot envision any calling with a greater need for passion -- that strong commitment to some goal -- than trying cases. Without passion there can be no compassion. Without compassion, we would be but "sounding brass or a tinkling cymbal." Your voice needs to be more than a sound. Develop its symphonic range and its full orchestral sounds so you can create a tune of universal harmony in your closing argument.

Rufus Choate, speaking on the life of Daniel Webster, said: "I never heard Webster argue to a jury that he did not leave the impression that he loved nothing, desired nothing, so much as the good and glory of America; that he did not seem to summon around him the whole brotherhood of states and men, and hold them to his heart. This gave the freshness and energy to all of his speeches. This set the tune for the universal harmony."²¹

Many lawyers have forgotten how to speak to ordinary folks.

²¹Rufus Choate, January 18, 1959.

Worse, their minds have been smashed and serialized, and their brain cells restacked so that they no longer can explode in every direction -- with joy and love and rage. They cannot see in the many colors of feeling. The passion is gone, replaced with the deadly droning of the intellect. And the sounds we make are all alike, like machines mumbling and grinding away, because what was once free -- the stuff of story-telling -- has become rigid, flanges and gears that convey nothing except the miserable sounds of mechanization.²²

Give jurors a break. Give your clients a break. Give your pocketbooks a break. Discard that monotonic droning. Say it as you ought.

²²Gerry Spence,



**South
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**The Art of Appellate Advocacy: Ap-
pellate Resolutions for a New Year**

The Honorable Kaye G. Hearn
Conway, SC



NEW YEAR'S RESOLUTIONS FOR APPELLATE LAWYERS

The Honorable Justice Kaye G. Hearn

HAPPY NEW YEAR!



1) LOSE THE WEIGHT

- ◎ Consider your portion when preparing the record on appeal
- ◎ Include what you need to present your case and trim the unnecessary fat



2) SPEND MORE TIME WITH THE ONES THAT MATTER

- ◎ Issue preservation and standard of review are the two best friends you can have on appeal—don't neglect them
- ◎ Whether they help your case or hurt it, you can't ignore them



3) CLEAR OUT THE CLUTTER

- ◎ **Prioritize your issues on appeal**
- ◎ **Piling on issues can undermine your truly meritorious arguments**
- ◎ **Don't waste your energy on issues that will only distract the Court**



4) GET BACK TO THE BASICS

- ◎ As an appellate lawyer your number one goal is to make a complicated case easy
- ◎ It should be apparent to the Court what the issue is, why it should rule in your favor, and the relief that follows



5) KEEP A SPOTLESS HOUSE

- ◎ **Make sure your brief is clean of typos and organized pursuant to the South Carolina Appellate Court Rules and the Bluebook**
- ◎ **Don't leave proofreading up to your administrative assistant or rely on Spellcheck**



6) BE PREPARED

- ◎ You should be able to walk into the courtroom confident that you know the most about the facts and applicable law in your case



7) BECOME MORE SOCIAL

- ◎ Oral argument should be a conversation amongst legal scholars, not story time
- ◎ Engage the bench and capture its attention



8) BE A BETTER LISTENER

- ◎ Respond to the question that is asked by the Court, and remember, not all questions are adversarial



9) ALWAYS TELL THE TRUTH

- ◎ Candor with the Court is critical



10) MAKE EMILY POST PROUD

© Disagreement should not invite incivility



THE END



Ten New Year's Resolutions for Appellate Lawyers

The Honorable Kaye G. Hearn

1. **Lose the weight:** Consider your portion when preparing your record on appeal. Include what you need to present your case and trim the unnecessary fat.
2. **Spend more time with the people that matter:** Issue preservation and standard of review are the two best friends you can have on appeal. Don't make them your frenemies.
3. **Clear out the clutter:** Prioritize your issues on appeal. Piling on issues can undermine your truly meritorious arguments. Don't waste your energy on issues that will only distract the Court.
4. **Get back to the basics:** As an appellate lawyer your number one goal is to make a complicated case easy. It should be apparent to the Court what the issue is, why it should rule in your favor, and the relief that follows.
5. **Keep a spotless house:** Make sure your brief is clean of typos and organized pursuant to the South Carolina Appellate Court Rules and the Bluebook.
6. **Be prepared:** You should be able to walk into the courtroom confident that you know the most about the facts and applicable law in your case.
7. **Become more social:** Oral argument should be a conversation amongst legal scholars, not story time.
8. **Be a better listener:** Respond to the question that is asked by the Court. Not all questions are adversarial.
9. **Always tell the truth:** Candor with the Court is critical.
10. **Make Emily Post proud:** Disagreement should not invite incivility.

RULE 209
DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

(a) Time to Serve and File. At the same time a party serves his initial brief(s) under Rule 208, to include a reply brief, he shall also serve on all parties to the appeal a Designation of Matter to be Included in the Record on Appeal which shall set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials which he proposes to include in the record on appeal. One copy of this Designation with proof of service shall immediately be filed with the clerk of the appellate court.

(b) Content. The Designation must clearly identify what the party desires to have included in the Record on Appeal, and the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)]. A party shall not include any matter in his Designation which is not relevant to the appeal.

(c) Certification. The Designation shall be accompanied by a certificate signed by the party's counsel of record that the Designation contains no matter which is irrelevant to the appeal.

RULE 210
RECORD ON APPEAL

(a) Time for Service. Within thirty (30) days after service of the last brief, the appellant shall serve a copy of the Record on Appeal on each party who has served a brief. Proof of service of the Record shall be immediately filed with the clerk of the appellate court.

(b) Time for Filing. The appellant must file with the clerk of the appellate court fifteen (15) copies of the Record on Appeal no later than the date his brief(s) are due under Rule 211. As provided by Rule 267(d), one copy filed with the appellate court shall be filed unbound. The appellate court may require an appellant to file additional copies of the Record on Appeal.

(c) Content. The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. The Record shall not, however, include matter which was not presented to the lower court or tribunal. Matter contained in the Record on Appeal shall be arranged in the following order: the title page, index, orders, judgments, decrees, decisions, pleadings, transcript, charges, exhibits and other materials or documents, and a certificate by appellant. Each page of the Record on Appeal shall be numbered consecutively beginning with the index. Where a portion of a page of the trial transcript, or a page of an exhibit or document, is to be included in the Record on Appeal, the entire page shall be included. When a portion of an order, judgment, decision or pleading is to be included in the Record on Appeal, the entire order, judgment, decision or pleading shall be included in the Record, to include the caption and signature(s); provided, however, that the portion of a pleading showing verification or service shall not be included unless

relevant to the appeal. If the original court reporter's numbering has been deleted, the Record on Appeal shall contain ellipses or other notation indicating when pages of the court reporter's transcript have been omitted.

Where witness testimony is included in the Record on Appeal, the first page of each witness's direct, cross, redirect and recross examination must show the name of the witness, the phase of examination and the name of the counsel conducting the examination. If this information is not already reflected on the page, the top of the page shall be annotated with the required information in the following form: John H. Doe-- Direct (Cross) (Redirect) (Recross) Examination by Mr. Smith.

(d) Title. The title page shall contain the caption as set forth in Rule 267. Nothing shall be printed on the title page except the caption.

(e) Index. Every Record on Appeal shall contain an index to the principal matters therein to include orders, judgments, decisions, pleadings, pretrial matters, opening statements, testimony, motions, closing arguments, jury charges, post-trial motions and exhibits. For witness testimony, the index shall show the pages on which direct, cross, redirect and recross examination begins.

(f) Exhibits. Photographs, plats and diagrams, and other paper exhibits shall be inserted in the Record on Appeal where they can reasonably be reduced or drawn to a size which permits them to be printed and inserted in the Record on Appeal, without folding more than one time. Where they are larger, or do not reasonably lend themselves to accurate reproduction, they need not be included in the Record on Appeal, but shall be filed separately. All exhibits other than paper exhibits must be retained in the trial court and delivered to the appellate court only upon receipt of an order from the clerk of the appellate court.

(g) Certificate of Counsel. Appellant or his counsel shall certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

(h) Review Limited to Record on Appeal. Except as provided by Rule 212 and Rule 208(b)(1)(C) and (2), the appellate court will not consider any fact which does not appear in the Record on Appeal.



**South
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Anatomy of a Hoax

James P. Cooney III
Charlotte, NC

Anatomy of a Hoax

A. I came to the conclusion that she -- she had made up -- that she was not telling the truth about anything. That she was improvising everything that she had said. That everything she was contradicted with, she would make up improvisation of what actually happened of why this happened, why this didn't happen.

SEXUALLY ASSAULTED ON MARCH 20TH 1994 AT THE AGE OF 17
Kuchanan?

Margaret M. Powell, CVR - (919) 779-0322

that stuff with her, was that before or after the
indictments occurred?

Margaret M. Powell, CVR - (919) 779-0322

Reported by
Margaret M. Pe
Certified Verbatim R
6212 Splitrock T
Apex, North Carolina
(919) 779-032

Opportunity

77886666666666

Saw him before - Brett
"fuck this nigger bitch"
Brett escalated, I'm
your ^{fun} Done Matt can
and got behind - He tried to
put it in my ass, it was sure
MATT. ^{one} ^{of} ^{his} ^{ass}
... ^{penetrated} ^{my} ^{ass}

half hour would
willing to prosecute,

GENERAL COURT OF JUSTICE
CT/ SUPERIOR COURT DIVISION
IDENTIFICATION ORDER

re called to the Kroger on
male reported to the officers that
Buchanan Blvd. The
had an appointment to dance at
sidence and joined the other
im reported that they began to
w minutes, the males watching
ated to the women "I'm gonna
shove this up you" while holding a broom stick up in the air so they could see it. The
victim and her fellow dancer decided to leave because they were concerned for their
safety. After the two women exited the residence and got into a vehicle, they were
approached by one of the suspects. He apologized and requested they go back inside and
continue to dance. Shortly after going back into the dwelling the two women were
separated. Two males, Adam and Matt pulled the victim into the bathroom. Someone
closed the door to the bathroom where she was, and said "sweet heart you can't leave."

The victim stated she was hit, kicked, and strangled during the assault. As she attempted to defend herself, she was overpowered. The victim reported she was sexually assaulted for an approximate 30 minute time period by the three males. During a search warrant at

half hour would NOT leave
willing to prosecute,
victim - visibly shaking and hurting ^{having a hard time} ^{SITTING DOWN}
"spj left side of ^{her} ^{ass}"
"Don't hit them," when she tried fighting Back

also located inside the residence during the search warrant. During the search, twenty
dollar bills were recovered inside the residence totaling \$160.00 consistent with the
victim claiming \$400.00 cash in all twenty dollar bills was taken from her purse
immediately after the rape. The victim was treated and evaluated at Duke University
Medical Center Emergency Room shortly after the attack took place. A Forensic Sexual
Assault Nurse (SANE) and Physician conducted the examination. Medical records and
interviews that were obtained by a subpoena revealed the victim had signs, symptoms,
and injuries consistent with being raped and sexually assaulted vaginally and anally.
Furthermore, the SANE nurse stated the injuries and her behavior were consistent with a
traumatic experience.

Richard J. Stithers
JUDGE

David Smith
Assistant District Attorney

DATE: 03/23/06

DATE: 3/23/06

1292

1 M .1 .1 460

March 13-14, 2006

659	Mar 13	1111P	INCOMING CL	NO CALL ID	1.0	OFPP	.00	INCL
660	Mar 13	1122P	INCOMING CL	NO CALL ID	2.0	OFPP	.00	INCL
661	Mar 13	1125P	DURHAM NC	919-251-3961	7.0	OFPP	.00	INCL
662	Mar 13	1133P	INCOMING CL	NO CALL ID	1.0	OFPP	.00	INCL
663	Mar 13	1136P	INCOMING CL	NO CALL ID	3.0	OFPP	.00	INCL

March 13-14, 2006

659	Mar 13	1111P	INCOMING CL	NO CALL ID	1.0	OFFPP	.00	INCL	
77	Raleigh_MTX01	3/13/2006	23:50:28	MT	(973) 953-4832	(919) 619-9547	(913) 568-9038	85	
660	Mar 13	1122P	INCOMING CL	NO CALL ID	2.0	OFFPP	.00	INCL	
661	Mar 13	1125P	DURHAM NC	919-251-3561	7.0	OFFPP	.00	INCL	
(913) 568-9038	(973) 953-4832	(973) 953-4832		0	3/13/06 23:48:36	3/13/06 23:49:21	45	588	
(973) 953-4832	(913) 568-9038	(973) 953-4832		0	3/13/06 23:50:09	3/13/06 23:51:39	90	588	
663	Mar 13	1136P	INCOMING CL	NO CALL ID	3.0	OFFPP	.00	INCL	

March 13-14, 2006

Friday, March
608 N. Buchar
Durham, NC

This is my acco
morning hours

At the approxi
men were playi
Buchanan as I
wearing a sort
My roommate,
on this day.

Friday, March 31, 2006

SOMETHING to the effect that they would be right there, or just give us a minute.

I saw the women enter 610 together. After a moment, I remember quite specifically noting that it was Midnight. At approximately 12:05 on Tuesday, I re-entered my house and took a quick shower. As I was getting re-dressed in my bedroom, which is on the opposite side of the building from 610, I heard loud voices from outside. I had left my front door open, and the voices were carrying from in front of my residence, as well as open windows along the alley between 608 and 610.

not of clothing, as I saw the person, but of something that she looked like comfortable with, but needed to talk the woman with the short skirt though. I did not overhear any specific words at that time. Twice that I noticed during this conversation, a man or two different men opened the back door of 610 and spoke to the women, and the more conservatively dressed woman responded both times.

I saw the women enter 610 together. After a moment, I remember quite specifically noting that it was Midnight. At approximately 12:05 on Tuesday, I re-entered my house and took a quick shower. As I was getting re-dressed in my bedroom, which is on the opposite side of the building from 610, I heard loud voices from outside. I had left my front door open, and the voices were carrying from in front of my residence, as well as open windows along the alley between 608 and 610.

bed.

Jason Alexander Bissey.

March 13-14, 2006

79	Raleigh_MTX01	3/14/2006	0:05:49	MO	(973) 953-4832	(913) 568-9038	(973) 953-4832	32
80	Raleigh_MTX01	3/14/2006	0:06:24	MO	(973) 953-4832	(913) 568-9038	(973) 953-4832	33
81	Raleigh_MTX01	3/14/2006	0:07:03	MO	(973) 953-4832	(913) 568-9038	(973) 953-4832	36
82	Raleigh_MTX01	3/14/2006	0:09:14	MO	(973) 953-4832	(1908) 337-1009	(973) 953-4832	23
83	Raleigh_MTX01	3/14/2006	0:09:57	MO	(973) 953-4832	(1908) 337-1009	(973) 953-4832	13
84	Raleigh_MTX01	3/14/2006	0:10:14	MO	(973) 953-4832	(913) 568-9038	(973) 953-4832	26
85	Raleigh_MTX01	3/14/2006	0:12:16	MO	(973) 953-4832	(913) 568-9038	(973) 953-4832	20
86	Raleigh_MTX01	3/14/2006	0:13:33	MO	(973) 953-4832	(913) 568-9038	(973) 953-4832	33
87	Raleigh_MTX01	3/14/2006	0:14:46	MO	(973) 953-4832	(1919) 730-5337	(973) 953-4832	58

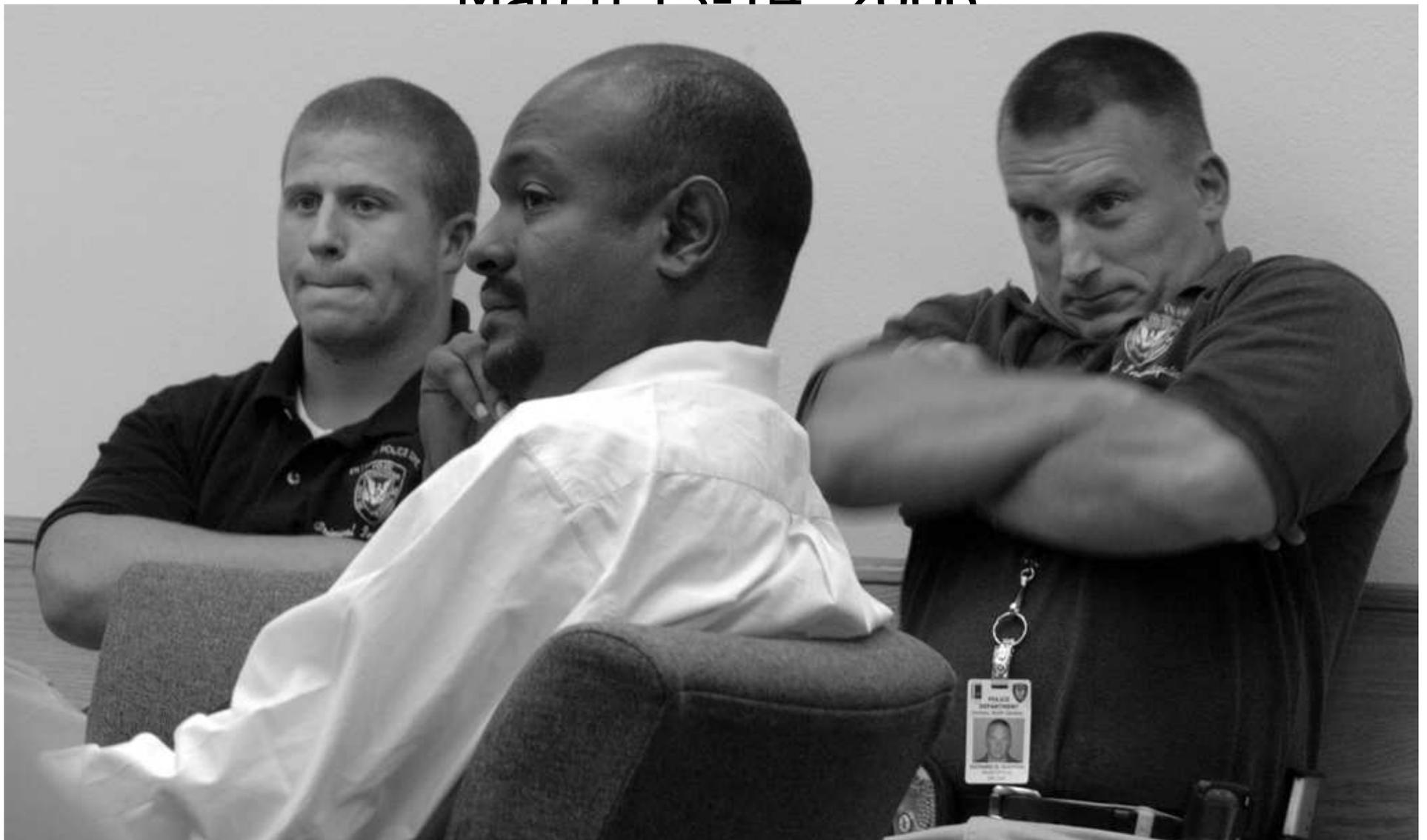
Cell Jason
Receiv 8 Call Calls by

DETAILS for 919-730-5337, 1 6 continued

> SUBSCRIBER ACTIVITY DETAIL

527	03/14	12:04A	Toll Free	800-915-1210 OP/PU	8:00	0.00	0.00	0.00
528	03/14	12:14A	Incoming	973-953-4832 OP	1:00	0.00	0.00	0.00
529	03/14	12:20A	Incoming	919-493-5050 OP	1:00	0.00	0.00	0.00
518	03/13	11:01P	Toll Free	800-915-1210 OP/PU	15:00	0.00	0.00	0.00
519	03/13	11:14P	Incoming	312-771-8500 OP/CW	1:00	0.00	0.00	0.00
520	03/13	11:21P	Incoming	919-493-5050 OP	1:00	0.00	0.00	0.00
521	03/13	11:44P	Incoming	919-493-5050 OP	1:00	0.00	0.00	0.00
522	03/13	11:46P	Incoming	919-493-5050 OP	1:00	0.00	0.00	0.00
523	03/13	11:51P	Incoming	919-493-5050 OP	4:00	0.00	0.00	0.00
524	03/13	11:59P	Toll Free	800-915-1210 OP/PL	1:00	0.00	0.00	0.00
525	03/13	11:59P	Toll Free	800-915-1210 OP/PU	1:00	0.00	0.00	0.00
526	03/14	12:00A	Toll Free	800-915-1210 OP/PU	3:00	0.00	0.00	0.00
527	03/14	12:04A	Toll Free	800-915-1210 OP/PU	8:00	0.00	0.00	0.00
528	03/14	12:14A	Incoming	973-953-4832 OP	1:00	0.00	0.00	0.00
529	03/14	12:20A	Incoming	919-493-5050 OP	1:00	0.00	0.00	0.00

March 13-14 2006



03/14/06 Tue
12:24:31A
A0
248

Cardholder: 137988806 SELIGMANN, READE WILLIAM

Activity: All Location: All

Cardholder: 137988806 SELIGMANN, READE WILLIAM
Activity: All Location: All Privileges: All Transactions: All Reader Status: All

Date	Time	FI	Location	Reader	Action	Privilege	Plan	Acct	N	F	X	Reason	Trans	Account	Amount	Balance	OPR
03/13/06	12:00AM				Reset Bal	Bursar Account		0025							0.00	0.00	SYN
03/13/06	12:56AM	H-HH1a	H-HH1a	H2C1ft	Rdr Trans	Residence Hall Access	Edens Quad										
03/13/06	02:22PM	H-2C1ft	H2C1ft	H2C83d	Rdr Trans	Residence Hall Access	Edens Quad										
03/13/06	02:22PM	H-2C8-3d	H2C83d	H2C83d	Rdr Trans	Residence Hall Access	Edens Quad										
03/13/06	06:58PM	OG1nr08	OG1nr08	H2C1ft	Rdr Trans	Residence Hall Access	Edens Quad										
03/14/06	12:46AM	H-2C8-3d	H2C83d	H2C83d	Rdr Trans	Residence Hall Access	Edens Quad										
03/14/06	09:18PM	H-2C1ft	H2C1ft	H2C1ft	Rdr Trans	Residence Hall Access	Edens Quad										
03/14/06	09:40PM	H-2C1ft	H2C1ft	H2C1ft	Rdr Trans	Residence Hall Access	Edens Quad										
03/14/06	12:46AM	H-2C8-3d	H2C83d	H2C83d	Rdr Trans	Residence Hall Access	Edens Quad										
03/14/06	10:45PM	1 LR-Hasting	LR2A		Rdr Trans	Flex	Student	0002						1.00	207.66		
03/14/06	10:45PM	1 LR-Hasting	LR2A		Rdr Trans	Flex	Student	0002						1.00	206.66		
03/14/06	10:45PM	1 LR-Hasting	LR2A		Rdr Trans	Flex	Student	0002						1.00	205.66		
03/14/06	11:31PM	1 LR-Hasting	LR2A		Rdr Trans	Flex	Student	0002						1.00	204.66		
03/14/06	11:31PM	1 LR-Hasting	LR2A		Rdr Trans	Flex	Student	0002						1.00	203.66		
03/14/06	11:31PM	1 LR-Hasting	LR2A		Rdr Trans	Flex	Student	0002						1.00	202.66		
03/14/06	11:31PM	1 LR-Hasting	LR2A		Rdr Trans	Flex	Student	0002						1.00	201.66		
03/14/06	11:31PM	1 LR-Hasting	LR2A		Rdr Trans	Flex	Student	0002						1.00	200.66		
03/14/06	11:32PM	VP-2A Haast	VP-2A		Rdr Trans	Vending	Food Vendi	0001						1.25	674.74		
03/15/06	12:50AM	H-2C8-3d	H2C83d	H2C83d	Rdr Trans	Residence Hall Access	Edens Quad										
03/15/06	10:25AM	H-2C8-3d	H2C83d	H2C83d	Rdr Trans	Residence Hall Access	Edens Quad										
03/15/06	04:58PM	H-2C8-3d	H2C83d	H2C83d	Rdr Trans	Residence Hall Access	Edens Quad										
03/15/06	05:00PM	H-2C8-3d	H2C83d	H2C83d	Rdr Trans	Residence Hall Access	Edens Quad										
03/15/06	06:40PM	1 LR-Hasting	LR2A		Rdr Trans	Flex	Student	0002						1.00	199.66		
03/15/06	06:42PM	H-2C1ft	H2C1ft	H2C1ft	Rdr Trans	Residence Hall Access	Edens Quad										
03/15/06	07:14PM	1 Grace'aNOP	GR'aNOP		Rdr Trans	Food	Plan D - \$	0001	*					9.58	665.16		
03/15/06	07:15PM	H-2A2L	H2A2L		Rdr Trans	Residence Hall Access	Edens Quad										
03/15/06	07:16PM	1 LR-Hasting	LR2A		Rdr Trans	Flex	Student	0002						1.00	198.66		
03/15/06	07:17PM	H-2C8-3d	H2C83d	H2C83d	Rdr Trans	Residence Hall Access	Edens Quad										

03/14/06 12:46AM H-2C8-3d H2C83d Rdr Trans Residence Hall Access Edens Quad

12:46a

Seligmann
Reenters
Dorm

Blackboard Inc.

Continued

Cam 3

March 13-14, 2006

108	03/14	12:22A	O	2	Raleigh /A	NC	(631)902-8312	Riverhead	NY	W		Included
109	03/14	12:27A	O	1	Raleigh /A	NC	(919)724-6571	Incoming	CL	MW		Included
110	03/14	12:30A	O	3	Raleigh /A	NC	(919)682-3030	Durham	NC	W	12:34a -	Included
111	03/14	12:33A	O	1	Durham /A	NC	(919)682-3030	Durham	NC	W	12:50	Included

11:00p

11:12p 11:24p 11:32p 11:34p 11:39p 11:52p

Midnight

12:14a

12:24a

12:30a

12:33a

1:00a

	Mangum	Mangum	Mangum	Mangum	Seligmann	Jason	Elmostafa	12:24a	Seligmann
Raleigh_MTX01	Cell	Cell	Cell	Cell	Cell		Picks Up		
	3/13/2006		23:29:11	NO		(919) 475-4567	(516) 242-0368	(919) 475-4567	32
Raleigh_MTX01	3/14/2006		0:34:33	NO		(919) 475-4567	(914) 582-2021	(919) 475-4567	965

11:29p

Evans' Cell

Calls Cab at weilmington

12:14a

Elmostafa Cell

Seligmann at Wachovia ATM

Finnerty Calls Domino's Pizza

Evans' Cell

12:26a

MAR 14

0026 AM

DURHAM

NC

919-490-8444

1:00

Finnerty Cell Call

A Picture Story

Dave Evans' Camera



13 Hours Difference

IMG_0061.JPG Properties



General Summary



IMG_0061.JPG

Type of file: JPEG Image

Opens with: Internet Explorer

Change...

March 14, 2006 12:02:03 AM

Size: 1.13 MB (1,191,571 bytes)

Size on disk: 1.13 MB (1,191,936 bytes)

Created: Monday, March 13, 2006, 11:02:08 AM

Modified: Monday, March 13, 2006, 11:02:08 AM

Accessed:

Attributes: Read-only Hidden Archive

OK

Cancel

Apply

Kevin Coleman (Camera with black stripper passed out
↳ Also going to car.

- Tom Clute
- Breck Archer
- Chris Loftus (Before strippers came, went w girlfriend)
- Dan Loftus
- Erik Hawkedman
- Colin Finerty
- Kyle David
- Zack Greer
- Chris Fogarty

H. Spine
Black, G.M. - Was messed up,
speed

March 16, 2006

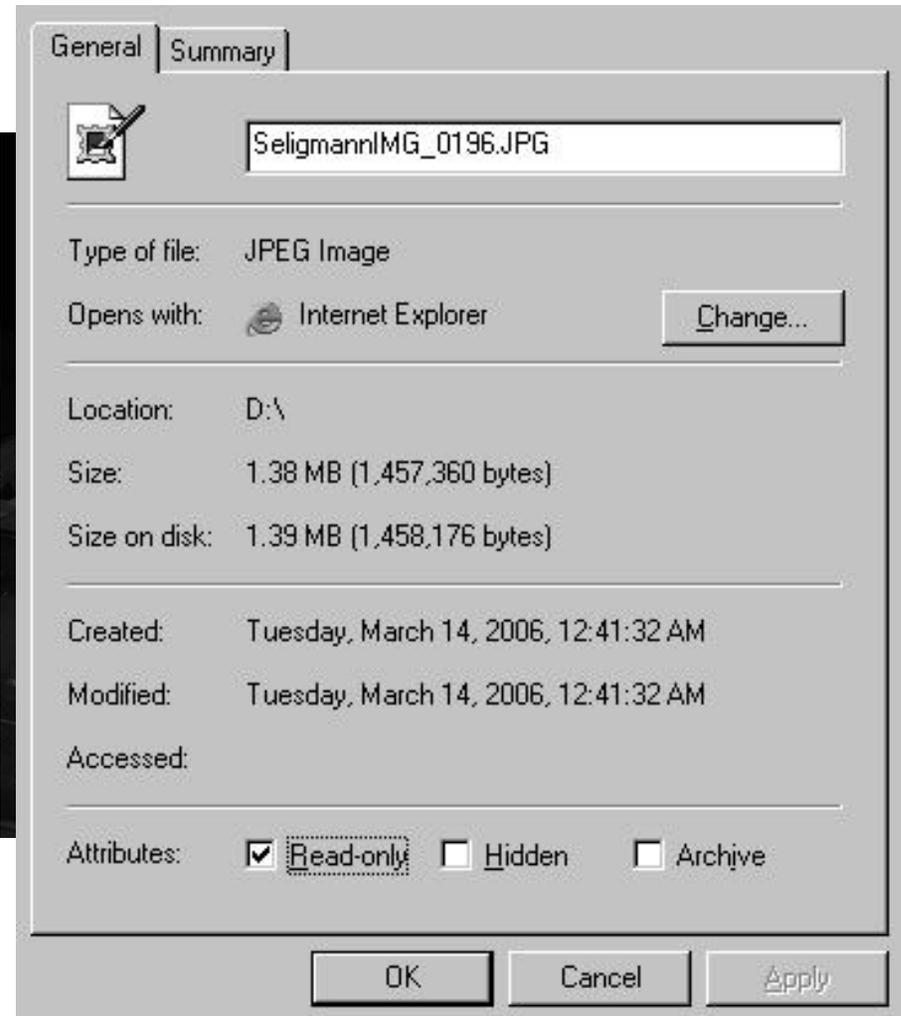
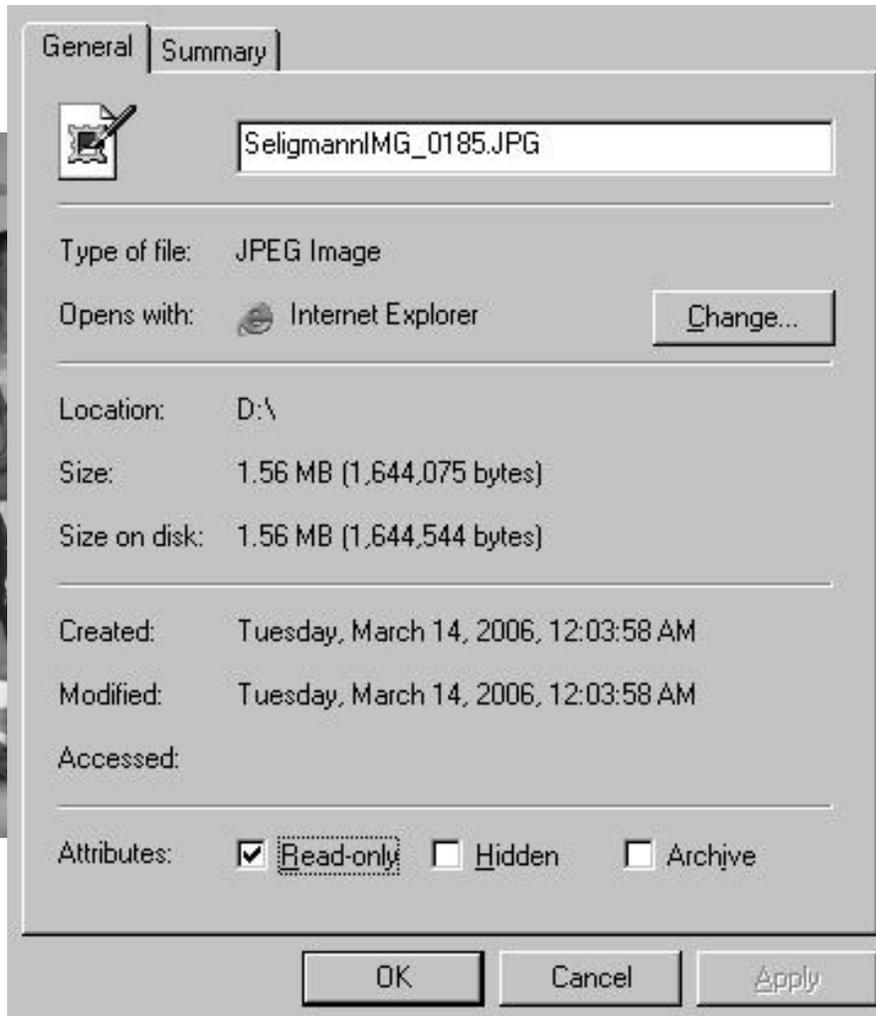
Matt Zash

Kevin Coleman - has picture of girl

Dancer

of the 1st 2000

March 13-14, 2006



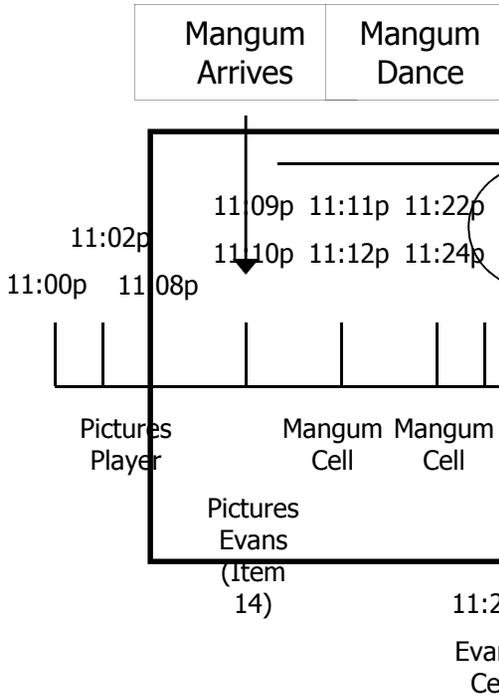
Trying to Change Time

HAN-DEE HUGO #77
 1203 W. CLUB BLVD.
 DURHAM, N.C. 27701

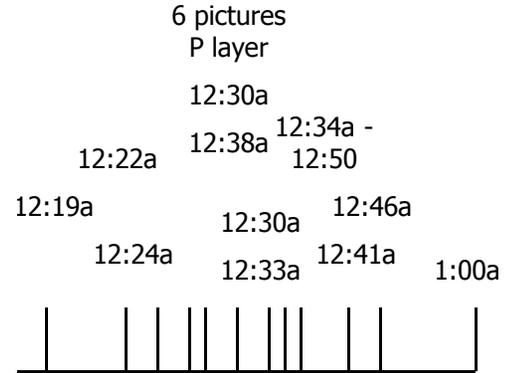
6

800000021419-001-2

HAN-DEE HUGO:S 77
 1203 W CLUB BLVD
 DURHAM NC 27701
 919-286-2276



Descr.	qty	amount
T GATOR XFAC EACH	1	1.39
Sub Total		1.39
Tax		0.10
TOTAL		1.49
CREDIT \$		1.49



mostafa
 icks Up
 :ligmann
 and
 ellington

12:24a
 Finnerty
 Cell Call

Seligmann
 Reenters
 Dorm

Seligmann
 at
 Wachovia
 ATM

Finnerty
 Calls
 Domino's
 Pizza

Evans' Cell

12:26a
 Mangum
 Cell

Mangum
 Leaves Player
 Picture

Finnerty
 Cell Call

December
 2006 Ve

CARD TYPE: VISA
 CARD NAME: BRIAN W TAYLOR

ACCT NUMBER: *****0312
 EXP. DATE: TRANS TYPE: SALE
 SEQ# 0014 REFERENCE# 0720000021000026
 AUTH# 420731 APPROVED
 BATCH# 57

Brian W Taylor
 I AGREE TO PAY TOTAL AMOUNT ACCORDING TO
 CARD ISSUER AGREEMENT. INITIALS

REG# 0002 CS# 009 DR# 01
 03/13/06 23:43:56

TR# 24705
 ST# ??

Q. What was your reaction when you saw the substance of the statements made in the Linwood Wilson's Investigative Report from the December 21st interview?

A. When I actually saw the report I was reading it and I said it didn't make any sense, she had changed her story completely. And there was -- the sexual positions she had of the suspects weren't even close to what she had told me. They had it underneath them and everything like that. And it didn't -- it wasn't making any sense.

Decei
2006

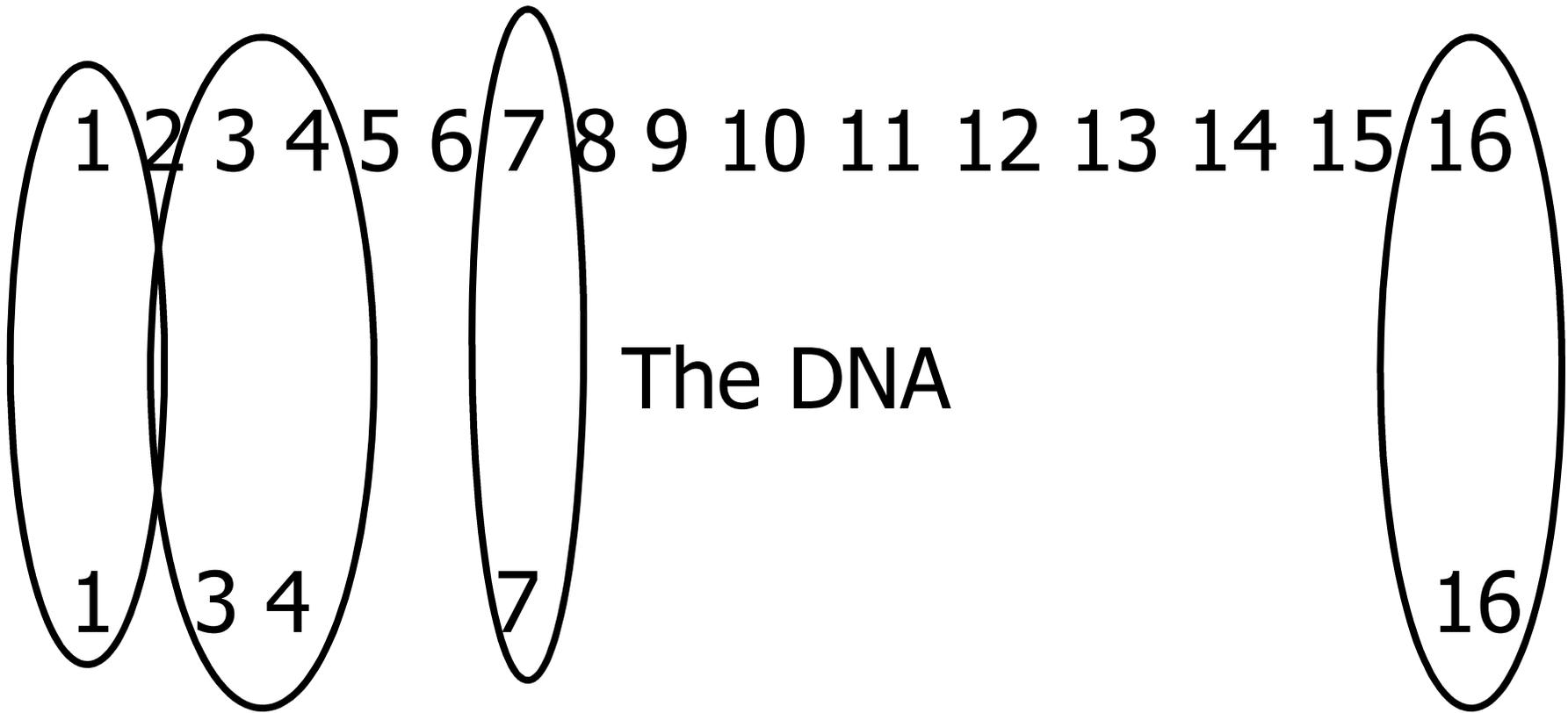
Reported by:
Margaret M. Powell
Certified Verbatim Reporter
6212 Splitrock Trail
Apex, North Carolina 27539
(919) 779-0322

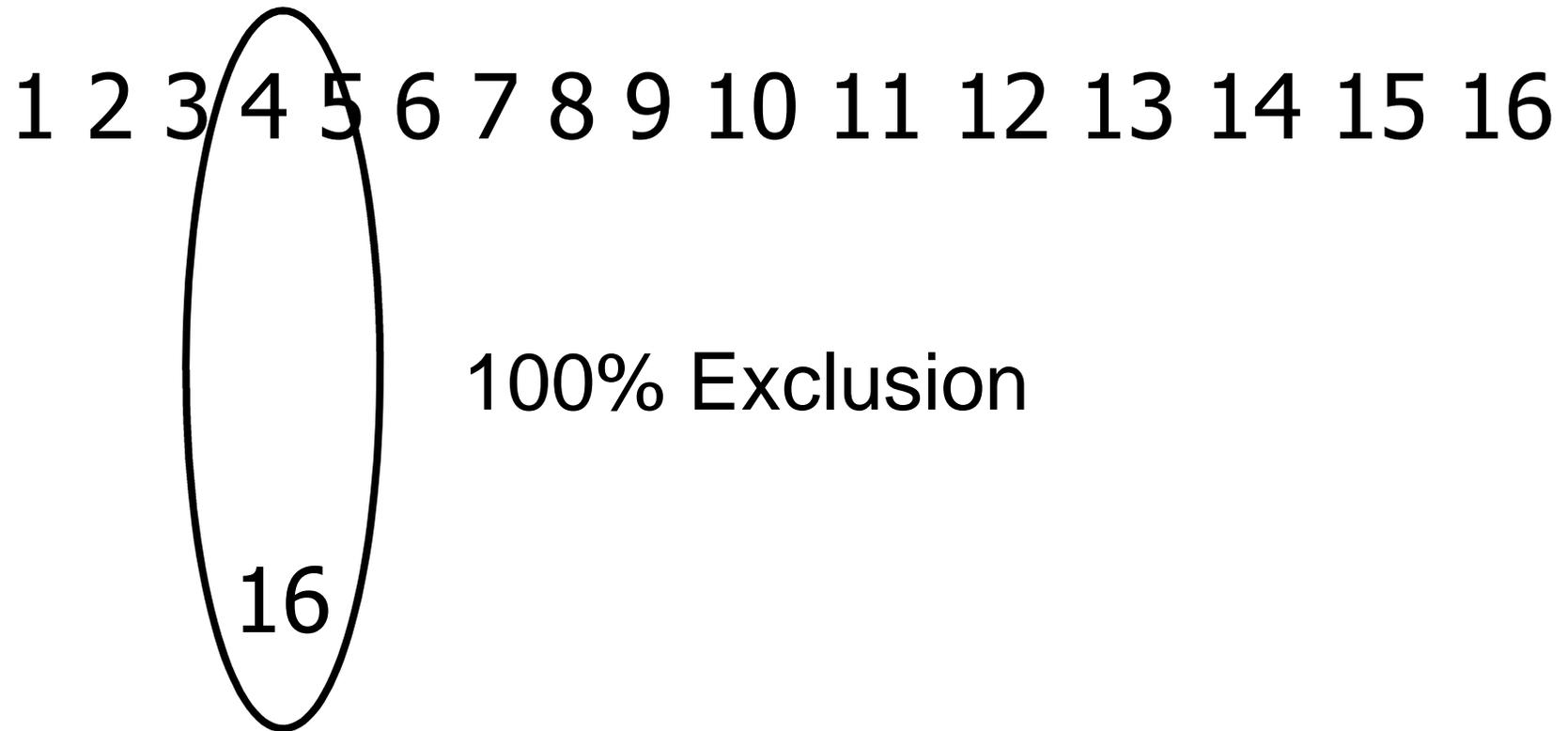
Mangum
Leaves Player
Picture

11:0
11:00p

Pict
Plc

0a





Results of DNA analysis:

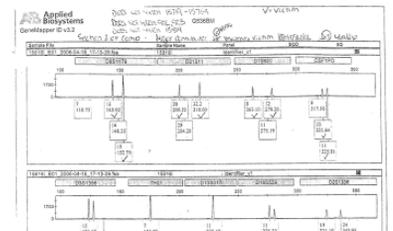
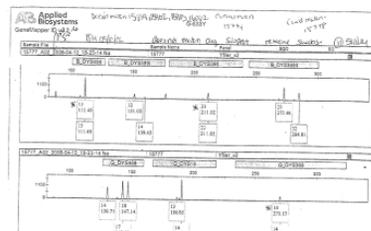
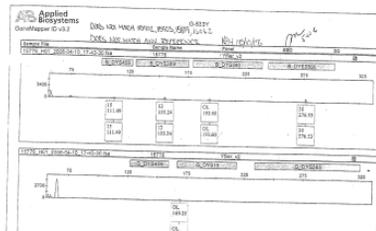
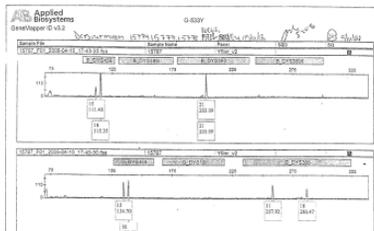
Individual DNA profiles for non-probative evidence specimens and suspect reference specimens are being retained at DSI pending notification of the client. Three of the reference specimens are consistent with DNA profiles obtained from some evidence items and the analysis of these specimens is below.

Analysis I - Numbers in bold indicate a match with the suspect reference specimen. Numbers enclosed in brackets () indicate a match coincident with a primer fragment or a fragment of low intensity. The "BC" indicates that results for that locus are inconclusive and cannot be reported.

Results of DNA analysis:

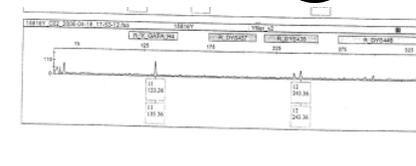
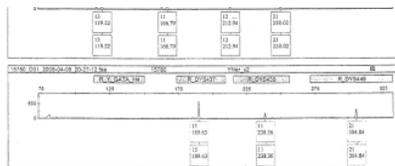
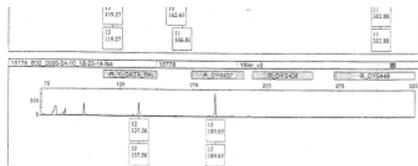
Individual DNA profiles for non-probative evidence specimens and suspect reference specimens are being retained at DSI pending notification of the client. Three of the reference specimens are consistent with DNA profiles obtained from some evidence items and the analysis of these specimens is below.

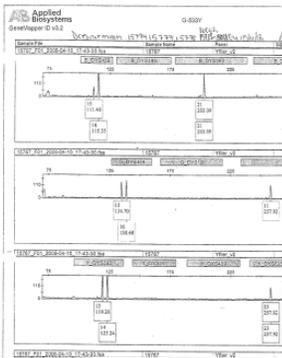
Q11010	16, 12	BC	18, 21	DT1420	18	12, 21, 28
Q11011	14, 18	16, 21, 28	18, 21	DT1420	18	12, 21
T101	8, 8, 8	26, 7, 8, 9, 8, 8	7	DT1420	12, 14	11, 18, 14
Q11012	18, 11	DT1420	11	DT1420	12	12
Q11013	8, 11	8, 13, 21, 12	12, 21	DT1420	18	18, 11
Q11014	28, 28	BC	18, 21	DT1420	12	12
Q11015	11, 18, 2	11, 2, 11, 11, 2, 2, 14, 18, 18, 2	12, 2, 12	DT1420	28	22, 21, 28
Q11	17, 18	18, 18, 12, 18	18, 17	DT1420	12	18, 12
T102	8	8, 8, 11	8, 11	YGC14108	12	18, 21, 12
Q11011	18, 14	BC	18, 21	DT1420	18	14, 18, 18
Q11018	12, 12	12, 12, 12, 12, 12, 21, 12, 12	12, 12	DT1420	12	12, 11, 12
Q11	28, 28	28	21, 24	DT1420	12	12



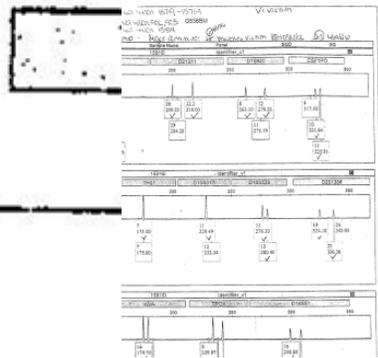
Y-STR (MALE) DNA CHARACTERISTICS DISCOVERED BY DNA SECURITY ON THE RAPE KIT ITEMS

	15787 Panties Stain A Sperm	15777 Panties Stain A Epithelial	15778 Panties Stain B Epithelial	15780 Panties Stain D Epithelial	15818 Pubic Comb Section 2	15817 Pubic Comb Section 3	15818 Pubic Comb Section 4	15778 Rectal Swab Sperm	15785 Rectal Swab Epithelia	15774 Oral Swab Sperm	15775 Vaginal Swab Sperm
DYS458	15, 16	15	15, 16	15	14, 16			15			13
DYS389I		12, 14	12	13				13	14		14
DYS390	21	23		21	24			(OL)			24
DYS389II		29, 32	29					30	31		32
DYS458	15, 16	14, 18, 17	17	17, 18						16, 17	17
DYS19		13, 14						(OL)			15
DYS385	11, 18	14		14, 15					12, 14		11
DYS393	13, 14	9, 13, (OL), 14, 15	13	13	13	13	13		13	13	14
DYS391		11	10, 11	11	10, 11			(OL)		11	10
DYS439		12, (OL)		12				8	12		13
DYS635	23	23		21	23		23	23			
DYS392	11	11, 12, 13	11								11
YGATAH4		11, 12, 13	12		11		11		11		12
DYS437		14	15	15		15	15			15	15
DYS438	11	(OL), 12		11	12				12		10
DYS448		19		21							22
Electropherogram Discovery Page	3053	3057-3058	3059	3049	3367	3388	3389	3056	3042, 3050	3025, 3055	3026, 3037, 3039





B_DYS456



75

125

Applied Biosystems
GeneMapper ID v3.2

Does not match 15719-15724, 15762-15767, 15819

15751 (could be 15751G536) (could be BM)

Sehen Zet Comb -

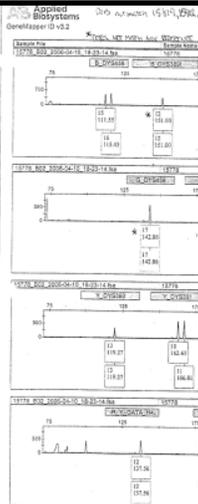
MIXTURE

KGM 05/02/03

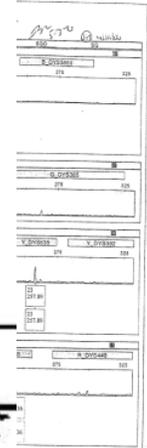
Sample File

Sample Name

Panel



16
115.20



02 2006-04-18 17-53-12.fsa

How Close Was This?

How Close Was This?

Alan Gell was Sentenced to Death in
February 1997

A Single Vote

April 1995

April 1995						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

May 1995						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

Monday	Tuesday	Wednesday	Thursday	Friday	Sat/Sun
					April 1
					2
3	4	5	6	7	8
					9
					10
					11
					12
					13
					14
					15
					16
					17
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					26
					27
					28
					29
					30

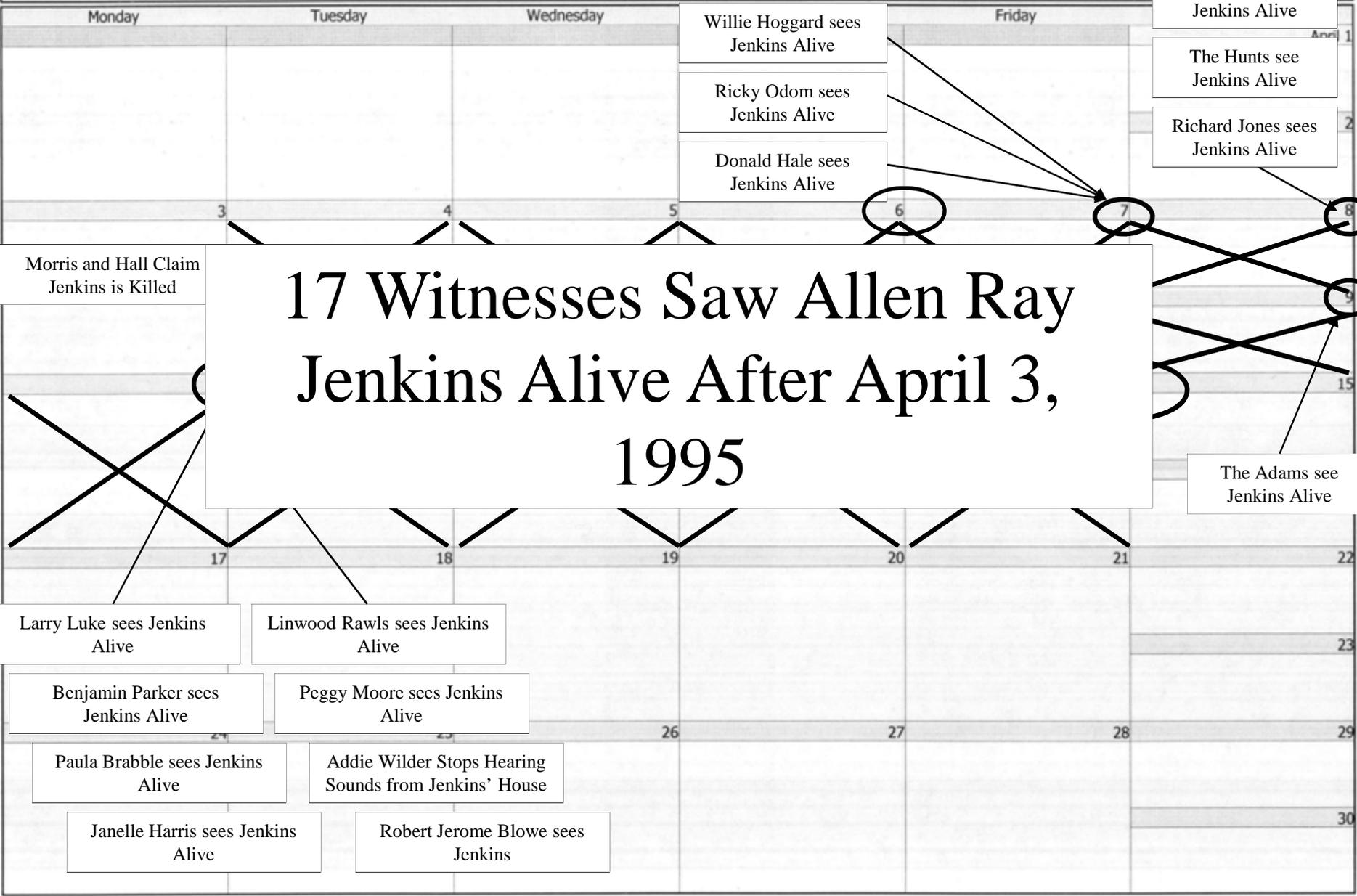
Morris and Hall Cl
Jenkins is Killed

If Allen Ray Jenkins Did Not Die
on April 3, 1995, Then Alan Gell
Is Innocent

April 1995

April 1995						
S	M	T	W	T	F	S
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30						

May 1995						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29					



17 Witnesses Saw Allen Ray Jenkins Alive After April 3, 1995

Morris and Hall Claim Jenkins is Killed

Willie Hoggard sees Jenkins Alive

Ricky Odom sees Jenkins Alive

Donald Hale sees Jenkins Alive

Sidney Jenkins sees Jenkins Alive

The Hunts see Jenkins Alive

Richard Jones sees Jenkins Alive

The Adams see Jenkins Alive

Larry Luke sees Jenkins Alive

Linwood Rawls sees Jenkins Alive

Benjamin Parker sees Jenkins Alive

Peggy Moore sees Jenkins Alive

Paula Brabble sees Jenkins Alive

Addie Wilder Stops Hearing Sounds from Jenkins' House

Janelle Harris sees Jenkins Alive

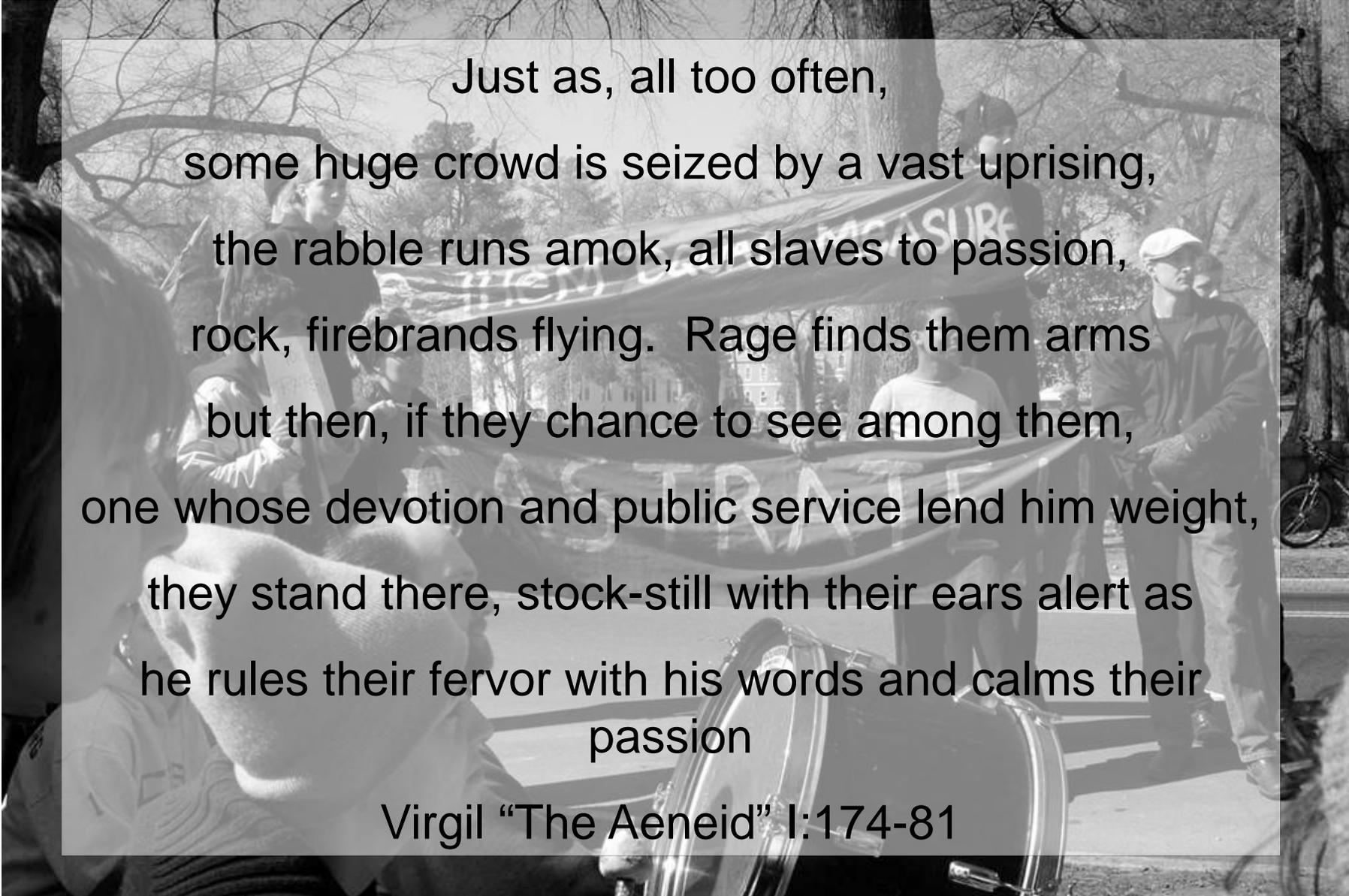
Robert Jerome Blowe sees Jenkins

Open File Discovery

How Close Was This?

Alan Gell was Sentenced to Death in
February 1997

A Single Vote



Just as, all too often,
some huge crowd is seized by a vast uprising,
the rabble runs amok, all slaves to passion,
rock, firebrands flying. Rage finds them arms
but then, if they chance to see among them,
one whose devotion and public service lend him weight,
they stand there, stock-still with their ears alert as
he rules their fervor with his words and calms their
passion

Virgil "The Aeneid" I:174-81



Observations on Crisis Management

You Will Not Always See It Coming

You May Not Even Recognize It as a
Crisis (At First)

The Value of Good Information (and Who
Has It)

Who You Are Does Not Change:
Remember Who You Are

Always Wear Clean Underwear

Do Not Be Afraid to Say You Are Sorry



How Close Was This?

Alan Gell was Sentenced to Death in
February 1997

A Fingernail (and an obsession)

A Single Vote

A Pawn in Their Game

- No fingerprints linking Reade Seligmann or Collin Finnerty to bathroom
- No hairs linking Reade Seligmann or Collin Finnerty to bathroom
- No fibers linking Reade Seligmann or Collin Finnerty to bathroom



- No
- No
- Crystal Mangunt's saliva/DNA not found in bathroom
- No obvious physical injuries consistent with beating and gang rape

In most cases, the minimum peak height threshold will be 150 RFU for STR alleles; however, the analyst may use a lower threshold. A lower threshold can be used if the following criteria are met:

1. Each electropherogram is analyzed independently of other electropherograms.
2. Evidence electropherograms are analyzed independently of reference electropherograms.
3. A peak has the correct shape.
4. The peak is at least three times the approximate average RFU of the noise.
5. The peak is higher than any reproducible artifacts in the analysis range.
6. If criteria 1-5 are met, the analyst can use 125, 100, 75, or 50 RFU as the minimum peak height to include any and all peaks that the analyst considers true.

~~In most cases, the minimum peak height threshold will be 150 RFU for STR alleles; however, the analyst may use a lower threshold. A lower threshold can be used if the following criteria are met:~~

- ~~1. Each electropherogram is analyzed independently of other electropherograms.~~
- ~~2. Evidence electropherograms are analyzed independently of reference electropherograms.~~

ratios to make artifacts appear as true alleles and make true alleles appear as artifacts.

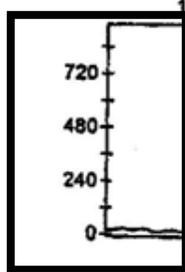
Alleles and loci are determined from the diagnostic peaks (allelic ladder) of the appropriate dye color and size range (bases) for a particular STR marker system.

Homozygote allele peak heights are approximately twice that of heterozygotes as a result of doubling signal from two alleles of the same size. The expected peak height ratio¹ for heterozygote alleles is 70-100%.

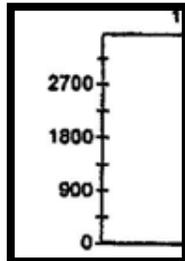
Peaks not aligning with those in the allelic ladders have been detected both within and outside the range of the ladders (off-ladder alleles). Some peaks may represent variant alleles containing incomplete repeats. The analyzer software will accurately label many of the alleles not present in the allelic ladders. If a sample has an off-ladder allele, the peak should be viewed under magnification to determine its position relative to the nearest bin. If the sample does not appear to be a true off-ladder allele, then the sample should be re-run. If the sample appears to be a true off-ladder allele, then the base designation must be noted. The sample must be re-amplified or another sample from a different tissue type from the same individual must be extracted and amplified. The two samples should then be run separately in the same electrophoresis run and the base designation must be within ± 0.5 bp. The off-ladder allele can be reported using ISFH nomenclature if the variant is listed in peer-reviewed literature or in the off-ladder allele database in STRbase. If it is a new variant, then the base designation will be listed when reporting out the data.

¹ [lower peak height] \div [higher peak height] x 100% = peak ratio

15823 D01 2006-



23 H01 2006-



(15823)



(15723)



2700

1800

900

0

720

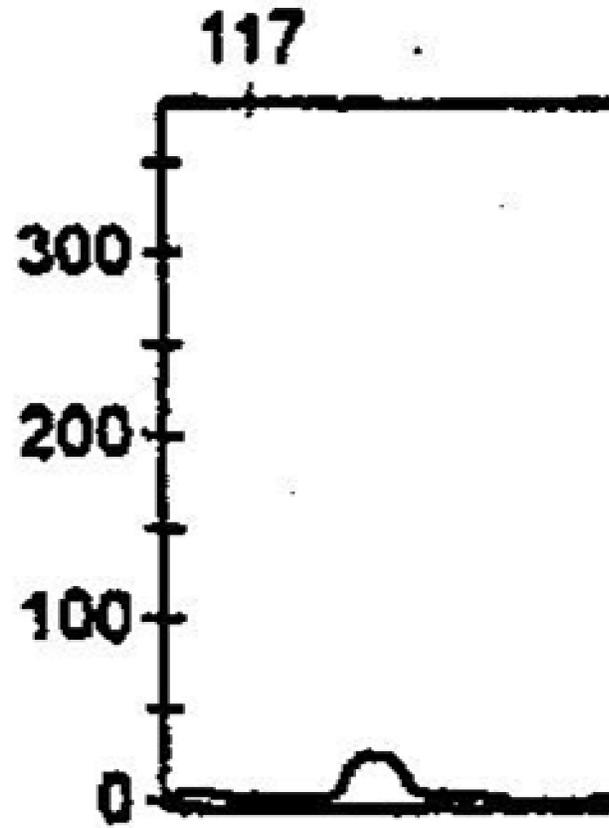
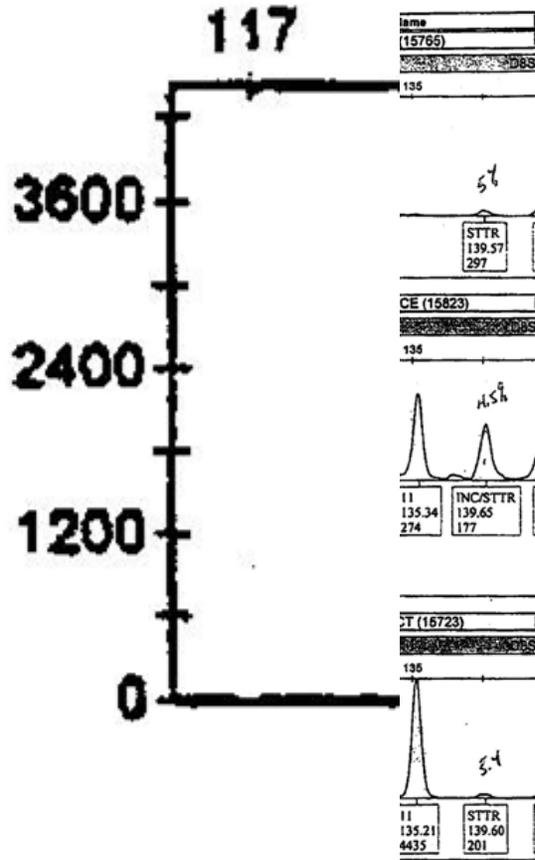
480

240

0

118

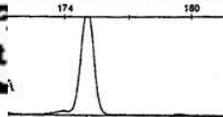
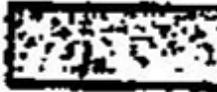
118



15823 D01 2006-

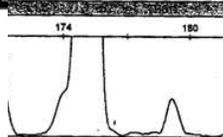
Mixture Analysis I

Sample Name Panel
ICTM (15785) Identifier v1



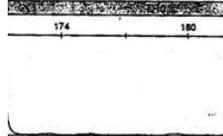
R	7
22	175.01
	8292

VIDENCE (15823) Identifier v1

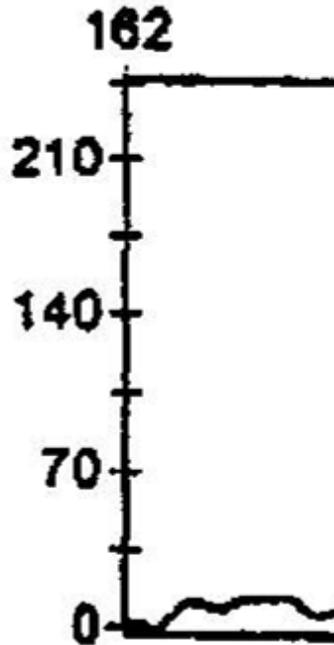


TR	7	8
	175.09	179.11
	5318	92

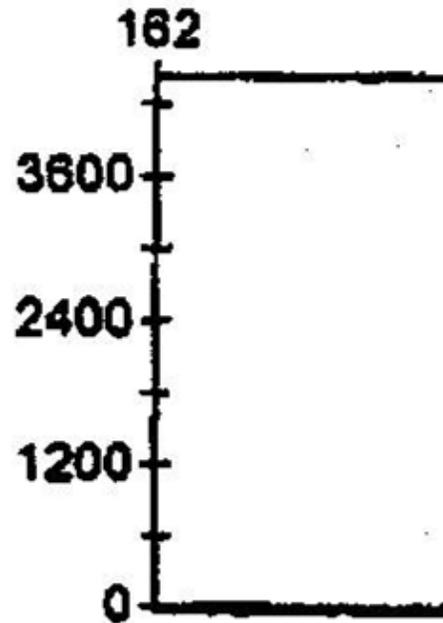
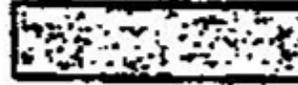
USPECT (15723) Identifier v1



S



23 H01 2006-04-



Something Must Have Happened

A Checklist

A Checklist

March 14, 2006

	Oral	Anal	Vaginal	Married
Matt				
Brett				
Adam				

A Checklist

March 14, 2006

	Oral	Anal	Vaginal	Married
Matt	X			
Brett				
Adam				

A Checklist

March 14, 2006

	Oral	Anal	Vaginal	Married
Matt	X		X	
Brett				
Adam				

A Checklist

March 14, 2006

	Oral	Anal	Vaginal	Married
Matt	X		X	X
Brett				
Adam				

A Checklist

March 14, 2006

	Oral	Anal	Vaginal	Married
Matt	X		X	X
Brett				
Adam		X		

A Checklist

March 16, 2006

	Oral	Anal	Vaginal	Married
Matt	X		X	X
Brett				
Adam		X		

A Checklist

March 16, 2006

	Oral	Anal	Vaginal	Married
Matt	X	X	X	X
Brett				
Adam		X		

A Checklist

March 16, 2006

	Oral	Anal	Vaginal	Married
Matt	X	X	X	X
Brett		X		
Adam		X		

A Checklist

March 16, 2006

	Oral	Anal	Vaginal	Married
Matt	X	X	X	X
Brett		X	X	
Adam		X		

A Checklist

March 16, 2006

	Oral	Anal	Vaginal	Married
Matt	X	X	X	X
Brett		X	X	
Adam	X	X		

A Checklist

April 6, 2006

	Oral	Anal	Vaginal	Married
Matt	X	X	X	X
Brett		X	X	
Adam	X	X		

A Checklist

April 6, 2006

	Oral	Anal	Vaginal	Married
Matt	X	XX	X	X
Brett		X	X	
Adam	X	X		

A Checklist

April 6, 2006

	Oral	Anal	Vaginal	Married
Matt	X	XX	XX	X
Brett		X	X	
Adam	X	X		

A Checklist

April 6, 2006

	Oral	Anal	Vaginal	Married
Matt	X	XX	XX	X
Brett		XX	X	
Adam	X	X		

A Checklist

April 6, 2006

	Oral	Anal	Vaginal	Married
Matt	X	XX	XX	X
Brett		XX	XX	
Adam	X	X		

A Checklist

April 6, 2006

	Oral	Anal	Vaginal	Married
Matt	X	XX	XX	X
Brett		XX	XX	
Adam	XX	X		

A Checklist

April 6, 2006

	Oral	Anal	Vaginal	Married
Matt	X	XX	XX	X
Brett		XX	XX	
Adam	XX	X		X

Who's Who



Reade S m") is Not



Who's Who

December 21st

Dave Evans = Adam, Dan, Brett and Matt

Reade Seligmann = Matt and Adam

Collin Finnerty = ?

Dave Evans (Adam, Dan, Brett and Matt) - -
Anal, Vaginal and Oral Sex

Reade Seligmann (Matt and Adam) - - No Sex

Collin Finnerty (?) - - Anal and Vaginal Sex

A Checklist

April 6, 2006

Brett Penetrates Anally and Vaginally

Adam Performs Sex Act in Her Face

Brett Finishes at Same Time as Adam

December 21 - - Dave Evans Does Sex Act in Face

Dave Evans = Brett and Adam

Therefore - - Dave Evans Has Sex with Her from
Behind and in Front of Her All at the Same Time



The Identification Process

The Identification Process

Use an Independent Administrator

Use Minimum of 5 Fillers per Suspect

Fillers Must Resemble Description

When Showing New Suspect Avoid
Reusing Fillers

Administrators Give Identical Instructions

Do Not Give Witness Feedback

Tell Witness Suspect May Not Be In
Photos

The Identification Process

The Photo Arrays

March 16, 2006



1905HRS - IN PHOTO ARRAY (A) SHE STATED THAT THE PEOPLE IN THE PHOTOS LOOKED ALIKE. SHE WAS ABLE TO SELECT PHOTO # 5 (7 – 10) 70%. SHE COULD NOT REMEMBER WHERE EXACTLY SHE SAW #7 AT THE PARTY.



March 21, 2006



TWO MORE ARRAYS (E-F) WERE SHOWN TO THE VICTIM ON 03/21/2006. SHE COULD NOT IDENTIFY ANY OF THE PICTURES IN THE PHOTO ARRAYS. SHE AGAIN STATED THE PHOTOS LOOKED THE SAME. SHE REQUESTED TO LOOK AT BOTH OF THE PHOTO ARRAYS AGAIN. I SHOWED THE PHOTOS AGAIN IN THE SAME ORDER. AGAIN, SHE WAS UNABLE TO IDENTIFY ANY OF THE PHOTOS. E WAS SHOWN AT 1808HRS AND F WAS SHOWN AT 1813HRS.



March 16, 2006

March 21, 2006

Collin Finnerty's Picture Was Never Shown in a
Photo Array

Collin Finnerty Did Not Resemble Any of the
Descriptions Given by Crystal Mangum

The Identification Process

The Investigation Was Dead

She Had Not Identified Anyone

She Had Not Given Descriptions That
Were Useful

She Could not Remember Anything
Further

There Was No Semen

There Was No DNA from the SBI

The Other Dancer Said It was a “Crock”

3/31/2006
Investig
to doing
obtained
2006 at
together
impressi
and inst
victim t
at the p
seeing t
interact

ence
23,
the
Team
ask the
riduals
called

The Identification Process



Devon Sherwood Was At the Party

They Had His Picture

Why Not Show It to Her to See If
She Remembered Him and What He
Was Doing?



validity.

photogr

being at

witness

identify

time the

e recalls

identify

failed to

emed by

The Identification Process

Was It an Identification
Process?

The Identification Process

3/28/06 1720HRS -- WENT TO THE APARTMENT OF WILLIAM
BLAKE BOEHMLER 731-445-1441 8/7/84, HE AGREED TO COME
TO THE STATION TO TALK ABOUT WHAT HAPPENED ON 3/13/06.
MR. BOEHMLER SIGNED A NON-CUSTODIAL FORM AND WAS

BRENT

FRIEN

WHO

Where Are the Pictures of Blake
Boehmler and Brent Saeli?

F

ND

225-

8658) 10/9/86 116 PEGRAM DORM.

GIRLS STARTED TO DANCE HE STATED THAT NONE OF THEM
LOOKED IMPAIRED AND THAT HE STATED THAT THERE WAS AN
ARGUMENT AND SOMEONE MENTIONED SOMETHING ABOUT A PIMP.
MR. BOEHMLER STATED HE GOT SCARED AND DECIDED TO LEAVE

The Identification Process

Was It an Identification
Process?

The Identification Process

Why Is This Videotaped?

Why Were the Photo Arrays Not
Videotaped?

The Identification Process



She Has Identified Reade as a
Witness

Why Not Ask to Speak with Him
Specifically?

Why Show Her Another Picture of the
Same Person Who She Has Already
Said Did Not Attack Her?

1905HRS - IN I
ALIKE. SHE V
WHERE EXAC

TOS LOOKED
REMEMBER



;
; **IMAGE 7 (Reade Seligmann)**

Victim:

He looks like one of the guys who assaulted me.

Sgt:

How sure of that are you?

Victim:

100%

Sgt:

You're a 100% sure. Ok.

Victim:

Yes.

Sgt:

How did he assault you? Which one was he?

Victim:

He was the one that was standing in front of me... um... that made me perform oral sex on him.

Sgt:

What else did he do?

Victim:

That was it.

NOTE: Inv. Clayton motioned for me to repeat that for him.

Sgt:

He was the one that was standing in front of her that made her perform oral sex. 100% sure that would have been IMAGE #7.

December 21, 2006

point she started feeling sharp pains in her ass and vagina, while Finnerty was behind her. Both Finnerty and Evans were trying to get Seligman to "do it" but he kept saying NO. Then Seligman got behind her, Finnerty got on the floor under her and Evans got in front of her. Dave Evans started jacking his penis and ejaculating on her face and she (Crystal) started spitting. Someone

March 16th

70% sure at party
Does not remember
exactly where saw
him

March 16th

70% sure at party
Does not remember
exactly where saw
him

April 4th

100% sure he was
the one who made
her perform oral sex

<p>March 16th</p> <p>70% sure at party</p> <p>Does not remember exactly where saw him</p>	<p>April 4th</p> <p>100% sure he was the one who made her perform oral sex</p>	<p>December 21st</p> <p>Seligmann refuses to have sex</p> <p>Dave Evans performs oral sex</p>
--	---	--

March 21, 2006



TWO MORE ARRAYS (E-F) WERE SHOWN TO THE VICTIM ON 03/21/2006. SHE COULD NOT IDENTIFY ANY OF THE PICTURES IN THE PHOTO ARRAYS. SHE AGAIN STATED THE PHOTOS LOOKED THE SAME. SHE REQUESTED TO LOOK AT BOTH OF THE PHOTO ARRAYS AGAIN. I SHOWED THE PHOTOS AGAIN IN THE SAME ORDER. AGAIN, SHE WAS UNABLE TO IDENTIFY ANY OF THE PHOTOS. E WAS SHOWN AT 1808HRS AND F WAS SHOWN AT 1813HRS.



April 4, 2006



who assaulted me sort.

you on this image?

the mustache.

ne?

likelihood this is one of the gentleman who

December 21, 2006

Inv. Wilson asked Crystal Mangum to describe the mustache on Dave Evans. Crystal Mangum stated, "it wasn't a real mustache like yours, it was like stubble or a shadow." Inv. Wilson said "Like a 5 o'clock shadow? Crystal Mangum stated, "Yes like that."

March 16th

Does Not
Recognize Dave
Evans

March 16th

Does Not Recognize
Dave Evans

April 4th

Looks just like him
without the
mustache

90% sure he was the
one who attacked if
he had a mustache

<p>March 16th</p> <p>Does Not Recognize Dave Evans</p>	<p>April 4th</p> <p>Looks just like him without the mustache</p> <p>90% sure he was the one who attacked if he had a mustache</p>	<p>December 21st</p> <p>He did not have a mustache</p> <p>He had a "five o'clock shadow"</p>
---	--	---

March 16, 2006

March 21, 2006

Collin Finnerty's Picture Was Never Shown in a
Photo Array

Collin Finnerty Did Not Resemble Any of the
Descriptions Given by Crystal Mangum

April 4, 2006



IMAGE 40 (Collin Finnerty)

Victim:

He is the guy who assaulted me.

Sgt:

What did he do?

Victim:

He put his penis in my anus and my vagina. (The victim's eyes were pooling with tears)

Sgt:

Was he the first or second one to do that?

Victim:

The second one.



December 21, 2006

12. Are you certain that they used their penis to rape you?

Answer: I can't say 100% that it was a penis that was used because I couldn't see it. They had me bent over and my face pushed down to the floor so I couldn't see what they were using but I believe it was their penis. It felt like a penis, but it was a sharp pain. I couldn't say 100% that I saw them use their penis but it was certainly something.

March 16th

March 21st

Finnerty Matches
No Description of
Her Attackers

March 16th

March 21st

Finnerty Matches No
Description of Her
Attackers

April 4th

He is the “second
one” who put his
penis in her vagina
Her eyes “pool” with
tears

<p>March 16th March 21st</p> <p>Finnerty Matches No Description of Her Attackers</p>	<p>April 4th</p> <p>He is the “second one” who put his penis in her vagina Her eyes “pool” with tears</p>	<p>December 21st</p> <p>Can’t remember whether penis was put in her vagina</p>
--	--	---

Who Else Did She Identify?

IMAGE 4 (Matthew Wilson)

Sgt:

Did you recognize that person?

Victim:

He looked like Bret but I'm not sure.

IMAGE 5 (David Evans)

Victim:

He looks like one of the guys who assaulted me sort.

One of the guys that assaulted me.

Sgt:

One of the guys that assaulted you? Ok.

Victim:

Um hum.

March 16, 2006



1923HRS - PHOTO ARRAY (D) SHE SELECTED #1 (10-10) 100% AS BEING AT THE PARTY. SHE COULD NOT REMEMBER EXACTLY WHERE SHE SAW #1 AT THE PARTY.



April 4, 2006



IMAGE 9 (John B. Ross)

Victim:

He was there.

Sgt:

In the bathroom, or at the party?

Victim:

At the party.

Sgt:

Ok, so he was not the person who assaulted you. Do you remember what he was doing at the party?

Victim:

He was standing outside talking to the other dancer.





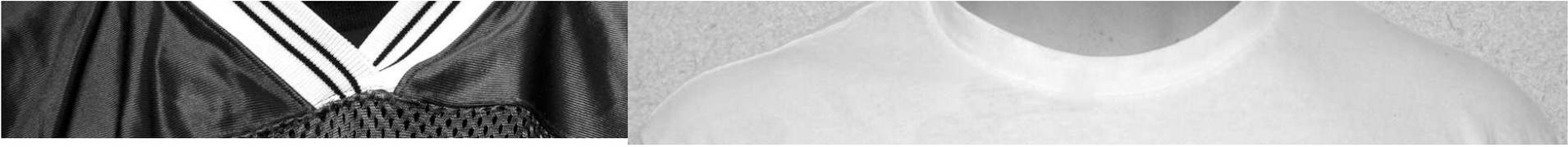
Consistent with our telephone conversation yesterday, I propose that you review the enclosed documents regarding Buchanan's visit to 303c in Me... telephone... following it

She Identifies Brad Ross with Certainty as Being at the Party in both the Photo Array and the Powerpoint Identification

10
in Raleigh,
Suite
ade
The

Brad Ross was in Raleigh When She was at the Party

- 1)
- 2)
- 3)
- 4) **The Statements of All Three of the Lessees of the Home Given to Police During Interrogations Conducted by Your District's Investigators**
- 5) **SBI Laboratory Reports of Tests Conducted on Mr. Ross's DNA**



April 4, 2006

That she and the others aforementioned went inside the house where the party or gathering was taking place. That she was the only female there at the time and she encountered no problems with anyone there. That after staying at this location for approximately fifteen to twenty minutes she and Chris Loftus opted to leave and return to Chris's dorm room on campus. That they called and were picked up by a cab at the house which took them back to the dorm on campus. That she did not remember the name of the cab company or even the description of the cab or driver at this point in time. That she had asked Chris about this before speaking with me but he didn't recall either.

That during the time she and Chris were at the party no other females were present that she saw, although she understood or heard that some strippers might be coming to the party after 11:00PM that evening.

That the cab picked she and Chris up and carried them back to campus dropping the two of them back at the dorm. That she knew this was somewhere around 11:00PM in that Chris used his student / id card to "swipe" the entrance door which was locked and per what he had learned this occurred at 10:59PM. That as they

March 16, 2006



1909HRS - IN PHOTO ARRAY (B) SHE SELECTED #1 (10-10) 100%. AGAIN SHE COULD NOT REMEMBER WHERE EXACTLY SHE SAW #1 AT THE PARTY. SHE HESITATED ON #4, BUT



April 4, 2006



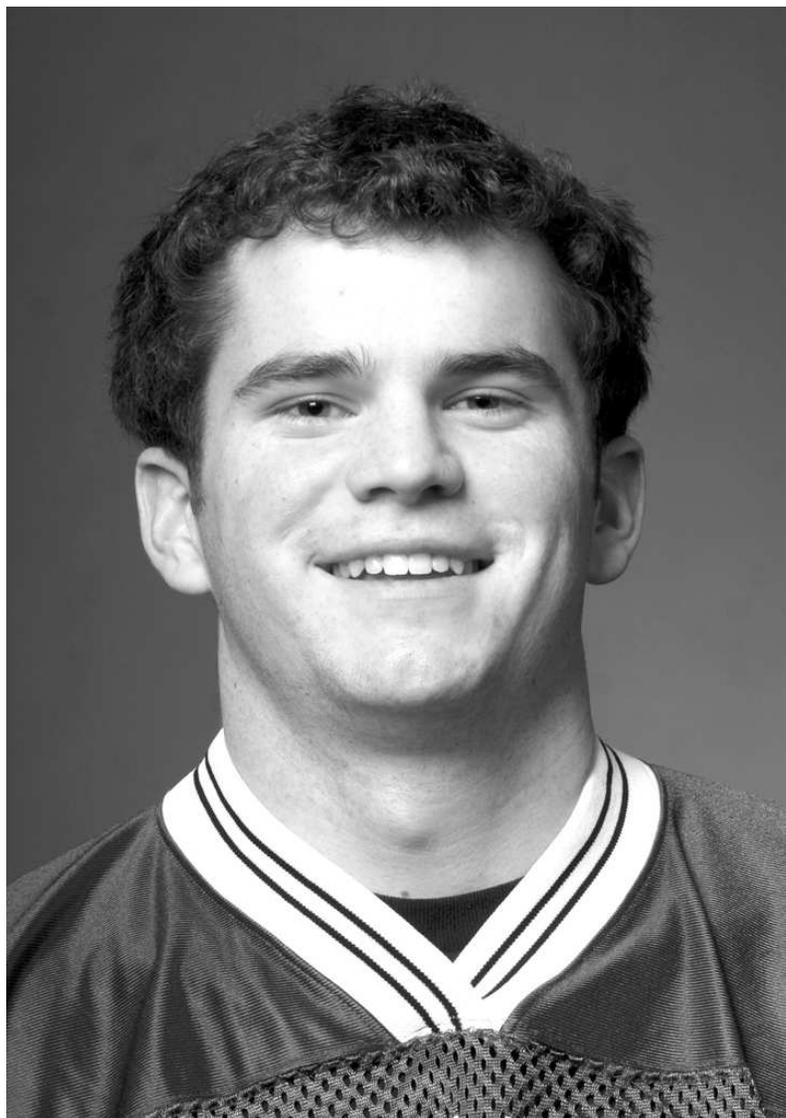
IMAGE 30 (Fred Krom)

Sgt:
Do you recognize him?

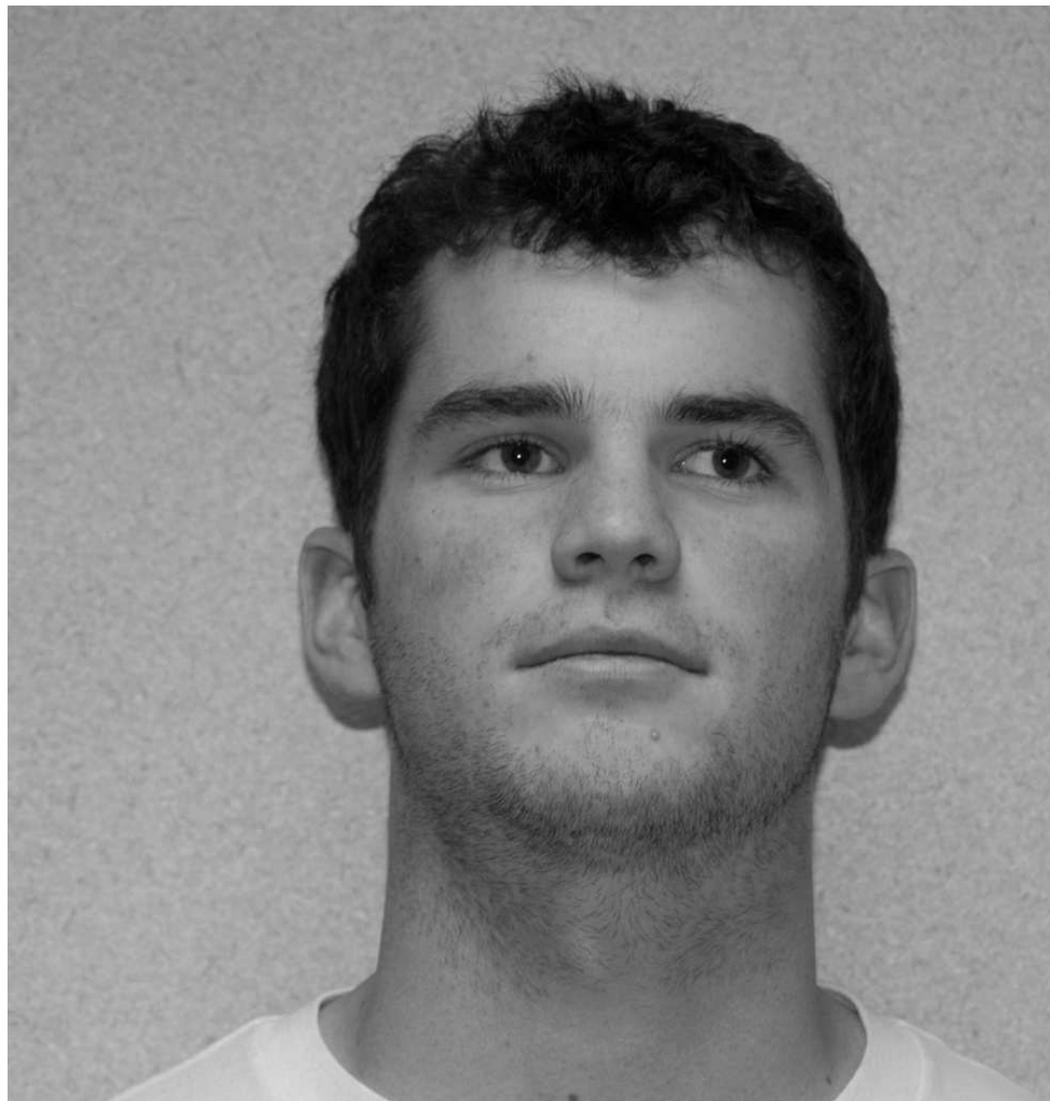
Victim:
No



100%



Does Not Recognize



March 16, 2006



1919HRS - IN PHOTO ARRAY (C) SHE SELECTED #5 AND #6 (10-10) 100% AS BEING AT THE PARTY. SHE COULD NOT REMEMBER EXACTLY WHERE SHE SAW #5 AND #6 AT THE PARTY. SHE HESITATED ON #2, BUT SHE COULD NOT IDENTIFY THE PERSON FROM THAT



April 4, 2006



IMAGE 27 (Nicholas O'Hara)

Sgt:

Do you recognize him?

Victim:

No.



March 16, 2006



1919HRS - IN PHOTO ARRAY (C) SHE SELECTED #5 AND #6 (10-10) 100% AS BEING AT THE PARTY. SHE COULD NOT REMEMBER EXACTLY WHERE SHE SAW #5 AND #6 AT THE PARTY. SHE HESITATED ON #2, BUT SHE COULD NOT IDENTIFY THE PERSON FROM THAT



April 4, 2006

IMAGE 41 (Kevin Mayer)

Sgt:

Do you recognize him?

Victim:

No.

CASE SUPPLEMENTAL REPORT
NOT SUPERVISOR APPROVED

Printed: 06/14/2006 10:54

Durham Police Department

OCA: **06008310**

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Case No: **CLOSED/CBA-ADULT (CASE** Case Mng Status: **CBA**

Occurred: **03/13/2006**

Offense: **RAPE - FORCIBLE**

Investigator: **REID, R. A. (6781)**

Supervisor: **(0)**

Date / Time: **03/16/2006 08:00:00, Thursday**

Contact:

Supervisor Review Date / Time: **NOT REVIEWED**

Reference: **Investigator Notes**

FSU REPORT

I responded at 909 Davinci Street and spoke with Inv. Himan. He requested photographs to be taken of the female victim who had been assaulted at another location. Photographs were taken of Crystal Gail Mangum B/F DOB:7/16/78. Ms. Mangum had both knees bandaged, cut on heel of one foot and big toe. RECV:1228 ARR:1243

The
ian h.

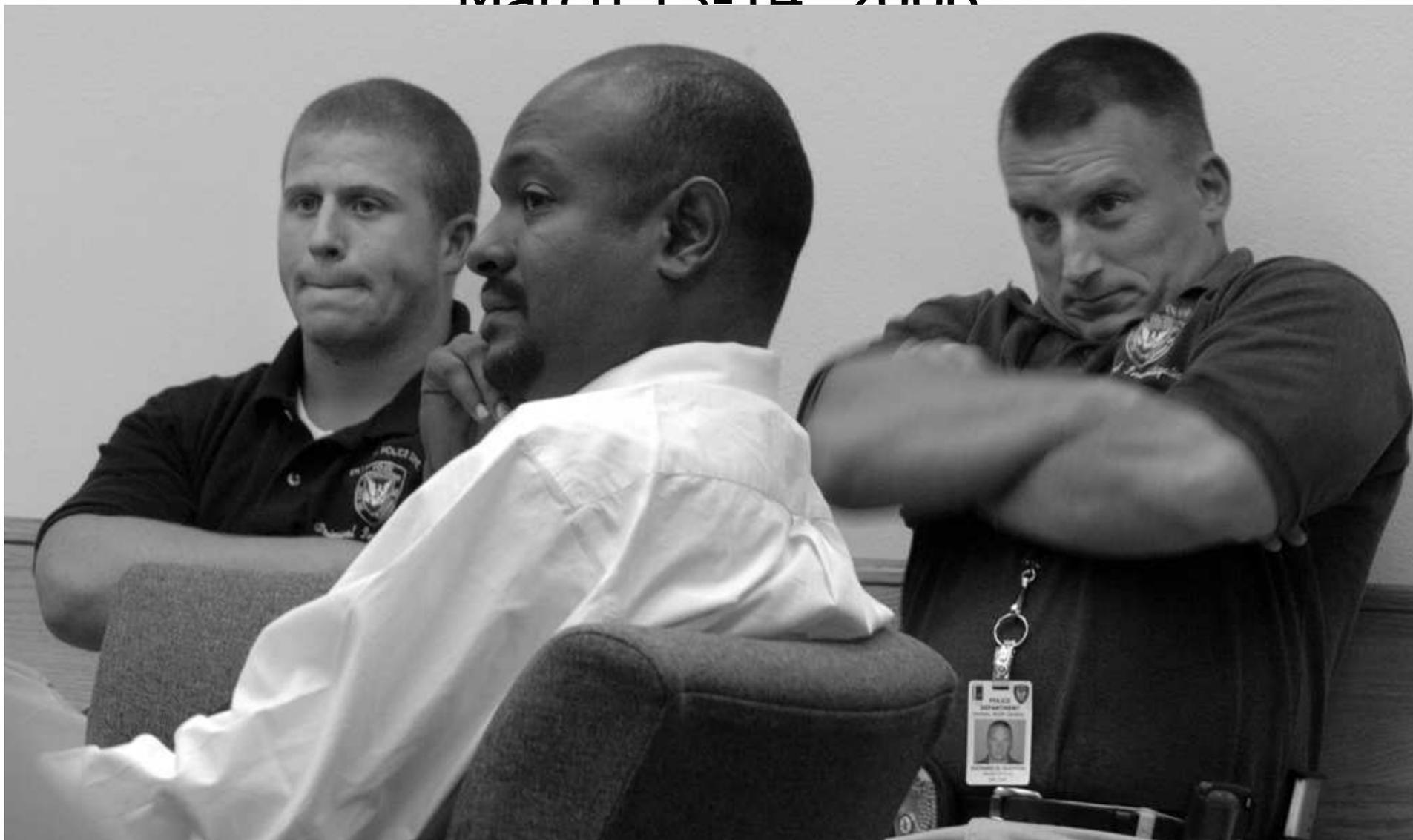
Dave,
me
and



Light Mary

Moez Elmostafa

March 13-14 2006



SPECIAL PROSECUTIONS SECTION
NORTH CAROLINA ATTORNEY GENERAL'S OFFICE, NORTH CAROLINA DEPARTMENT OF JUSTICE

On January 13, 2007, Attorney General Roy Cooper accepted the request of the Durham District Attorney to take over cases involving three individuals who were accused of sexually assaulting a woman at a party in March 2006.

In agreeing to accept the cases, he promised a new review of the evidence and additional investigation, and that "the path that these cases travel will be lighted by the law and the evidence alone."

The charges against the three individuals arose out of allegations that an exotic dancer who had been hired to perform at the off-campus party during spring break 2006 had been the victim of a sexual assault by three members of the Duke University lacrosse team.

As a result, grand jury indictments were returned in April 2006 against Reade Seligmann and Collin Finney accusing them of first-degree rape, first-degree sexual offense and first-degree kidnapping. In May 2006, David Evans was indicted for these same offenses.

From the outset, all three of the named defendants strenuously maintained their innocence. In the ensuing months, numerous court proceedings were held regarding motions filed by defense counsel. In late December of 2006, Durham District Attorney Michael B. Nifong dismissed the charges of rape against all three defendants.

The same month, the North Carolina State Bar notified the Durham District Attorney that it was initiating a disciplinary hearing into his conduct related to certain aspects of his handling of these cases. As a result, on January 12, 2007, District Attorney Nifong requested the Attorney General's Office to take responsibility for the prosecution of all pending matters pursuant to the North Carolina General Statutes.

THE ATTORNEY GENERAL OF NORTH CAROLINA



The State's cases rested primarily on a witness whose recollection of the facts of the allegations was imprecise and contradictory. This alone would have made it difficult for a prosecutor to prove the allegations. However with additional evidence uncovered in the new investigation, it was clear that there was no credible evidence that these crimes occurred at 610 N. Buchanan Blvd. in Durham that night.

Because of the lack of evidence and the additional affirmative proof that these crimes did not occur during this time, the Attorney General along with his special prosecutors, Senior Deputy Attorney General James J. Coman and Special Deputy Attorney General Mary D. Winstead, believed it was in the best interest of justice to declare these three individuals innocent of these charges.

The Attorney General and his special prosecutors based their decision on the totality of their review of the evidence. Primarily, their investigation found that:

- The accusing witness's testimony regarding the alleged assault would have been contradicted by other evidence in the case from numerous sources;
- The accusing witness's testimony regarding the alleged assault and the events leading up to and following the allegations would have been contradicted by significantly different versions of events she told over the past year;
- No testimony or physical evidence would have corroborated her testimony;
- The accused individuals were identified through questionable photographic procedures;

While prosecutors acknowledge that rape and sexual assault victims often have some inconsistencies in their accounts of a traumatic event, in this case, the inconsistencies were so significant and so contrary to the evidence that the State had no credible evidence that an attack occurred in that house that night.

Based on the significant inconsistencies between the evidence and the various accounts given by the accusing witness, the Attorney General and his prosecutors determined that the three individuals were innocent of the criminal charges and dismissed the cases April 11, 2007.

prosecutors brought Officer Santos' opinion of the witness's behavior to the attention of the Durham District Attorney. Officer Santos had spent more than five hours with the accusing witness during the early morning hours of March 14, 2006.

Similarly when the special prosecutors asked her about her behavior during the party that suggested impairment, the accusing witness stated that she was dizzy and fuzzy when the two women began dancing that night. She said she was dizzy after the alleged assault, and that was why she was stumbling in the backyard. When asked how she could be certain of her identifications of her attackers, she said she was dizzy when the dancing started, she "woke up" in the bathroom, and then was dizzy afterward.

In a meeting with the special prosecutors on April 4, 2007 the accusing witness demonstrated commonly-pitiful speech and other mannerisms that were consistent with behaviors observed by numerous witnesses who were at the party the night in question and confirmed through a video taken that night. The special prosecutors confirmed that the accusing witness had taken Ambien, methadone, Pzyl and sertraline, for which she had prescriptions, prior to meeting with the special prosecutors that day.

Results of DNA analysis

Individual DNA profiles for non-productive evidence specimens and select reference specimens are being matched to DNA profiles verified of the client. Three of the reference specimens are consistent with DNA profiles obtained from some evidence items and the analysis of these specimens is below.

Analysis I: Numbers in bold indicate a match with the suspect reference specimen. Numbers enclosed in brackets () indicate a match coincident with a stutter fragment or a fragment of low intensity. The "NC" indicates that results for that locus are inconclusive and cannot be reported.

Locus	Autosomal STR Analysis			Y-Chromosome STR Analysis		
	Specimen 15723 Reference specimen from David Brown	Specimen 15823 DNA Inclusive name Regional (provided by NCBE)	Specimen 15768 Reference specimen from Crystal Manjun	Specimen 15723 Reference specimen from David Brown	Specimen 15823 DNA Inclusive name Regional (provided by NCBE)	
AMEL	X, Y	X, Y	X, X	XY1200	17	15, 16, 17
D3S1338	14, 15	12, 11, 10 15, 14, 9 20, 20, 20 21.2 (10.2)	15, 15	DT1200	12	12, 13, 14
D5S488	20.2, 21.1	20.2	20, 20.2	DT1400	20	21, 22, 24
D7S822	11, 12	8, 10, 12	8, 12	DT1500	20	20, 20, 21
D8S1179	10, 12	NC	12, 11	DT1600	18	12, 12, 18
D13S322	14, 15	14, 15, 15	15, 15	DT1700	14	13, 14
TH01	8, 8.2	10, 7, 8, 8, 8.2	7	DT1800	12, 14	11, 11, 14
DT1900	10, 11	DT19, 11	11	DT1900	12	12
DT2000	8, 11	8, 13, 11, 12	11, 12	DT2000	10	10, 11
DT2100	20, 20	NC	18, 22	DT2100	12	12
GM1418	13, 13.2	11.2 (10.2), 12.2 14, 15, 14.2	12.2, 12	DT2200	20	22, 22, 22
YF8	17, 18	18, 18, 17, 18	18, 17	DT2300	12	12, 12
YF12	8	8, 8, 11	8, 11	YGT1A.01	12	12, 11, 12
YF16.1	12, 14	NC	12, 12	DT2400	12	14, 12, 12
YF16.2	12, 12	12, 12, 12, 12 12, 12, 12	12, 12	DT2500	12	12, 11, 12
YF18	20, 22	20	20, 24	DT2600	12	12

analyst may use a lower threshold. A lower threshold can be used if the following criteria are met:

1. Each electropherogram is analyzed independently of other electropherograms.
2. Evidence electropherograms are analyzed independently of reference electropherograms.
3. A peak has the correct shape.
4. The peak is at least three times the approximate average RFU of the noise.
5. The peak is higher than any reproducible artifacts in the analysis range.
6. If criteria 1-5 are met, the analyst can use 125, 100, 75, or 50 RFU as the minimum peak height to include any and all peaks that the analyst considers true.
7. Peaks below 50 RFU are not interpreted.

If true peaks below the threshold are suspected, then the following steps can be taken:

1. A larger quantity of amplified DNA can be added to the formamide/size standard mix.
2. A smaller amount of template DNA can be used.

Each electropherogram shall be analyzed independently of other electropherograms

aware that stochastic effects on small amounts of template DNA can alter peak height ratios to make artifacts appear as true alleles and make true alleles appear as artifacts.

Alleles and loci are determined from the diagnostic peaks (allelic ladder) of the appropriate dye color and size range (bases) for a particular STR marker system.

Homozygote allele peak heights are approximately twice that of heterozygotes as a result of doubling signal from two alleles of the same size. The expected peak height ratio¹ for heterozygote alleles is 70-100%.

Peaks not aligning with those in the allelic ladders have been detected both within and outside the range of the ladders (off-ladder alleles). Some peaks may represent variant alleles containing incomplete repeats. The analyzer software will accurately label many of the alleles not present in the allelic ladders. If a sample has an off-ladder allele, the peak should be viewed under magnification to determine its position relative to the nearest bin. If the sample does not appear to be a true off-ladder allele, then the sample should be re-run. If the sample appears to be a true off-ladder allele, then the base designation must be noted. The sample must be re-amplified or another sample from a different locus type from the same individual must be extracted and amplified. The two samples should then be run separately in the same electrophoresis run and the base designation must be within ±0.5 bp. The off-ladder allele can be reported using ISFH nomenclature if the variant is listed in peer-reviewed literature or in the off-ladder allele database in STRbase. If it is a new variant, then the base designation will be listed when reporting out the data.

¹ (lower peak height) ÷ (higher peak height) x 100% = peak ratio

3813

In most cases, the minimum peak height threshold will be 150 RFU for STR alleles; however, the analyst may use a lower threshold. A lower threshold can be used if the following criteria are met:

1. Peak height is analyzed independently of other electropherograms.
2. Evidence electropherograms are analyzed independently of reference electropherograms.
3. A peak has the correct shape.
4. The peak is at least three times the approximate average RFU of the mix.
5. The peak is higher than any reproducible artifacts in the analysis range.
6. If criteria 1-5 are met, the analyst can use 125, 100, 75, or 50 RFU as the minimum peak height to include any and all peaks that the analyst considers true.
7. Peaks below 50 RFU are not interpreted.

If true peaks below the threshold are suspected, then the following steps can be taken:

1. A larger quantity of amplified DNA can be added to the formamide/size standard mix.
2. A smaller amount of template DNA can be re-amplified if the threshold is not met.

Evidence electropherograms shall be analyzed independently of reference electropherograms

aware that stochastic effects on small amounts of template DNA can alter peak height ratios to make artifacts appear as true alleles and make true alleles appear as artifacts.

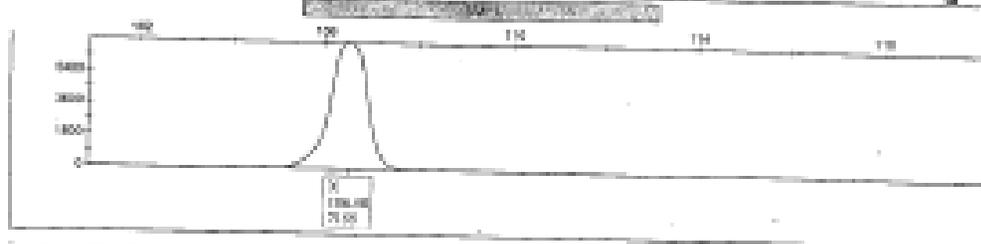
Alleles and loci are determined from the diagnostic peaks (allelic ladder) of the appropriate dye color and size range (bases) for a particular STR marker system.

Homozygote allele peak heights are approximately twice that of heterozygotes as a result of doubling signal from two alleles of the same size. The expected peak height ratio¹ for heterozygote alleles is 75-100%.

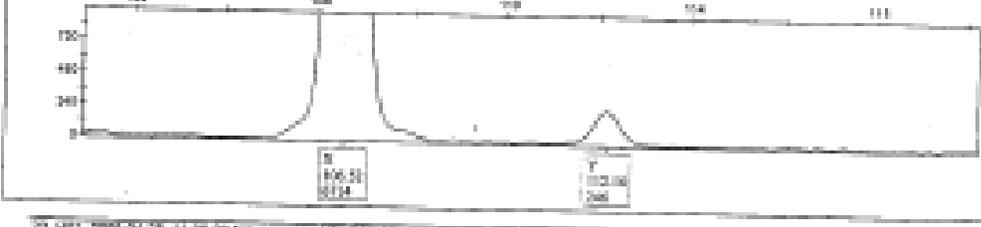
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¹ (lower peak height) ÷ (higher peak height) x 100% = peak ratio

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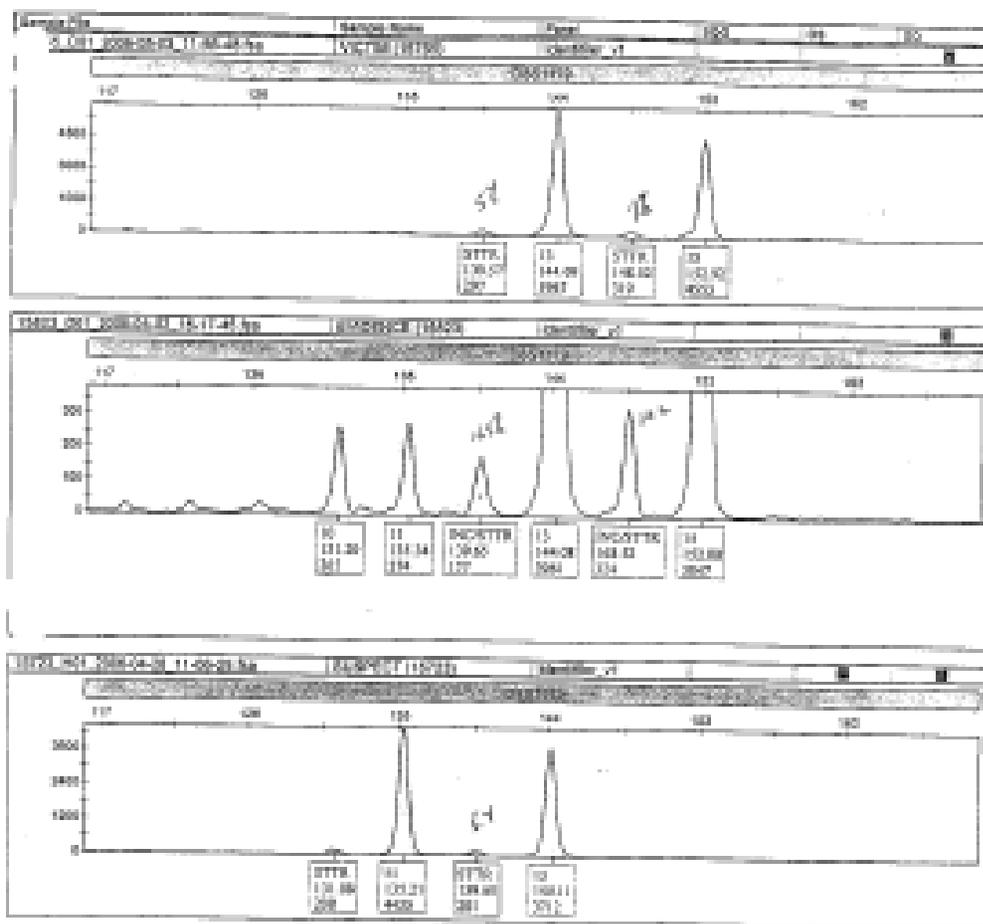


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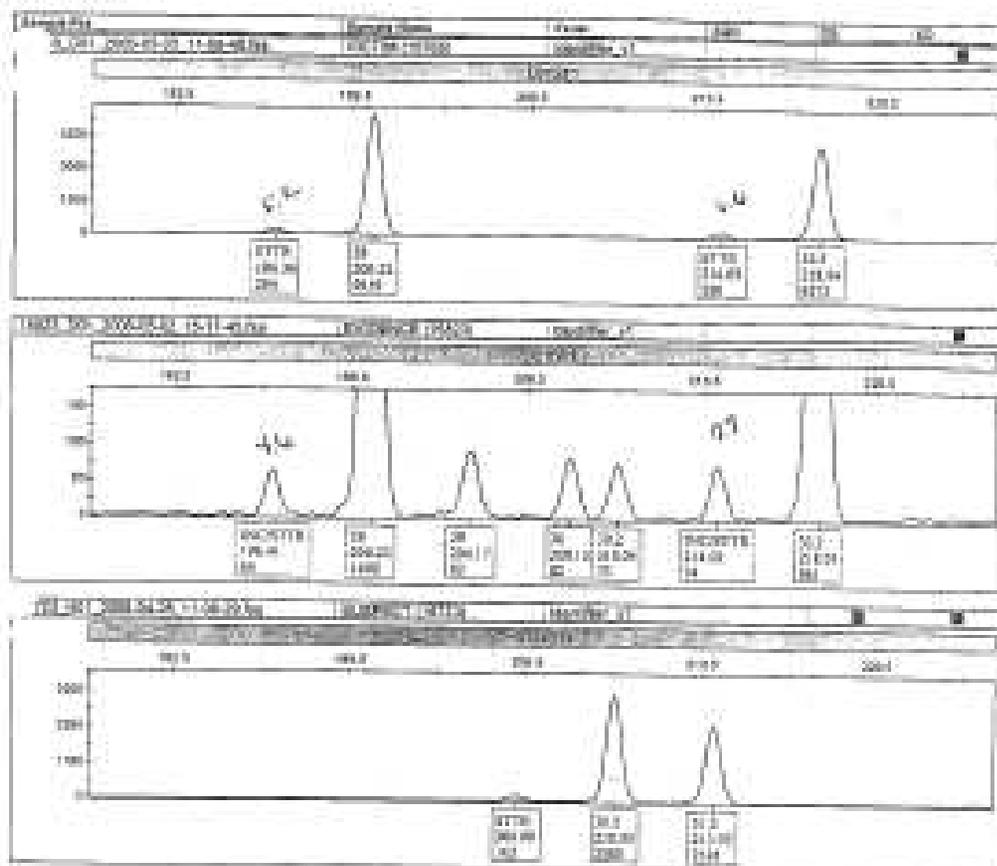


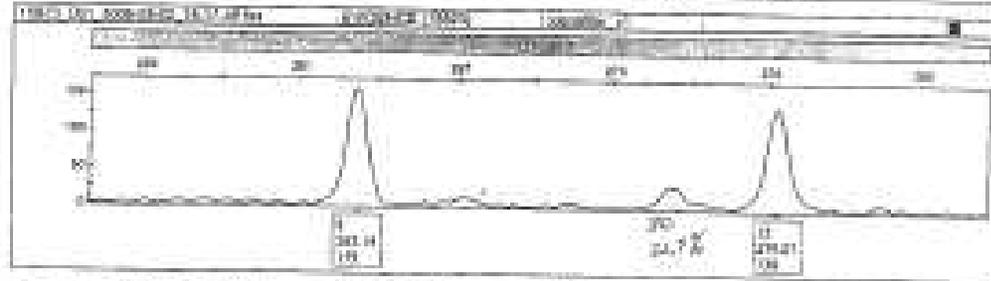
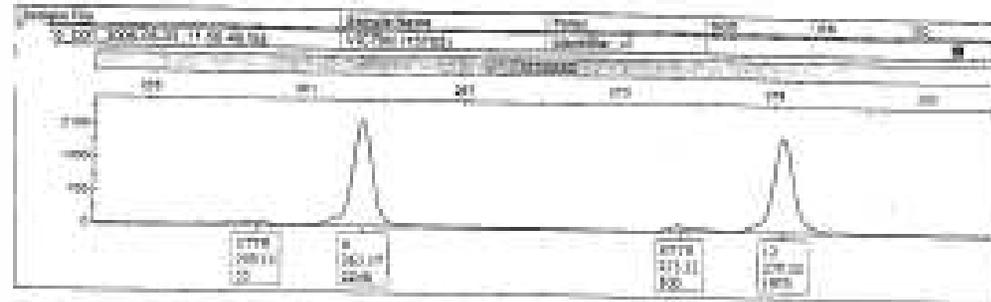
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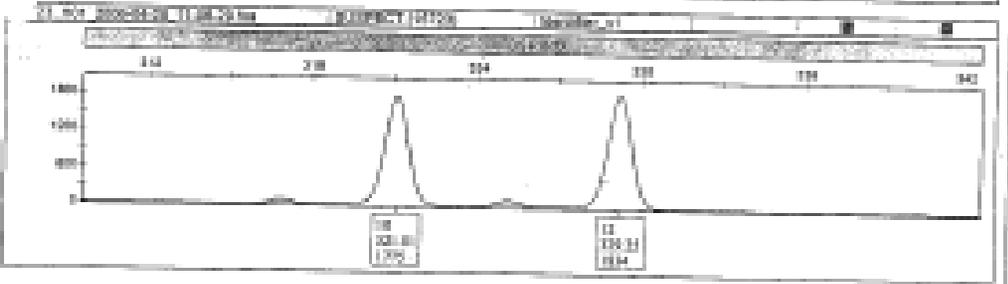
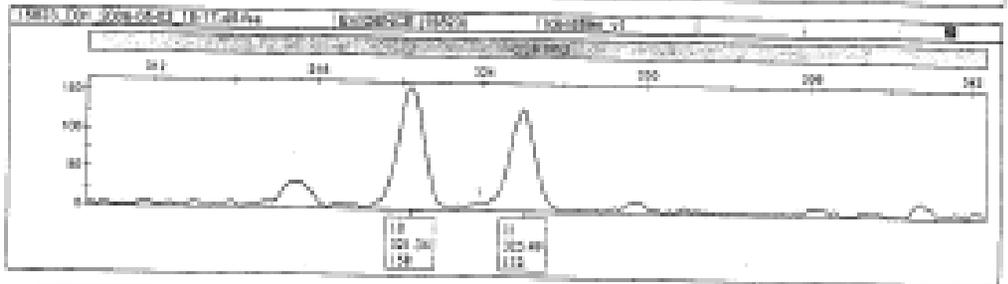
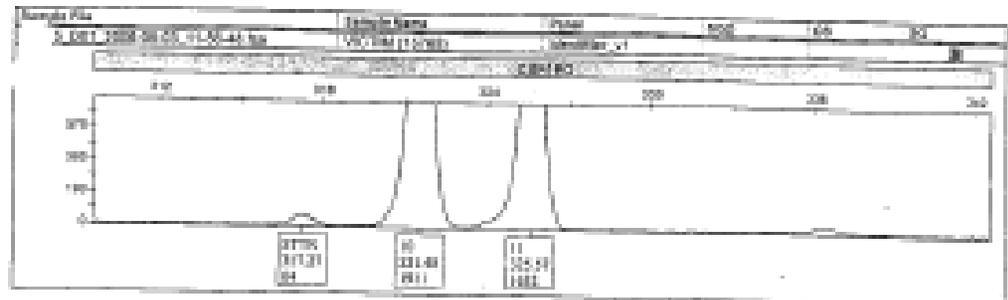


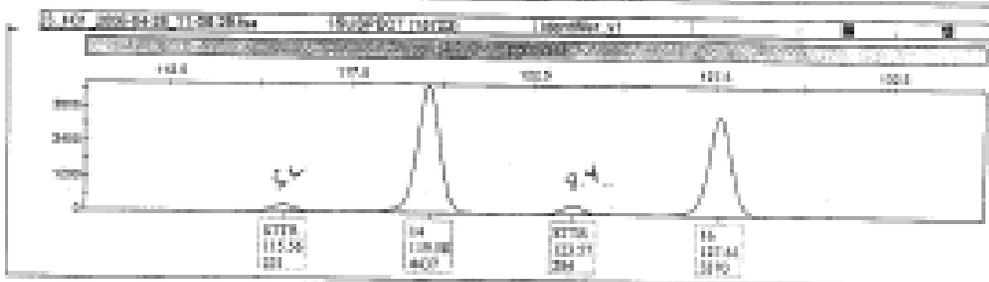
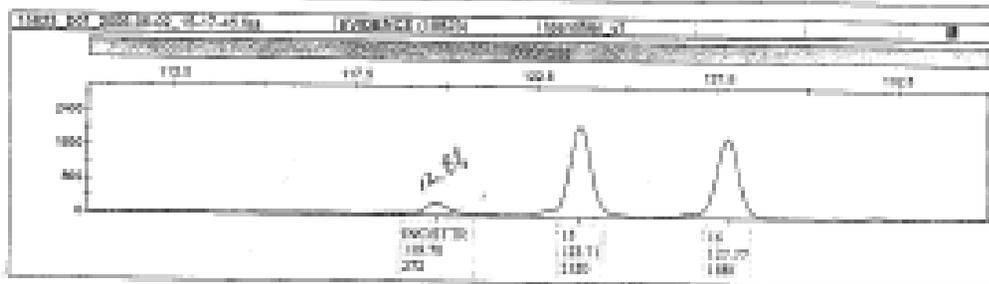
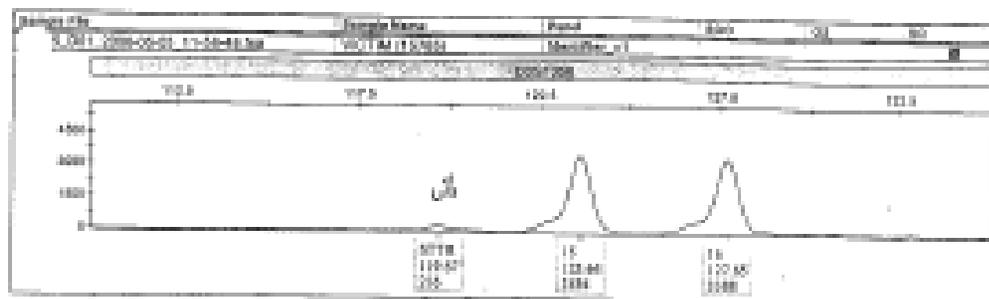


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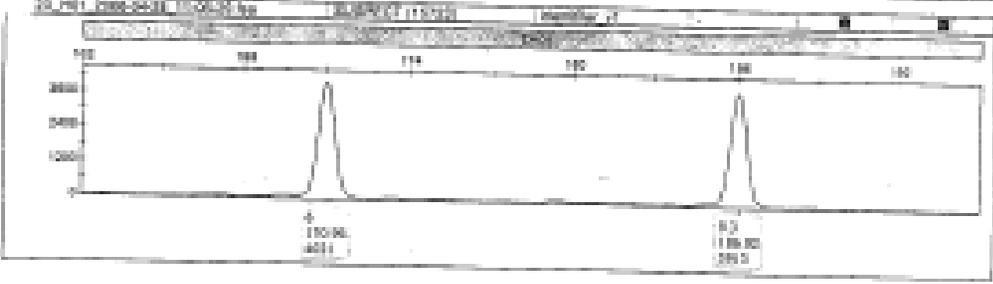
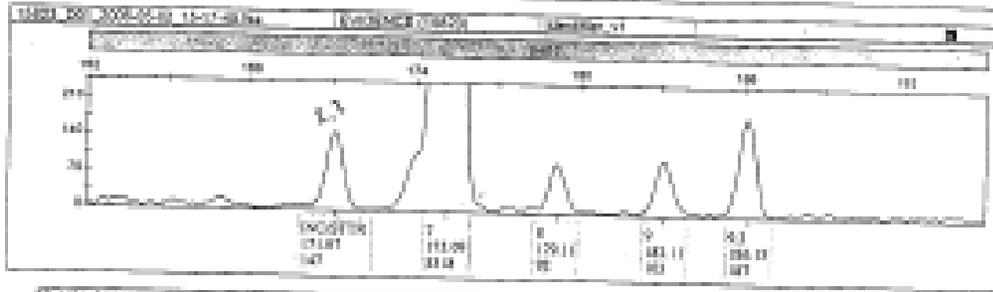
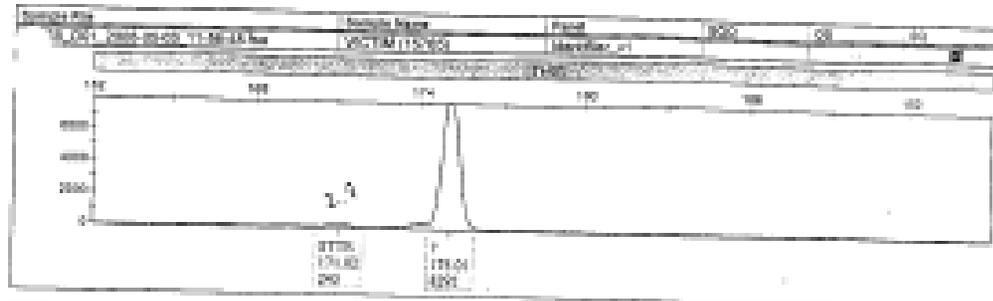








Mixture Analysis I



MEMORANDUM

At the outset, let me acknowledge the City's concurrence with Attorney General Roy Cooper's decision to dismiss all of the charges against Evans, Seligman and Finnerty as well as his declaration that these young men are innocent of the charges for which they were indicted. While

Re: Duke Lacrosse Report

- The accusing witness's testimony regarding the alleged assault would have been contradicted by other evidence in the case from numerous sources;
- The accusing witness's testimony regarding the alleged assault and the events leading up to and following the allegations would have been contradicted by significantly different versions of events she told over the past year;
- No testimony or physical evidence would have corroborated her testimony;
- The accused individuals were identified through questionable photographic procedures;
- Credible and verifiable evidence demonstrated that the accused individuals could not have participated in an attack during the time it was alleged to have occurred;
- The accusing witness's credibility would have been suspect based on previous encounters with law enforcement, her medical history and inconsistencies within her statements.

On January 13, 2007, Attorney General Roy Cooper accepted the request of the Durham District Attorney to take over cases involving three individuals who were accused of sexually assaulting a woman at a party in March 2006.

In agreeing to accept the cases, he promised a new review of the evidence and additional investigation, and that "the path that these cases travel will be lighted by the law and the evidence alone."

The charges against the three individuals arose out of allegations that an exotic dancer who had been hired to perform at the off-campus party during spring break 2006 had been the victim of a sexual assault by three members of the Duke University lacrosse team.

As a result, grand jury indictments were returned in April 2006 against Reade Seligmann and Collin Finney accusing them of first-degree rape, first-degree sexual offense and first-degree kidnapping. In May 2006, David Evans was indicted for these same offenses.

From the outset, all three of the named defendants strenuously maintained their innocence. In the ensuing months, numerous court proceedings were held regarding motions filed by defense counsel. In late December of 2006, Durham District Attorney Michael B. Nifong dismissed the charges of rape against all three defendants.

The same month, the North Carolina State Bar notified the Durham District Attorney that it was initiating a disciplinary hearing into his conduct related to certain aspects of his handling of these cases. As a result, on January 12, 2007, District Attorney Nifong requested the Attorney General's Office to take responsibility for the prosecution of all pending matters pursuant to the North Carolina General Statutes.

The resolution review focused only on the criminal charges of first-degree sex offense in violation

THE ATTORNEY GENERAL OF NORTH CAROLINA



The State's cases rested primarily on a witness whose recollection of the facts of the allegations was imprecise and contradictory. This alone would have made it difficult for a prosecutor to prove the allegations. However with additional evidence uncovered in the new investigation, it was clear that there was no credible evidence that these crimes occurred at 610 N. Buchanan Blvd. in Durham that night.

Because of the lack of evidence and the additional affirmative proof that these crimes did not occur during this time, the Attorney General along with his special prosecutors, Senior Deputy Attorney General James J. Coman and Special Deputy Attorney General Mary D. Winstead, believed it was in the best interest of justice to declare these three individuals innocent of these charges.

The Attorney General and his special prosecutors based their decision on the totality of their review of the evidence. Primarily, their investigation found that:

- The accusing witness's testimony regarding the alleged assault would have been contradicted by other evidence in the case from numerous sources;
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In the same interview, the credibility of the accusing witness's ability to identify the alleged attackers was further called into doubt. When asked how she could recall with such certainty who allegedly attacked her she claimed she was good at remembering faces. When the special prosecutors brought Officer Gwen Sutton of the Durham Police Department into the interview room, the accusing witness claimed she did not know Officer Sutton and had not seen her before that day. Officer Sutton had spent more than five hours with the accusing witness during the early morning hours of March 14, 2006.

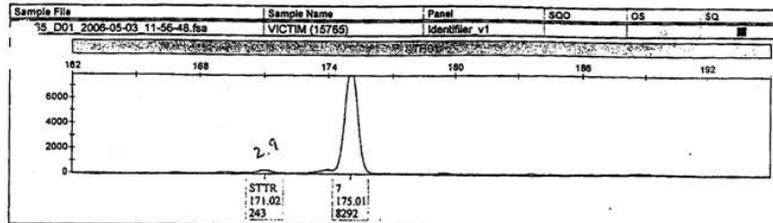
When the special prosecutors pointed out that she was wearing only one shoe, she claimed that the picture had been altered. She stated that they danced in a bedroom not the living room. When confronted with credible photographic evidence to the contrary, she claimed Duke paid someone to alter the photos. She routinely denied she made various earlier statements that were attributed to her by law enforcement officials. She denied that she had made statements attributed to her in medical reports both the night of the alleged attack and in the ensuing days. The accusing witness claimed that the photograph of her on the back porch at 610 N. Buchanan Blvd. was not her. When the special prosecutors pointed out that she was wearing only one shoe, she claimed that the picture had been altered.

In the same interview, the credibility of the accusing witness's ability to identify the alleged attackers was further called into doubt. When asked how she could recall with such certainty who allegedly attacked her she claimed she was good at remembering faces. When the special prosecutors brought Officer Gwen Sutton of the Durham Police Department into the interview room, the accusing witness claimed she did not know Officer Sutton and had not seen her before that day. Officer Sutton had spent more than five hours with the accusing witness during the early morning hours of March 14, 2006.

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Based on the significant inconsistencies between the evidence and the various accounts given by the accusing witness, the Attorney General and his prosecutors determined that the three individuals were innocent of the criminal charges and dismissed the cases April 11, 2007.



hu May 04, 2006 02:49PM, EDT

