

Fain, Charles

Testimony of
Pamela J. Server, Idaho State Crime Lab

1 MR. HARRIS: I would like to call Pam
2 Server to the stand.

3 If you would come forward, please.

4 PAMELA J. SERVER

who, being called as a witness
on behalf of the plaintiff,
The State of Idaho, in defense
of the motion to dismiss,
after having been duly and
regularly sworn, testified
as follows:

DIRECT EXAMINATION

12 BY MR. HARRIS:

13 Q Would you state your name, please, for
14 the record?

15 A Pamela J. Server.

16 Q Will you spell your last name, please?

17 A S-E-R-V-E-R.

18 Q And what is your occupation, or employment?

A I'm a forensic chemist at the state crime laboratory in Boise.

21 Q How long have you been so employed in that
22 capacity?

23 A Nine years.

Q What, in the area of forensic lab work at
the state lab, do you - - is your specialty, or do you

1 work with most of the time?

2 A Forensic serology.

3 Q And what do you mean by that?

4 A It's the identification and comparison of
5 biological stains, be it blood or semen.

6 Q And have you had occasion in the course
7 of -- in the past several months to conduct examination
8 involving the defendant, Charles I. Fain, or a victim in
9 this case, Daralyn Johnson?

10 A Yes.

11 MR. HARRIS: As of Friday, a motion was
12 served upon the prosecuting attorney's office which in
13 part states, "Pam Server will testify that, having found
14 the presence of semen, she would next, microscopically,
15 examine the swabs to determine the blood type of the
16 semen depositor. She will then -- she will testify
17 that from the blood typing she could make comparisons
18 with the blood typing of the defendant and could possibly
19 exclude him as the semen depositor. She will further
20 testify that she cannot make such determinations from
21 the smear itself, because the semen is dry. She will
22 testify that she would need to examine the swabs in order
23 to make the blood typing determinations."

24 Now, first of all:

25 Q Could you, on the basis of the blood --

1 the swabs, make a determination of the blood type of the
2 semen depositor?

3 A That would depend on several things.

4 Q Could you tell us what that would depend
5 upon?

6 A Considering the time that has elapsed,
7 if the swabs had been preserved in a frozen state, or
8 maybe even in the refrigerator, it would have been
9 possible.

10 If there is enough semen that's found on the
11 swabs, that is the most important thing, is that we
12 quantitate the semen to make sure there is enough there
13 to make a conclusion about the semen donor.

14 Q Do I understand you correctly, that first
15 of all you would have to determine whether or not there
16 was enough semen in the swabs to quantitate or to reach
17 such a level as to make a typing?

18 A That's right.

19 Q In other words, there may not have been
20 sufficient semen in the swab to make a determination?

21 A That's possible.

22 Q Are there any other considerations that
23 you would need to take into account in making a blood
24 typing determination?

25 A Well, the only unusual thing about where

1 I found the sperm was in the rectal, or anal smear, is
2 where I observed it.

3 Most of the studies that have been done in
4 forensics have been done on vaginal swabs mixed with
5 semen. Not a lot of literature is available on the
6 rectal cavity, and how long semen does persist.

7 I would have to be very careful in making a
8 statement about the blood group on a rectal swab.

9 MR. HARRIS: Now - -

10 A I would have to have quite a bit of semen
11 there, because of the bacteria and contamination that is
12 possible in a rectal swab.

13 Q So in other words, the location of the
14 sample where the semen that you found would in and of
15 itself possibly contaminate the swab, or the - - contaminate
16 the ability to arrive at a blood typing?

17 A It's possible.

18 Again, it all depends on how much semen I would
19 have found if I would have had the swabs.

20 MR. HARRIS: Okay.

21 Q Does everyone have a characteristic whereby
22 blood typing can be made from other - - other body fluids
23 other than blood? Can that be done for everyone?

24 A No, it cannot.

25 Q Why is that?

1 A Well, they found over the years that there
2 are secretors and non-secretors.

3 A secretor is somebody who does deposit their
4 blood group substances in their body fluids, be it
5 saliva, semen, sweat, urine, whatever. You can pick up
6 the A,B,O blood factors in their body fluids even in the
7 dry state, when they've dried. That's eighty percent
8 of the population.

9 Twenty percent of the population do not secrete
10 their blood group factors in their body fluids.

11 Q So, assuming for example that the defendant
12 in this case fell within that twenty percent group, a blood
13 typing could not have been made, even if there were suf-
14 ficient semen to make such an examination?

15 A Well, there are some fairly new ways we
16 can go about it. The rarity of finding non-secretors,
17 I haven't done too many conclusions, but there - - if
18 there is almost pure semen on a swab, and you have got
19 almost a pure quantitation of acid phosphatase that you
20 know you have got lots of semen, and you're not picking
21 up any blood group factors, you know the chances are you
22 probably do have a non-secretor; so you could at least
23 state that a non-secretor deposited the semen.

24 You may not always get the blood group from
25 it, though.

1 Q Do you know whether any testing has been
2 done of the defendant in this case to make the determine
3 whether he is a secrete - - a secretor, or a non-secretor?

4 A As far as I can tell from the FBI inventory,
5 I saw no reference to blood or saliva being taken from the
6 defendant.

7 MR. HARRIS: Okay.

8 Let me read one other thing here from the motion
9 that was made, paragraph number six, it said, quote:

10 "Server will testify that she could also have
11 examined the vaginal washings of the victim, and could
12 have used any semen found there for the blood typing
13 process. But she has been advised that, in the search
14 for the swabs, Canyon County Sheriff's Detective Supervisor
15 Jim Hensen opened the bottle of vaginal washings and the
16 substance exploded. Therefore, she is unable to type the
17 blood from the vaginal washings. She will also testify
18 that she may not have been able to make the examination
19 necessary for blood typing from the vaginal washings,
20 at any rate, because Hensen advised her that the bottle
21 had not been maintained at the refrigerated or frozen
22 state necessary for testing."

23 Q Do you remember having such a conversation
24 with a Jim Hensen of the sheriff's office?

25 A I do.

1 Q Did he, in the course of that conversation,
2 explain to you that the substance had exploded?

3 A He didn't say exploded. I don't believe
4 those were my terms, either.

5 He said that it -- I don't recall his actual
6 cliche. He just said that it smelled horribly, which
7 was a sign to me that it was putrefied, and that it was
8 on a -- a screw-type lid that had accumulated some air,
9 or some gas in it.

10 Q Okay, could you from the vaginal washings
11 been able to make a blood typing determination?

12 A That would depend on several things.

13 Q Could you explain to me what those factors
14 are?

15 A If the vaginal washing had been preserved
16 and frozen; if I would have found semen, if semen had
17 been found in the vaginal washing; and then also depending
18 on how much semen was found.

19 The vaginal washing is not the best sample to
20 try to get for semen analysis. A swab is the best sample,
21 because it's a nice, dry swab, and anytime you have a
22 liquid solution the bacteria can readily take over, and
23 -- and putrefy a sample; and also, the vaginal washing
24 is a -- a very dilute sample when what you want is to
25 concentrate something like on a swab.

1 Q Did you examine the vaginal smear in this
2 particular case?

3 A I did.

4 Q And in whatever - - did you find any semen
5 on the vaginal smear?

6 A I did not.

7 Q Did you, or are you aware of the testing
8 done at the Mercy Medical Center in Nampa, Idaho, regard-
9 ing testing done on the vaginal smear there?

10 A Yes, I am.

11 Q And to your knowledge did they find any
12 semen deposited in the vaginal cavity?

13 A I believe their report said that they did
14 not find sperm.

15 Q Would that indicate, then, that in all
16 likelihood no semen would have been determined in the
17 vaginal washings?

18 A Not necessarily.

19 Q Okay, again, it would be the - - if the
20 - - there are a number of factors upon which that is based,
21 I presume?

22 A That's correct.

23 MR. HARRIS: I don't believe that I have
24 anything further of this witness, Your Honor.

25 COURT: Mr. Bishop.

CROSS EXAMINATION

BY MR. BISHOP:

3 MR. BISHOP: Miss Server, the sex crime kit
4 that we made reference to.

Q Do you know where that sex crime kit came
from that the sheriff's department utilized?

7 A I can surmise.

8 Q Okay, what would your surmise - -

9 A We supply - -

Q - - supposition be?

A -- we supply on a regular basis free sex
crime kits to hospital emergency rooms, including Mercy
Medical. These are also used in the morgue.

14 Q Okay now, with that sex crime kit, are
15 there instructions as to the preservation of the evidence
16 to be obtained and deposited in the sex crime kit?

17 A There are no instructions on preservation.
18 There is just instructions on how to complete the kit.

19 Q Okay, and then the kit would be forwarded
20 -- what would happen to the kit at that point?

21 A Well, generally the nurse, or the physician
22 will hand the sealed sex crime kit that has been completed
23 to an officer, and he will take it to a forensic laboratory,
24 or keep it refrigerated until it could be taken to a
25 forensic lab.

1 Q Okay, is there any instructions, to your
2 knowledge of - - of refrigeration on the sex crime kit
3 that it should be refrigerated?

4 A There is nothing on the kit. In our
5 training classes in how - - the use of the kit to emergency
6 rooms, we do stress that, and also to officers.

7 Q Okay, do you know if you have had any such
8 classes at Marcy Medical?

9 A No. We have had them in the area, but not
10 at that hospital.

11 Q How about the Alameda County, or Canyon
12 County Sheriff's Department?

13 A We haven't had any classes recently, but
14 we had - - we have had sex crime classes over here.

15 Q Okay, and would that have been two, three
16 years ago?

17 A Approximately three years ago, and more
18 recently at Caldwell Memorial.

19 Q Now, you stated that eighty percent of the
20 population are secretors?

21 A Roughly, yes, uh-huh.

22 Q Okay, but even - - there is new methods
23 now, even if they are not a secretor that it may be
24 possible to determine blood type; is that as I understood
25 your testimony?

1 A That's right.

2 Q If there was ample semen that was not con-
3 taminated, do you feel that even after a year, or eighteen
4 months from when those swabs were taken, had they have
5 been preserved, that a blood type grouping could be made?

6 A Well, if all of those ifs you said before
7 were followed, yes.

8 Q Okay, now, would that be with the A,B,O
9 factors; is that correct?

10 A That's right.

11 Q And once a blood group, or blood type
12 was determined from the semen, having knowledge of the
13 victim's blood type, could you include, or exclude, the
14 potential blood type of the perpetrator?

15 A Possibly.

16 Q Okay, and what would that depend upon?

17 A Again, it would depend on whether the swab
18 was preserved, and also how much semen was there for us
19 to - -

20 Q But once you have determined from the
21 swab the blood type grouping of the perpetrator, and
22 you have knowledge of the victim's blood type, assuming
23 all of those things - -

24 WITNESS: Uh-huh.

25 Q - - were done; then could you include ..

1 or exclude a - - potential defendants because of blood
2 type?

3 A I probably could have.

4 Q Well, could you explain probably could have?

5 A Again, that the kicker here is that the
6 -- the sperm or semen was found in the rectal cavity.
7 I would have to see what my results would be, and how
8 confident I would feel before calling something like
9 that on - - on a rectal swab. That is a little slightly
10 different than what we are used to working with, but if
11 there were enough semen, and if - - knowing the - - the
12 blood group of the victim, which was a fairly rare blood
13 group, it's possible that I could have commented on the
14 semen donor's blood group.

15 Q The semen donor, then, would be the potential
16 perpetrator of the offense?

17 A That's right.

18 MR. BISHOP: Now, you made mention that you
19 have a forensic lab and a medical lab at the hospital.

20 Q Is there a difference in the - - the two
21 labs, a medical lab at a hospital and a forensic lab?

22 A Quite a difference, yes.

23 Q What type of differences - -

24 A Well, a crime lab, or a forensic laboratory,
25 has specialized training in chain of custody, and the

1 analysis of minute amounts of evidence.

2 My specialized training is in semen and blood,
3 and working with very small amounts; and the hospital
4 lab is used to working with live victims, and working
5 on liquid blood; and they just have different type of
6 techniques, and different training.

7 Q Okay, so the fact - - would it be - - is it
8 would it be fair to say that the fact that the medical
9 lab at Mercy Medical Center did not find semen, or sperm,
10 that that would not eliminate the possibility that the
11 forensic lab could find it?

12 A That's true. In fact, it's happened before
13 in another case.

14 Q Within your knowledge, it's happened before?

15 A Yes.

16 Q Specifically with the medical facility at
17 Mercy Medical Center?

18 A In their clinical lab, yes.

19 Q Would it be a lengthy process to determine
20 whether or not the defendant, Charles Fain, in this case
21 was a secretor?

22 A No.

23 Q How would you determine that?

24 A Well, I would go through a - - the proper
25 legal channels, and then I would - - since I am a certified

1 medical technologist, I would go to where he is, and do
2 a vena puncture, or take his blood sample. I would also
3 ask for a saliva sample from him just as a backup.

4 I would take it back to the laboratory, and
5 I would do an A,B,O blood grouping, and I would also do
6 what is called the Lewis test. This - - these are antigens
7 that are found in the blood that denote whether somebody
8 is a secretor.

9 Then as a double check, I would test his dry
10 -- dry saliva stain to see if I could pick up the same
11 antigens I found in the - - the same factors that I
12 found in the blood.

13 Q Now, if you examined the swabs and if
14 those swabs had ample semen to where you could do a
15 blood type or a blood grouping of that, then that would
16 indicate that the perpetrator was a secretor; is that
17 correct?

18 A Generally if you find blood group factors
19 that are not the victim's, and also in a semen sample
20 that has lots of semen in it, you can assume that they
21 are from a secretor - - from - - you can assume that
22 they are from a secretor if you find the factors.

23 Q Okay, so if those factors were present,
24 and you did a - - a secretor's test upon the defendant
25 Charles Fain, and he was not a secretor, could that

1 eliminate him as a potential defendant?

2 A It's possible.

3 Q And that you could then, if you determined
4 he was a secretor with his blood type, knowing the blood
5 type of the victim and the blood type of the semen depositor,
6 you could potentially exclude him as a - -

7 A That's possible.

8 Q The sex crime kit - - kit that is provided
9 to law enforcement, and to the hospitals; is there a
10 standard procedure for the preservation of those kits?

11 A (No response.)

12 Q That is the swabs, is there a standard
13 procedure in how those swabs are kept or maintained?

14 A Well, there is in the forensic community,
15 a standard procedure. I don't know so much in the hos-
16 pitals.

17 We recommend that until it gets to the crime
18 lab that the kits are refrigerated. That you don't put
19 them in the back seat of your car on a hot summer day.
20 That you try and refrigerate them.

21 Q How about packaging of the sex crime kit;
22 is there individual packages, or - -

23 A Oh, yes.

24 Q And what - - for the swabs specifically,
25 what are there?

A Well, there are three long cardboard boxes in the sex crime kit, and the physician can mark on them, oral, anal, or vaginal, on the cardboard box; and they are supposed to put the swab inside the cardboard box.

Never plastic. That's why it -- all of the proper containers are in the kit.

And then there are seals inside the kit to seal the outside of the kit so you know that it will not have been tampered with until it gets to the crime lab.

Q Okay, so the entire -- there is packaging for the slides, the swabs, and what-have-you in the kit, and then there is a package for the entire kit to be kept together; is that correct?

A That's true.

We don't quality-control every kit. There might be a kit that doesn't have them, I don't know, but rarely do we find them without them.

MR. BISHOP: I have no further questions.

REDIRECT EXAMINATION

BY MR. HARRIS;

Q Did you examine the crime kit in -- or the sex crime kit in question in this case?

A PARTS OF IE, yes.

Q Okay, did you find any of these cylindrical cardboard boxes that you are talking about?

1 A I did not.

2 MR. HARRIS: One other question regarding
3 the source of the semen sample that you found.

4 Q And that is, that it can possibly be
5 contaminated, and that is a contamination by the bacteria
6 which is present in the anal cavity?

7 A That's right.

8 Q Would the bacteria - - by contamination
9 of that, of the sample; what kind of contamination are
10 you talking about?

11 A Well, it's been - -

12 Q In what way would it contaminate the
13 sample?

14 A It's been found that certain bacteria also
15 carry blood group factors. We don't know, evolutionary-
16 wise, why that occurs, but there is some fecal bacteria
17 e. coli in particular that can carry certain blood group
18 factors just like we find on the red blood cells, or in
19 the secretor semen; and that's why I would have to be
20 very careful on an opinion from a rectal swab.

21 Q In other words, any blood grouping that
22 you might make as a result of a source of semen from
23 the anal cavity might be a blood grouping from bacteria
24 as opposed to the depositor of the semen?

25 A That would be a consideration. It would

1 depend on all of the other results that you got, but it
2 could be possible. Especially on a dead victim. It makes
3 a big difference on what happens after -- after death.

4 Q Would the length of time involved in the
5 death until samples were taken; would that have any
6 consideration, or would that have any effect upon the
7 general results that you would obtain?

8 A Most of my reading in the literature shows
9 that if it is cold outside, and the body is well-preserved,
10 semen can survive a long time in body cavities.

11 If it's real warm and humid, it could be gone in
12 three or four hours. It just depends on the outside tem-
13 perature a lot.

14 Q Is the -- is the length of time, would it
15 be longer or shorter, if the source was found in the anal
16 cavity?

17 A I think that you would have to ask a
18 forensic pathologist that. I don't know.

19 Q Okay, would the fact that there are bacteria
20 there, or let's say a larger quantity of bacteria there
21 as opposed to, let's say, the vaginal cavity, have any
22 effect upon the -- the validity of the sample?

23 A Well, let me put it this way, it would
24 make warning bells go off for me to be very careful on
25 my conclusions.

1 MR. HARRIS: I don't believe I have any-
2 thing further, Your Honor.

3 MR. BISHOP: Nothing further.

4 COURT: You may step down, ma'am.

5 MR. HARRIS: In addressing this motion to
6 dismiss, Your Honor.

7 First of all, we would object on the grounds of
8 timeliness. My first involvement, or first knowledge of
9 this motion was a phone call that I received Friday after-
10 noon from the Court, and I believe that was between three
11 and 3:30 Friday afternoon.

12 Therefore, it seems to me that the - - the
13 motion was not timely made. Since this is Monday morning
14 at nine o'clock, this motion came on for hearing.

15 Second, in my discussions with the evidence
16 officer involved, who was at the autopsy, that is Victor
17 Rodriguez, I spoke with him by telephone approximately
18 six p.m. Friday afternoon, and he indicated to me that
19 the procedure at the hospital at the time the autopsy
20 was conducted was to the effect that the physician who
21 performed the autopsy collected all of these samples,
22 put the samples in the sex crime kit, the sex crime kit
23 was then sealed at the hospital. That sex crime kit was
24 then, by Officer Rodriguez, tendered to the FBI lab in
25 Washington, D.C.

Fain, Charles

Testimony of
Robert Hallett, Federal Bureau of Investigation

1 MR. HAYNES: Thank you.

2 Nothing further, Your Honor.

3 COURT: Do you have any further questions?

4 MR. BISHOP: No other questions, Your Honor.

5 COURT: You may step down, sir.

6 ROBERT B. HALLETT

7 who, being called as a witness
8 on behalf of the plaintiff,
9 the State of Idaho, after
10 first having been duly and
11 regularly sworn, testified
12 as follows:

13 DIRECT EXAMINATION

14 BY MR. HARRIS:

15 Q Would you please state your name, please,
16 and spell your last name?

17 A Robert B. Hallett, H-A-L-L-E-T-T.

18 Q What is your occupation, sir?

19 A I am a special agent in the Federal Bureau
20 of Investigation.

21 Q How long have you been employed in that
22 capacity?

23 A Approximately fifteen years.

24 Q What is the nature of your - - of your
25 work? What - - what do you do for the FBI?

26 A Currently I am assigned to the document

1 section at the FBI laboratory in Washington, D.C. Here
2 I perform examinations of all types in the field of
3 question documents.

4 However, six of our examiners have received
5 additional training in the examination of shoe print and
6 tire tread impressions.

7 Q Has your entire time with the FBI spent in
8 this particular line of work?

9 A No, for the first five years I was a field
10 agent. I returned to the FBI laboratory approximately ten
11 years ago. I have been there ever since.

12 Q Could you relate, if you would, please, your
13 educational qualifications and background which qualify you
14 for doing the type of work that you do?

15 A Well, I'm currently involved with the
16 master's program at the George Washington University in
17 Washington, D.C., seeking a degree in the field of forensic
18 science.

19 I have a bachelor's degree, which is not
20 pertaining to this, from the New Jersey State College at
21 Trenton.

22 Q What specific training have you had in the
23 area of document examination, including, as you indicated,
24 shoe -- shoe print and tire tread identification?

25 A For the first three years, when I returned

1 to the FBI laboratory, I was relieved of all other duties.
2 During this time I received training in this particular
3 field. I studied with other document examiners receiving
4 specific training in the area of shoe print and tire tread
5 examination by attending regularly scheduled classes,
6 reading prescribed books, articles, and pamphlets, attend-
7 ing lectures and so on; and culminating with a moot court
8 system where I had to demonstrate my abilities in this
9 field to the satisfaction of the bureau.

10 Q Are you then assigned - - is this your - -
11 your basic line of work with the FBI at the present time,
12 is in the area of question documents and shoe print and
13 tire print identification?

14 A Yes, sir, I am currently assigned fulltime
15 to this area.

16 Q Have you appeared and testified as to the
17 examinations that you have conducted as an expert witness
18 in this area?

19 A Yes, sir, I have testified approximately one
20 hundred times in thirty-five states. This would be at
21 federal, state, and local level, as well as in military
22 court martial.

23 MR. HARRIS: Mr. Bailiff, I am wondering
24 if I could have you show the witness Exhibits Numbers Eight,
25 Nine, and Ten, if you would, please.

1 MR. BISHOP: Your Honor, at this time I
2 would object, the - - as to relevancy of not being tied
3 in.

4 COURT: Well, all he has done is ask that
5 they be shown to the witness. I can't keep him from show-
6 ing them to the witness.

7 (Whereupon documents were
8 handed to the witness by the
9 bailiff as requested by
10 counsel.)

11 MR. HARRIS: Okay, Mr. Hallett, showing you
12 what has been marked for identification and admitted into
13 evidence subject to tie-up.

14 Q Could you look at Exhibit Number Eight,
15 and Exhibit Number Nine and Ten, and tell us if you are
16 in any way familiar with those exhibits?

17 A Well, yes and no.

18 My answer is dual inasmuch as the negatives
19 which is State's Exhibit Eight bears my initials, and the
20 date of examination. At that particular time I received
21 two prints which were made from the negatives that I have
22 just described, and those prints appear similar to these
23 items. However, I initialed the photographs on the back,
24 and these are affixed to backing.

MR. HARRIS: Okay.

1 A And I can't tell for sure. They look to
2 be the ones that I looked at.

3 Q They - - they appear to be the ones that
4 you examined?

5 A Yes, sir.

Q Okay, can you tell us what your examination
of those exhibits amounted to?

8 A The photographs depicted, or the impression
9 - - there is an impression depicted in the photographs made
10 from the negatives. That impression appears to be of a
11 shoe print, or a track made by a shoe. It was part of my
12 examination to examine that track, and attempt to determine
13 if it had value for comparison with known shoes eventually
14 leading, perhaps, to an identification by a particular pair
15 of known shoes with this impression.

16 MR. HARRIS: Mr. Bailiff, I am wondering if
17 I could have you show the witness Exhibit Number Seven,
18 please.

19 (Whereupon an exhibit was
20 handed to the witness by the
21 bailiff as requested by coun-
22 sel.)

1 Q Could you examine those, please, and tell
2 us what those are, if you know?

3 A Yes, sir.

4 At the same time I received State's Exhibit
5 Eight I received State's Exhibit Seven, which is a pair
6 of shoes, and these shoes were submitted with the request
7 to determine if either of these shoes could have been
8 responsible for the impression in State's Exhibit Eight.

9 Q Now, could you describe to us, then, if
10 you in fact conducted an examination of Seven and Eight
11 by way of comparison?

12 A Yes, sir, I did.

13 Q And have, as a result of that examination,
14 have you reached a conclusion or an opinion based upon
15 that examination?

16 A Yes, sir, I did.

17 Q Did you, in the course of your examination,
18 enlarge the negative of Exhibit Number Eight, or have an
19 enlargement of that neg - - enlargement of the picture
20 made?

21 A I had a true and accurate print made of
22 the negative, inasmuch as the negative contains a ruler.

23 MR. HARRIS: Okay, why don't you do it
24 this way.

25 Why don't you tell us what you did as far as

1 your examination, and your comparison is concerned.

2 WITNESS: All right.

3 A shoe print examination varies almost as many
4 times as we receive this type of examination at the lab-
5 oratory. For instance, the question impression may be
6 one of dust, paint, blood, oil, on a flat surface.
7 Another occasion might be a plastic cast made of an
8 impression in soil. The difference being one is a
9 two-dimensional object; the other is a three-dimensional
10 object. An examination of them would have to take that
11 into account.

12 In this particular case, I had a photograph
13 of a three-dimensional object. The photograph depicts
14 an impression in soil; that is, there is a depression
15 and the flat surface attempts to give a true and accurate
16 depiction of that - - of that impression.

17 This particular examination involved - - let
18 me put it this way - - duplicating, or making an impres-
19 sion from this particular pair of shoes which would
20 suffice in a comparison of the photograph. These are
21 three-dimensional, this is two-dimensional, and I had
22 to take that into account.

23 Q Okay now, what did you do to overcome
24 that dimensional difficulty, if anything?

25 A Well, I did. The - - first of all, I

1 determined that the photograph, the question photograph,
2 was that of a left shoe, or had been made by a left shoe,
3 and I can explain that further momentarily. However, I
4 will -- then using the left shoe, I made a plaster cast
5 impression at the laboratory. Using that plaster cast,
6 I then had it photographed. I then had a representation
7 of a three-dimensional object in the photograph.

8 I then made a transparency of the plaster cast,
9 and using that as my known standard, made a comparison
10 of the question impression in the photograph.

11 Q Now, Mr. Hallett, do you have with you
12 today the plaster cast from which you made that transpar
13 - - transparency comparison?

14 A Yes, sir, I do.

15 Q And where is that?

16 (Whereupon the witness holds
17 an object up.)

18 MR. HARRIS: Okay, Mr. Bailiff, I am wonder-
19 ing if I could have you mark this as Exhibit Seven A, if
20 you would, please.

21 (Whereupon an object was taken
22 by the bailiff from the witness
23 and handed to the clerk.)

24 CLERK: State's Exhibit Number Seven A
25 marked for identification purposes.

SX 7-A
Marked

(Whereupon State's Exhibit
Number Seven A was marked
for identification purposes.)

(Whereupon an object was taken from the clerk and handed to the witness.)

MR. HARRIS: Now, once again showing you what has been marked for identification as State's Exhibit Number Seven A.

10 Q Would you describe to us again what that
11 is?

12 A It's a plaster cast. Actually it's - -
13 it's made of dental stone. It's not a plaster paris,
14 and it was made using the left shoe, State's Exhibit
15 Seven, as a model, or as the genuine item.

Q Okay, and from the plaster cast, as I understand it, then, you made a photograph?

A Yes, sir.

Q And that was put on a transparency?

20 A I had a transparency made. yes. six.

21 Q Now, have you had an enlargement made,
22 then, of the -- of the photograph of that trans -- or
23 the print in that -- that was impressed upon the cast
24 that you have in front of you?

25 A Not an enlargement. I had a true and

1 accurate photograph depicting all of the characteristics
2 in the cast.

3 Q Okay, the same -- okay, now, have you
4 made a comparison, then, using that with the question
5 print?

6 A Yes, sir, I did.

Q Okay, could you demonstrate to the jury how you made that comparison?

9 A Yes, sir, I can.

10 MR. HARRIS: Would you - - would you
11 like to step down in front of the jury, and do that for
12 us.

13 WITNESS: Do you - -

14 MR. HARRIS: I suppose I should have that
15 marked.

16 Mr. Bailiff, could I have this exhibit marked
17 as Seven B, if you would, please.

18 (Whereupon a document was
19 taken from the witness and
20 handed to the clerk.)

SX 7-5
Marked

CLERK: State's Exhibit Number Seven B
marked for identification purposes.

23 (Whereupon State's Exhibit
24 Number Seven B was marked for
25 identification purposes.)

(Whereupon a document was taken from the clerk and handed to the witness by the bailiff as requested by counsel.)

WITNESS: Thank you.

7 MR. HARRIS: I - - I'm wondering, as you
8 testify - - I wonder if I could just have the alternates
9 move around to the side, and then you could stand right
10 in front of the jury.

11 Q Would that be preferable to you, Mr.
12 Hallett?

13 A I think it would -- would be helpful,
14 yes, sir.

15 MR. BISHOP: Your Honor, if he remains
16 in the general area, we can all see, and for cross
17 examination purposes, and I -- it appears that he has
18 photographs, and so on, that --

19 COURT: Well, sometimes things are just
20 not perfect for every situation, so if - - if you are
21 obstructed from view, you can get up and walk right
22 over there by that jury box and - - and, you know, watch
23 so you can see what he is doing, but I want the fact-
24 finders to have the opportunity to view it, and you
25 are free to go over there if you feel - -

1 You folks in front there, if you wouldn't mind,
2 slide the chairs around to the side temporarily here,
3 and - -

4 And then you - -

5 WITNESS: I may approach the jury, Your
6 Honor?

7 COURT: Yes.

8 WITNESS: Thank you.

9 The photographs are quite small, and you
10 might not have seen them from the stand.

11 To reiterate what my object was, was to compare
12 this impression in the photographs submitted to the lab-
13 oratory with this particular pair of shoes to determine
14 if either of these shoes could have made this question
15 impression.

16 First of all, there are two photographs that
17 were submitted, and I determined that they were of the
18 same impression. It doesn't matter which one is used.
19 They are both of the same - - the same impression; however,
20 it's rather obvious, using the ruler as a guide, that
21 this is not a true and accurate representation of the
22 impression at the scene where it was taken. The ruler
23 is much smaller.

24 Using the ruler as a guide and the negatives
25 from which these prints are made, I had a true and

1 accurate photograph made so that the impression would
2 be of the same size it appeared at the scene when it
3 was taken.

4 That photograph is the center panel, and it
5 is marked "question impression". This was made from
6 the negatives which were submitted to the laboratory,
7 and it is this impression which is in question.

8 For clarification, the known shoes, if you
9 regard the number you will see that it is backwards.
10 What I had done was a reverse of the photograph made.
11 There was a reason for that. I stated from the stand
12 that the shoes that I was dealing with - - the particular
13 shoe was the left shoe.

14 The left shoe, when it makes an impression,
15 is face-down. When it is turned up to look at the
16 design on the bottom, it reverses itself. Therefore,
17 the impression, the question impression, was made by
18 a left shoe face-down. However, to look at that and
19 to make a comparison of the design, I would have to
20 pick it up and reverse it. So it appears opposite in
21 the question impression and the known shoe. Therefore,
22 the left shoe in this particular photograph marked
23 "known" is the one to your right, and appears opposite.
24 That is so it will correspond with the question impres-
25 sion. When you see it later, you will see that this is

1 the left shoe. It appears to be a right one, because
2 it is a reverse print.

3 My first part of the examination was to see
4 if I could eliminate these shoes from having made the
5 impression by design comparison. If there were charac-
6 teristics in the question impression that were different
7 than the known shoe, then I would eliminated the shoe,
8 and there would be no further need for examination. I
9 would have determined this shoe could not have made
10 this impression.

11 However, there were characteristics in the
12 question impression of these lateral or horizontal bars
13 running across, or - - running across the design of the
14 shoe.

15 I found the same characteristic in the arch
16 area quite clearly in the question, or in the known
17 shoes as well. At this point I couldn't eliminate them.
18 It was possible that this shoe made this impression.

19 It was at this point that I took certain meas-
20 urements, the width of the arch area, the length of the
21 heel, and compared them with this left shoe.

22 Incidentally, the way I determined it was a
23 left shoe is they - - in the arch area is this sharp
24 angle. There is a much more gradual angle on the out-
25 side of the shoe.

1 This very sharp angle appears clearly in the
2 question impression.

3 Having made the measurements of the question
4 impression and the known shoe, and found them to corres-
5 pond, or to compare closely, I then at this point made
6 the plaster cast of the left shoe.

7 I then photographed the plaster cast, and had
8 a transparency made of that photograph. That transparency
9 that I used is affixed to the third panel, the one to
10 your right. I am holding it up here. This is of the
11 plaster cast that I identified from the stand, and this
12 was made from the left shoe.

13 This two-dimensional item then could be super-
14 imposed over the question impression.

15 I found rather quickly that the question
16 impression was not a single impression, but consisted
17 of a double impression; that is, the person who made it
18 moved their foot slightly so there are two impressions
19 here.

20 Where the arrow in the question impression is
21 affixed, there is a slight bulge showing where the angle
22 of the heel was originally, and then moved, making the
23 second impression. There is a movement, and a slight
24 bulge, (indicating).

25 This is the second portion that was originally

1 in this angle here. You see a slight bulge, (indicating).

2 There was an additional characteristic which
3 allowed me to make that determination, and that was the
4 angle of the lines.

5 In the heel the lines move slightly upward.
6 There is approximately a thirty-degree difference with
7 the lines in the arch area. As he moved, that angle of
8 these lines in the heel also moved, and it impressed
9 it again.

10 That became important when placing the trans-
11 parency over one of those impressions. I had to make a
12 choice. I had to choose one of the impressions, examine
13 that first, and then move the transparency to get the
14 second impression.

15 Using the first impression, I made the follow-
16 ing observations:

17 In the area just in front of the heel where
18 this arrow is pointing. Where my thumb is placed on the
19 question impression. The edge of the heel is seen.
20 When the transparency is placed, the other red arrow
21 showing that part of the heel superimposes exactly over
22 the first one.

23 The heel can then be seen to be in place over
24 that impression.

25 There are also additional lines running

1 horizontally which correspond to the lines in the heel.
2 Those lines superimposed exactly. It's difficult to
3 see in this dark transparency, but they will if you
4 have enough chance to look at them. They superimpose
5 where these small red arrows are pointing.

6 Additionally, the arch area made by these two
7 arrows to your right superimposed exactly, and the
8 perimeter of the shoe also superimposes exactly.

9 It was at this point that I determined that
10 the size of the shoe which made the question impression
11 corresponded with the size of the left shoe of the known
12 shoe.

13 At this point I had the design and the size
14 corresponding.

15 Additionally, back on the question impression,
16 I had shown an arrow in this center panel where a small
17 root portion is. In this area there is a wearing away;
18 that is, there are slight lines running across that
19 stop. Showing no lines in the middle, and then pick up
20 again on the opposite side. That area corresponds in
21 the left shoe to a wear area.

22 Wish I had one more hand.

23 This area here has worn part of those lateral
24 lines away. When I superimpose the transparency, I
25 found that that wear area corresponded in the same area

1 of this particular impression that I had. The transparency
2 over it is right here. The lines do not appear in this
3 area, nor do they appear in the known shoe.

4 I found, therefore, that the shoe which made
5 this impression, and this left shoe had sustained wear
6 in the same area. ~~To me as a shoe print examiner, this~~
~~would indicate that the individual who walked with these~~
~~shoes has the same walking gait.~~
7
8

9 Some examiners believe, I have not quite gone
10 that far myself, but that could be a positive identifying
11 characteristic. They believe we all walk differently.
12

That wear corresponded exactly.

13 Based on these characteristics of size, design,
14 and general wear characteristics, it was my opinion that
15 the left shoe and this question impression could have
16 originated -- that is, that the question impression
17 could have originated with this left shoe.

18 Whichever shoe did make this question impression,
19 it would have to have the same characteristics as the
20 known left shoe.

21 MR. HARRIS: Thank you.

22 (Whereupon the witness
23 resumes the witness stand.)
24

MR. HARRIS: At this time, Your Honor,
we would offer into evidence Seven A, Seven B - -

SX 7-A & 25
7-B Offered

SX 8, 9 & 2
10 Re-
Offered

1 COURT: Which - - which - -

2 MR. HARRIS: - - and Eight, Nine, and
3 Ten.

4 (Whereupon State's Exhibit
5 Seven A and State's Exhibit
6 Seven B, having been pre-
7 viously marked, were offered
8 into evidence, and State's
9 Exhibit Eight, State's
10 Exhibit Nine, and State's
11 Exhibit Ten, having been
12 previously marked, offered,
13 and re-offered, were re-
14 offered into evidence.)

15 COURT: Which is - - which are they,
16 other than by number? What is the - -

17 MR. HARRIS: Okay, Seven A are the, or
18 is the cast.

19 Seven B is the photographs from which the - -
20 Mr. Hallett made the presentation to the jury.

21 Eight is the negatives from which he used to
22 make his demonstration from.

23 And Nine and Ten are the photographs of the
24 footprint taken at the scene of the crime.

25 MR. BISHOP: Your Honor, I would object.

1 There has been no demonstration of the relevance as to
2 this defendant at this time, and we object to the entry
3 into evidence.

4 COURT: I - - I will admit those only
5 upon the assurance of the prosecuting attorney that you
6 intend to offer evidence which ties this evidence to
7 the defendant.

8 MR. HARRIS: Right. The - - the only
9 item that is not tied to the defendant is the shoes,
10 and we will tie the shoes to the defendant.

11 COURT: Well, the rest of it is tied to
12 the shoes.

13 MR. HARRIS: Right, that's true.

14 COURT: So none of it is tied to the
15 defendant at this point.

16 MR. HARRIS: We will tie the shoes to
17 the defendant, Your Honor.

18 SX 7-A, 18
19 7-B, 8, 9 &
20 10 Admit-19
21 ted
I will permit them into evidence.

22 (Whereupon State's Exhibit
23 Seven A and Seven B, having
24 been previously marked and
25 offered, and State's Exhibit
Eight, State's Exhibit Nine,

and State's Exhibit Ten,
having been previously marked,
offered, re-offered, and
re-offered, were admitted
into evidence.)

MR. HARRIS: Thank you, Your Honor.

I have no further questions of this witness.

COURT: Cross examination?

CROSS EXAMINATION

BY MR. BISHOP:

Q Is it - - is it Inspector Hallett?

A No, Agent.

Q Agent Hallett?

A Yes, sir.

15 Q Okay, Agent Hallett, you indicated that
16 you made the plaster cast, and then took a photograph
17 of the plaster cast; is that correct?

18 A I had that photograph made. This required
19 very special photographing done. It was done under my
20 direct supervision. I stood there and explained exactly
21 what I wanted done, but I am not a photographer.

22 Q Okay, your conclusion, or your opinion,
23 as I understood what you said, was it could have been
24 made by this shoe, or a similar shoe with -- with those
25 characteristics?

1 A Yes, I said that the shoe which made it
2 would have to have those characteristics.

3 Q Okay, what type of shoe did you make the
4 plaster cast off of?

5 A I made it with the left shoe that was
6 submitted to me.

7 Q What is the type of shoe that that is?

8 A Well, it's a deck shoe. I'm not familiar
9 with the particular brand. They vary many, many places.
10 I mean, in fact they interchange so it's not really
11 important, but it's a deck shoe.

12 Q It's a deck shoe?

13 A Deck-type shoe, yes, sir.

14 Q And they interchange, you mean the manu-
15 facturers interchange their molds and - -

16 A It's not valid to say that a particular
17 manufacturer can be identified from the shoe alone.

18 Q Okay, so that particular sole, if you
19 would, would come from some sort of a mold?

20 A Yes, sir, it would.

21 Q And that mold may be from that manufacturer,
22 or it may be from some other manufacturer; is that
23 correct?

24 A No, each manufacturer will make its own
25 mold, but the design which I identified. Those - - that

rope-like horizontal bar is made from various manufacturers.

3 Q Do you have any idea how many manufacturers?

4 A Well, they can be identified only slightly;
5 that is, if a measurement - -

6 MR. BISHOP: Okay, not identify.

7 Q But how many manufacturers use that same
8 rope-like design?

9 A I would have no idea. Many. If you count
10 foreign manufacturers, it would be many, many, many
11 manufacturers.

12 Q And you call a deck shoe -- I'd probably
13 refer to it as a tennis-type shoe, would that --

A It's not a tennis shoe. It's a deck shoe.

15 Q Okay, what -- what is the significance
16 of a deck shoe?

17 A Well, they became popular by people who
18 were around boating - -

19 Q Okay, I guess - -

A - - yachts, sailing, so on.

21 MR. BISHOP: I guess I haven't been around
22 boats that much, so I didn't see the significance of the
23 deck.

24 WITNESS: Well, other people wear them,
25 too, obviously.

1 Q Okay, is it a very common type shoe?

2 A This particular design?

3 Q Yes.

4 A As compared to what?

5 Q Generally is it a common design?

6 A Well, compared to a Converse basketball shoe,
7 or a Nike shoe, it's very uncommon. There are many shoes
8 of this type.

9 Q Would it have to be a deck shoe that would
10 have that same pattern?

11 A I haven't never seen it on another shoe,
12 but that is not to say that it isn't -- is impossible.

13 Q Couldn't they use the same pattern, for
14 instance, on a rubber boot?

15 A On a rubber boot?

16 Q Yes.

17 A Again, I haven't seen it, but that is not
18 to say that it isn't done. There are so many shoes that
19 you can't be aware of them all.

20 Q The general molds that are made, or
21 manufactured and then distributed to -- to numerous
22 producers of shoes; is that not true?

23 A (No response.)

24 Q So what I'm saying is that that basic mold
25 design is -- is passed around?

1 A It's - - it's copied as in tires. It's
2 copied. There are slight differences, however, in each
3 one for patent purposes, but putting in foreign shoes
4 which don't necessarily follow our patent laws, there
5 might be some copies of it.

6 Each mold, however, would have its own particu-
7 lar characteristics, even within one manufacturer.

8 Q Okay, but as that one mold within the
9 manufacturer was used over and over and over again would
10 it not change its dimensions?

11 MR. HARRIS: Well, I will object as - -
12 I mean, what - - I can't see no purpose to that question.
13 I object on the grounds of relevancy.

14 COURT: Well, I - -

15 MR. HARRIS: And speculation.

16 COURT: I don't know whether it is or not,
17 but I think the - - the witness is capable of responding
18 as to those matters within the purview of his specialty,
19 and what - - which are not.

20 WITNESS: I - -

21 COURT: Go ahead.

22 WITNESS: Are you telling me to direct,
23 Your Honor?

24 COURT: Go ahead.

25 A I have visited several manufacturers of - -

1 of shoes, and in each case where I have visited, if there
2 is a variation which is detectable, the mold is destroyed.

3 Q But wear on the mold could - - could create
4 a variation in the - - in the process of - - in production
5 of the sole; is that not true?

6 A As I say, if it's detectable, they would
7 destroy it. That would imply that it is - - that it is
8 possible.

9 Q Now, in your process of - - of reviewing
10 the shoe, would it be fair to characterize your observa-
11 tions of the deck shoe, the photograph, and your plaster
12 cast as general class characteristics of the shoe?

13 A Now, as I stated to the jury earlier, that
14 those wear characteristics that I described at the end of
15 my testimony. It's becoming increasingly - -

16 MR. BISHOP: Please just respond to the
17 question.

18 COURT: Well, let him answer the question.

19 A Many shoe examiners would not consider
20 that wear characteristic a class characteristic.

21 Q But did you not - - did you not state to
22 the jury that it - - that it was a class characteristic - -
23 general class characteristics?

24 A Because I said I did not subscribe - -

25 Q That's your opinion?

1 A - - to that. In my opinion I would consider
2 it a class characteristic. I am not ready to go that far
3 yet.

4 Q Okay, so your description, and your opinion
5 is it's a class characteristic?

6 A Yes, sir.

7 Q Now, did you make a written report of your
8 findings of the shoe print comparisons?

9 A Yes, sir, I did.

10 Q And did - - you have a copy of that, or
11 - -

12 A Yes, I do.

13 Q - - are you familiar with it?

14 A (No response.)

15 MR. BISHOP: I believe you stated, "a
16 definite conclusion" - - and we made reference to the
17 - - "Q-53 shoe made" - -

18 REPORTER: I'm sorry.

19 MR. BISHOP: Okay, "a definite conclusion"
20 - - and then it was - - "the Q-53 shoe made this questioned
21 impression was not reached".

22 WITNESS: That's correct, sir.

23 Q Okay, now that is your testimony also today?

24 A Definitely.

25 MR. BISHOP: Okay, I believe in addition you

1 stated that "there was lacking particular defects appear-
2 ing in the questioned impression and which corresponded
3 to the left shoe." You had Q-53, but left shoe.

4 Q So there was no defects that we - - were
5 determined?

6 A (No response.)

7 Q Is that my understanding of your written
8 report?

9 A I could find no defects in the questioned
10 impression which corresponded to that Q-53, as you said,
11 that left shoe; that's correct, sir.

12 MR. BISHOP: Okay now, as a - - you
13 indicated it was a multiple impression.

14 Q It's my understanding that generally if - -
15 if a person is walking straight ahead, that his heel would
16 hit first, and then it would slide down, and then there
17 would be a toe impression as he - - as he raised his foot;
18 would that be correct?

19 A Sometimes. A runner does just the opposite.

20 Q Okay, a runner would be on his toes and
21 then to his heel?

22 A Yes, sir.

23 Q But generally there would be a sliding
24 motion into the soil if a person was walking or running?
25 One way, either the toe would move back or the heel would

1 move forward; is that correct?

2 A And it's -- it -- there is many varia-
3 tions, but that's -- that's a usual one, yes.

4 Q Okay now, you stated there was a multiple
5 impression, so it would appear that that individual was
6 -- was standing in one position, and not walking on?

7 A That would be my -- my best observation,
8 yes.

9 Q So that kind of standing, and moved his
10 foot a half inch, or a quarter inch, or --

11 A Yes, sir.

12 Q Did you determine how -- how far that was
13 moved?

14 A No, the -- the next impression that was
15 made obliterated the -- the previous impression, so I
16 didn't have any reference point to make that determination.

17 Q Now, from the photograph, were you provided
18 with any information as to the depth of the impression from
19 the soil level?

20 A No, I was not.

21 Q Okay, would that make a difference in --
22 in characteristic of size of the shoe? The depth --
23 say if it was a half inch deep, versus -- just a minor
24 impression?

25 A Not of the size that I referred to on my

1 direct testimony, because I was referring to the distances
2 across, not in depth. I couldn't make that determination
3 from a flat object.

4 Q Okay, but if the - - if the shoe print was
5 at this level, and the - - and the soil was at this level,
6 and the tape measure is on the soil so your measurement is
7 above the plane of the bottom of the impression; is that
8 not true?

9 A That's correct, sir.

10 Q Okay, if there was a half inch between the
11 bottom of the impression and the ruler, wouldn't that make
12 a difference?

13 A If it was as much as a half inch, the
14 deviation would be so small as to not really make a
15 difference. In other words, I could not find any apparent
16 difference between the width of those horizontal rope-like
17 affairs with that small a - - a depression - -

18 Q Okay, but - -

19 A - - that is within a half inch.

20 Q - - the - - I'm sorry, the half inch - -

21 A Well, you said a half inch heel. Within
22 that amount of distance - -

23 Q Okay, the depth, a half inch in the depth?

24 A I understand. There would be no deviation
25 that you could even tell the difference between those

1 rope-like in that amount of - - in that amount of distance.
2 It would be so small as to be negligible.

3 Q Well, wouldn't it be in the area of a
4 sixteenth or better - - or in that area of an inch?

5 A Depends what angle the camera was, and
6 how far above the impression the camera was being taken
7 as well as the - - as the lens used on the camera. There
8 is too many variables in there. You haven't - -

9 Q To really make a determination?

10 A - - you haven't told me enough, right.

11 Q Okay, well if you have no information as
12 to the height from the question impression to the camera
13 - - if you knew the exact plane, and you knew the exact
14 depth, you could - - you could give us a little closer
15 variance, could you not, as if you don't know those
16 distances?

17 A Again, you're speaking hypothetically,
18 because I'm not referring to the depth. I only refer
19 to the width.

20 You're telling me now a half inch, and it's
21 - - it becomes hypothetical. I don't believe those are
22 a half inch.

23 Q Well, if the impression, though, the
24 soil - - you know, the impression in the soil, the
25 bottom of that impression, on - - I believe the photograph

1 number eight - -

2 COURT: I think he is just saying that - -
3 that the print left a half inch impression in the soil.

4 WITNESS: Yes, I understand.

5 MR. BISHOP: Yes.

6 The distance - - the depth here is a half inch
7 below the soil level, (indicating).

8 WITNESS: Fine, I understand now, sir.

9 MR. BISHOP: Okay, and then the - - this
10 is at the soil level, or maybe above because of the rocks.

11 Q But in comparison to your known distance,
12 if that's closer to your camera than the bottom, wouldn't
13 there be a variance of size in your - -

14 A Again, I'm saying it would be negligible
15 for what my examination has determined.

16 Q Okay, well, the - - the distance between
17 the soil and the camera would have a bearing on that,
18 would it not?

19 A A bearing on what?

20 Q I mean, if your camera was a half inch and
21 so - - of course it wasn't, but if your camera was a half
22 inch above the soil, and - - and the - - the tape, and
23 then your impression was a half inch below, that would
24 be different than if it was five feet above; would it
25 not?

1 A Again, it would be negligible. I can't - -
2 I can't give you a better answer than that. I give - - I
3 think I stated I'm not a photographer, and obviously I
4 think you perhaps are, but the distance, as I have been
5 told, for the casts that I made, for instance; that that
6 was negligible. There would be very, very minute differ-
7 ence. There would be a difference to - - if I'm answering
8 your question.

9 Q There would be a difference?

10 A Yes.

11 MR. BISHOP: Okay, and you stated the
12 distance you were told.

13 Q Who - - did somebody tell you the distance
14 of that?

15 A Well, I asked because I didn't want any
16 variation in that photograph of the plaster cast from
17 the photographer that I took it to, and - -

18 Q Okay, so his - - his photograph?

19 A - - he advised that at three feet, which
20 is where he was with this one, that there would be
21 negligible difference. It wouldn't - - wouldn't be any - -
22 wouldn't be apparent.

23 Q Okay, were you submitted any plaster casts
24 of the question impression?

25 A No, I was not.

1 Q Okay, so the only thing that you had to
2 go on was the photograph itself?

3 A That's correct, sir.

4 Q Could you tell from the photograph the
5 time, or any length of time that the footprint had been
6 there prior to taking the photograph?

7 A No, I have been verbally asked this.
8 There are too many variables to make that - - that kind
9 of a determination here. It - - the lines are fairly
10 sharp, and depending on rainfall and other various
11 erosion type things, it would - - I would say you have
12 three days to a week perhaps.

13 Q In clay type soil, how long - - you know,
14 if it was undisturbed from any elements, how long could
15 a shoe print stay in clay type soil?

16 A Well, again, if there is no disturbance on it,
17 I know what - -

18 MR. BISHOP: My - - my question, to clarify.
19 I've - - I've asked similar question in regards to finger-
20 prints, and on certain surfaces fingerprints could stay
21 for years. I just - -

22 Q Would that be the same situation if they
23 were not destroyed in any way, or elements affected them?

24 A Well, with no other variables that you have
25 admitted shoe prints have been examined over three or four

1 thousand years, and to have some validity, yes.

2 MR. BISHOP: Well, that's our archaeological
3 sites, and -- and so on --

4 WITNESS: It would be -- yes. Footprints
5 in that way --

6 Q Pardon?
A Footprints, I think I said shoe prints,
7 and there weren't three thousand years. Footprints.

8 MR. BISHOP: Archaeological work -- work
9 shoes.

10 (Laughter)

11 Q So it's -- it's not unusual for a shoe
12 print to -- to be in existence for a length of time
13 except for elements?

14 A That's correct, sir.

15 Q You stated that you didn't know the --
16 the manufacturer of that -- that shoe; is that correct?

17 A That's correct.

18 Q Okay, do you know the size of the shoe?

19 A Again, the variance, and this is why we
20 try shoes on. There is so many variations that we can
21 have as much as two and a half sizes for the same perimeter
22 outside. I am more interested in the exact perimeter of
23 that shoe.

24 Q So that same impression could have been
25 made with a shoe that was a nine, ten -- you said two

1 and a half?

2 A (No response.)

3 Q So nine to -- a nine, ten, eleven, or
4 eleven and a half --

5 A And a half.

6 Q -- or anywhere in between size foot
7 could carry that same sole?

8 A A manufacturer's designation up to that
9 size, but the perimeter of the shoe corresponds to this
10 shoe in size.

11 Q Okay, but not -- the manufacturer, so
12 we don't know the size of the shoe, but it was somewhere
13 -- did you make any general classification of what size
14 of shoe it was?

15 A Again, I am saying that the perimeter
16 corresponds, and the size is not important, because it
17 could be as much as two and a half sizes difference --

18 Q Okay, so it --

19 A -- in this --

20 Q -- so just basically two and a half size
21 variation?

22 A Yes, that's correct.

23 MR. BISHOP: I don't have any other ques-
24 tions at this time.

25 MR. HARRIS: I just have a couple of

I have some questions on redirect, Your Honor.

REDIRECT EXAMINATION

3 BY MR. HARRIS:

4 Q Mr. Hallett, do I understand your testimony
5 on cross examination to be such that the questioned impres-
6 sion depicted in the photographs, I believe Nine and Ten,
7 would have been of fairly recent origin?

8 A I hope I qualified that. I said, barring
9 various elements, and rain and so on, which I am not
10 familiar with happening at this point.

11 It's a fairly fresh impression. If there were
12 no disturbances on it, I would say, three days, maybe a
13 week.

Q Okay, you also, if I understand correctly,
that you said if another shoe made the impression, it
would have to have the same characteristics as the actual
left shoe that we have here?

A That's correct, sir.

Q What are those characteristics?

20 A The same size, the same design, and having
21 general wear in exactly the same locations.

22 Q Now, did you indicate that the wear char-
23 acteristics are put there by a gait of a particular
24 individual?

A You would have to have the same character-

1 istic walk as the individual who owned those shoes.

2 MR. HARRIS: Okay, I don't have anything
3 further, Your Honor.

4 COURT: Any recross?

5 RECROSS EXAMINATION

6 BY MR. BISHOP:

7 Q Okay, I understand, then, that the wear
8 pattern is significant in your determination, or your
9 comparison here?

10 A I think so, yes.

11 MR. BISHOP: Okay, I have no other ques-
12 tions at this time, but once that they're tied in, I
13 would ask that this individual stay available for
14 additional testimony.

15 WITNESS: I won't be here.

16 COURT: When - - at the present time when
17 are you scheduled back in Washington?

18 WITNESS: I can be back here on Monday.
19 I have a commitment on Friday. If - - if that would be
20 a suitable time.

21 COURT: At the present time, if you're
22 able to pursue your own plans, when will you depart here?

23 WITNESS: Tomorrow at 12:30.

24 COURT: Well - -

25 MR. BISHOP: May we - - may we approach

1 the bench?

2 COURT: Yes.

3 (Whereupon an off the record
4 discussion was had at the bench
5 between court and counsel.)

6 COURT: You could be available for brief
7 testimony at nine o'clock in the morning, could you?

8 WITNESS: Oh, yes, sir. Surely.

9 COURT: Very well, I will ask you then to
10 continue to abide by the subpoena until they have a chance
11 to talk to you briefly in the morning.

12 WITNESS: Yes, Your Honor, I will.

13 COURT: We are going to recess the trial
14 until nine o'clock tomorrow morning, ladies and gentlemen.

15 Please keep in mind the admonition of the Court
16 concerning contacts and viewing, and that sort of thing;
17 and please heed that admonition.

18 (Whereupon court then recessed
19 at 5:10 p.m. on the 26th day
20 of October, 1983.)

21 (Whereupon court then recon-
22 vened at 9:14 a.m. on the
23 27th day of October, 1983,
24 and the following proceedings
25 were had, to-wit:)

1 MR. HARRIS: Your Honor, while we are
2 waiting for the jury - - do you have something?

3 MR. BISHOP: Just the stipulation that I
4 was talking about.

5 MR. HARRIS: Okay, go ahead.

6 MR. BISHOP: Your Honor, I have talked with
7 Mr. Harris, and over the evening I've communicated with
8 Pam Server of the state lab, and she has been in contact
9 with the serologist in California in regards to the slide
10 of the vaginal and anal slides that were presented to us
11 from the prosecutor.

12 It's not absolute, but there is a possibility
13 that from the slide they can determine blood type. It
14 would depend upon the required amount of semen on the
15 slide, and if there is sufficient amount, a blood type
16 could be determined.

17 I have talked with Mr. Fain, and he is desirable
18 and anxious to have that done.

19 It would necessitate, however, that the slide,
20 in essence, would be destroyed for evidential purposes.

21 It's my understanding in talking with Mr. Harris
22 he does not intend to use the slide, and does not have an
23 objection to that.

24 MR. HARRIS: Well, it wasn't that I was
25 not going to intend to use it, because we - - we were

1 going to call Pam Server to discuss what she found on
2 the slide, but I'm not sure that since we can translate
3 that into oral testimony that necessarily we need the
4 slide to - - for her to testify what she found from the
5 slide, and so in - - in that regard I don't have any
6 objection to them using the slide for some other purpose
7 as long as there is no objection to the testimony of the
8 witness that she did examine the slide, and these were
9 her findings.

10 MR. BISHOP: Miss - - Miss Server is - -
11 is our witness, and acting on our behalf, and we would
12 not object to her testimony as to what she observed on
13 the slide.

14 COURT: Very well.

15 MR. HARRIS: Well, I'm not sure it's your
16 witness, necessarily.

17 MR. BISHOP: Well, she is working on our
18 behalf.

19 MR. HARRIS: Well, I'm not even sure
20 about that. She is working.

21 (Laughter)

22 MR. HARRIS: She is a forensic - -

23 COURT: Well, it's - - it's immaterial.
24 We don't need to debate whose witness she is.

25 The fact is that you will stipulate that she

1 may testify, as far as the state is concerned, as to
2 what she observed, and the state will not object then,
3 if in further examination, the testing process is destruc-
4 tive of the exhibit.

5 MR. BISHOP: Of the exhibit.

6 COURT: Is that right?

7 MR. HARRIS: That's right.

8 COURT: I really - - it would be hard
9 for me to see how the jury could perceive anything by
10 looking at a slide - -

11 MR. HARRIS: Well, that's - - that's true,
12 Your Honor. It's the - -

13 COURT: - - that it takes an expert to
14 tell you what's on there.

15 MR. HARRIS: It is the oral testimony
16 that really is the - - is the factor.

17 COURT: Right.

18 That sounds all right to me.

19 Go ahead.

20 MR. HARRIS: Second thing I have this
21 morning. Yesterday we listened to the testimony of
22 Mr. Shockey and Mr. Workman. Shockey, of course, is
23 from Salem, Oregon; and - - and Rupert Workman is
24 from Alaska, and they are both police officers in that
25 area. As far as our side of the case, they have

1 completed their testimony, and they have requested that
2 they be excused from further attendance of the trial
3 so they can return to their areas of assignment; and at
4 this time I would request that they be excused so they
5 - - they could return to their homes.

6 COURT: That is witness Workman and - -

7 MR. HARRIS: And Shockey.

8 COURT: And Shockey.

9 Do you have any - -

10 MR. BISHOP: I do not anticipate recalling
11 them, and I - - you know, if it was necessary, I am sure
12 we could get ahold of them by phone, and return so I would
13 have no objection.

14 COURT: Very well, those witnesses may be
15 excused.

16 MR. HARRIS: Thank you very much, Your
17 Honor.

18 COURT: Are you ready otherwise to resume?

19 MR. HARRIS: Yeah, we are ready to proceed,
20 Your Honor.

21 (Whereupon the jury was then
22 returned to open court at
23 9:18 a.m.)

24 COURT: Be seated, please.

25 Counsel waive the roll call of the jury?

1 MR. HARRIS: We would waive the call,
2 Your Honor.

3 MR. BISHOP: Defense would waive, Your
4 Honor.

5 COURT: Very well.

6 MR. HARRIS: At this time I would like to
7 recall to the stand Mr. Hallett for just a few more
8 questions.

9 COURT: All right.

10 You, of course, were sworn as a witness yester-
11 day, so you are still under oath.

12 WITNESS: Yes, sir.

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1 ROBERT B. HALLETT

2 who, being called for further
3 redirect examination by the
4 plaintiff, The State of Idaho,
5 having been previously sworn,
6 testified as follows:

7 REDIRECT EXAMINATION

8 BY MR. HARRIS:

9 Q Again, will you state your name for the
10 record?

11 A Robert B. Hallett.

12 Q And are you the same Robert Hallett that
13 testified yesterday?

14 A Yes, sir.

15 MR. HARRIS: Now, Mr. Hallett, just a couple
16 of more questions to follow up on your testimony of yes-
17 terday, and I would like to pose the question in the form
18 of a hypothetical.

19 Assume, for the purposes of your testimony,
20 that the impression was made on or about the 24th of
21 February by the shoe print impression, and assume further
22 that the shoe itself was not recovered, and taken --
23 taken into the custody of the police station until on
24 or about the following January 12th. So that would be
25 a time lapse of approximately eleven months, not quite
 eleven months.

1 Q Would the fact that that shoe was in a
2 situation that we don't know about, its use and the
3 amount of use, whether it was in the closet, whether
4 it was not in a closet, but that it was worn for that
5 period of time; would that make any difference in the
6 - - as far as your conclusions are concerned?

7 A No, sir, it would not.

8 Q Why would it not make any difference as
9 far as your conclusion is concerned?

10 A The amount of wear that was on the shoe
11 that I received was consistent with the wear that was
12 in the questioned impression. If the entire design had
13 been worn away where no comparison could be made, in that
14 particular case, it - - it might make a difference, but
15 in this particular instance the amount of wear that was
16 on the shoe, and the amount of wear that was in the
17 questioned impression were consistent.

18 Q And so as a - - as a - - if I understand
19 you correctly, then, your conclusion is that that time
20 difference would make no difference in your conclusion?

21 A No, sir, it would not.

22 MR. MARRIS: I don't believe I have anything
23 further of the witness, Your Honor.

24

25

1 RECROSS EXAMINATION

2 BY MR. BISHOP:

3 Q Mr. Hallett, when did you receive the
4 shoes?

5 A The shoes actually were sent to the
6 laboratory in January. My - -

7 Q January of 1983?

8 A Yes, sir.

9 MR. BISHOP: Okay.

10 A My examination, however, did not take
11 place until the following month; that is, in February - -

12 MR. BISHOP: Okay.

13 A - - I believe it was the 10th.

14 Q February of '83?

15 A Yes, sir.

16 Q Okay, now, you indicated that the wear
17 pattern is significant, but would not be significant
18 in your determination on these - - this pair of shoes;
19 is that correct?

20 A (No response.)

21 Q The wear pattern is an identifying char-
22 acteristic?

23 A The wear pattern can be an identifying
24 characteristic as it pertains to my conclusions.

25 Q Okay now, when we - - presumably when we

1 buy a new pair of shoes, that haven't been worn at all,
2 there is no wear pattern at all; is that correct?

3 A There should be.

4 MR. BISHOP: Shouldn't be, we hope.

5 WITNESS: Yes, sir.

6 Q Then as we wear the shoes, the wear pattern
7 starts to develop?

8 A Yes, sir, that's correct.

9 Q And then that continues to develop over a
10 period of time, dependent upon the number of times we
11 wear the shoes; would that be correct?

12 A That's correct, sir.

13 MR. BISHOP: Okay, I have no other
14 questions.

15 COURT: Anything further?

16 MR. HARRIS: I have nothing further of the
17 witness, Your Honor.

18 COURT: You may step down, sir.

19 WITNESS: Am I excused, Your Honor?

20 COURT: May this witness be excused?

21 MR. HARRIS: As far as I am concerned he
22 can, and I would request that he be excused, Your Honor.

23 MR. BISHOP: I have no objection.

24 COURT: Yes, sir, you may be excused.

25 WITNESS: Thank you, Your Honor.

1 COURT: Thank you.

2 MR. HARRIS: Your Honor, at this time we
3 have in evidence a packet received from the state
4 laboratory which is still in a sealed condition, and
5 we would like at this time to open the seal so that we
6 can retrieve some exhibits that this witness will testify
7 from.

8 COURT: Very well.

9 MR. BISHOP: No objection, Your Honor.

10 MR. HARRIS: We would like to have those
11 marked at this time.

12 COURT: There is no objection to that
13 procedure?

14 MR. BISHOP: No.

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Fain, Charles

Testimony of
Douglas W. Deedrick, Federal Bureau of Investigation

1 DOUGLAS W. DEEDRICK

2 who, being called as a witness
3 on behalf of the plaintiff,
4 The State of Idaho, after
5 first having been duly and
6 regularly sworn, testified
7 as follows:

8 DIRECT EXAMINATION

9 BY MR. HARRIS:

10 MR. HARRIS: May we have - - we approach
11 the witness?

12 COURT: Yes.

13 MR. BISHOP: May we approach the bench
14 while those are being marked?

15 COURT: Yes.

16 (Whereupon an off the record
17 discussion was held at the
18 bench between court and coun-
19 sel.)

20 CLERK: State's Exhibits Six A through Six H
21 are marked for identification.

22 (Whereupon State's Exhibit
23 Six A through State's Exhibit
24 Six H inclusive were marked
25 for identification purposes.)

Q Would you state your name, please, for the

1 record, and spell your last name?

2 A My name is Douglas W. Deedrick. Deedrick
3 is spelled D-E-E-D-R-I-C-K.

4 Q What is your employment or occupation?

5 A I am employed with the Federal Bureau of
6 Investigation, Special Agent Examiner in the FBI laboratory
7 in Washington, D.C.

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

9 A Well, approximately eleven and a half years.

10 Q Has that entire time been spent with the
11 laboratory?

12 A No, it hasn't. I have been with the lab-
13 oratory now for approximately six years.

14 Q What is your educational background?

15 A Well, I came to the FBI with a degree, a
16 bachelor's degree, in biology, which I received from
17 Indiana University.

18 Q What do you do in the FBI laboratory?

19 A Well, I am currently assigned to the micro-
20scopic analysis unit.

21 In this unit in the laboratory I conduct exam-
22 inations and comparisons of evidence that is submitted to
23 me relating to crimes of violence, either from our local
24 field offices, or more likely from sheriff's offices and
25 local police departments around the country.

1 The type of evidence that I look at consists
2 primarily of hair evidence, and fiber evidence; that is,
3 human hairs that may have been exchanged, passed between
4 two individuals, found on items of clothing, comparing
5 these with known samples that are taken from a given
6 individual, or individuals.

7 Fiber evidence is very similar in that question.
8 Fibers are compared with known sources of textile materials,
9 whether they be clothing, bedding, or carpeting, or other
10 items.

11 Q What kind of training have you received
12 which qualifies you to do those types of examinations?

13 A Well, when I came to the laboratory I
14 initiated, at that time, a training period which lasted
15 approximately one year. During this time I reviewed
16 literature that basically gave a background on hair,
17 hair growth. Very little is actually written of hair
18 comparisons. That comes with experience, so comparison
19 of reference material such as glass slides that are
20 prepared from given individuals, and comparing these
21 with question slides.

22 Becoming familiar with the types of cases that
23 we receive in the lab. The types of evidence pertaining
24 to different types of crimes.

25 The training is under the supervision of a

1 unit chief, and other experienced examiners.

2 Comparing questioned materials and known mater-
3 ials pertains to both hair evidence and fiber evidence.

4 I attended schools that the FBI has - - puts
5 on at the FBI Academy in Virginia pertaining to hair and
6 fiber identification, crime scene identification,
7 collection of evidence; schools pertaining to various
8 techniques in the use of the microscope, polarized micro-
9 scope, fluorescents microscopy, and other techniques that
10 are used in comparing hairs and fibers.

11 That at the FBI Academy as well as school that
12 was put on by the McCrone Institute of Chicago, Illinois,
13 which deals with trace evidence analysis.

14 Trace evidence is very minute particles of
15 hairs and fibers, and other materials that are often
16 passed between two individuals, or picked up at a crime
17 scene, and to be analyzed to see if they pertain in some
18 way to - - to the crime, or the crime scene, where they're
19 placing an individual at the crime scene, or in contact
20 with another individual.

21 Q Is your entire time at the lab devoted
22 to this type of work that you have just described?

23 A Yes, it is. It's a ten-hour day, and
24 primarily with microscopic type of work with the examin-
25 ation of evidence such as I said, hairs and fibers

1 primarily.

2 The - - the other time that I spend would be
3 like today and yesterday, coming out to testify in a
4 case.

5 Q Have you qualified and appeared as an
6 expert witness in hair and fiber identification in other
7 courts?

8 A Yes, I have testified in approximately
9 seventy-five different courts throughout the country
10 and territories. I have been to Guam, Virgin Islands,
11 and approximately twenty-five different states during
12 the past five years.

13 Q Could you tell, or what can you tell us
14 from a - - from a microscopic examination of hairs?

15 A Well, there are basically two groups,
16 animal hairs and human hairs.

17 The animals hairs have certain characteristics
18 that can be identified through that given type of animal.

19 Most of that work is - - is in comparing it.
20 Comparing the question hair, or hairs, with known samples
21 that were - - been taken from known animals; but most
22 of - - most of the hair comparisons actually in the
23 laboratory pertain to human hair. Determination of
24 race. Whether it's Caucasian, or Mongoloid, or Negroid,
25 or perhaps possessing mixed racial characteristics.

1 These characteristics are identified by examining the
2 internal structure, and general shape of the hairs.

3 The part of the body the hair came from.
4 Whether it can be identified as coming from the pubic
5 region, or head region, or other body parts.

6 How the hair was removed. If it fell out
7 naturally, was forcibly removed, was cut. The tip of
8 the hair can be analyzed to determine if it had razor
9 cut or scissor cut.

10 If it has been treated. Artificial treatment
11 can be identified.

12 Sometimes mechanical methods used on hairs
13 can also be identified.

14 These are basically the first things that are
15 determined using low power magnification.

16 Q What are the characteristics on the hairs
17 you look for when conducting your examinations?

18 A Well, there are certain characteristics
19 that you look at on the hair, but most of the character-
20 istics are found within the hair.

21 Using the microscope with magnifications up
22 to four hundred. It's not really necessary to magnify
23 it over that. You really lose a lot of resolution, or
24 clarity by magnifying it too much, but within the hair
25 there are three major areas.

1 Cuticle, which has scales, and the scales over-
2 lap toward the tip, or in that direction. The cuticle's
3 thickness, color, scale protrusion. All of these are
4 factors which are considered when - - when reviewing the
5 known sample of - - of the given individual.

6 The cortex just beneath it has pigment granules
7 that is made up of cells that - - may have the pigment
8 granules may be of differing size, their distribution,
9 density. All of these things are - - are considered.

10 The presence of oval structures, dark oval
11 structures called ovoid bodies, presence of air spaces
12 and their distribution throughout the hair. Texture of
13 the cells within the - - it - - within the cortex. These
14 are all identified, and are significant aspects when
15 comparing them with question hairs.

16 The very center of the hair is called the
17 medulla, and the medulla may or may not be present. In
18 some body areas it's more present than - - than others.
19 In the head - - for instance, head hairs may not find a
20 more - - more pronounced medulla whereas in pubic hairs
21 there is - - there is generally a more pronounced
22 medullary structure. It's composed of a different - -
23 little different type, and it - - it may have air sur-
24 rounding it. If air is surrounding this area, it - -
25 it appears black when viewed microscopically. If there

1 is no air, it appears clear.

2 The medulla may be broken, continuous, thick,
3 thin. You may have a amorphous structure with -- with
4 no particular structure. Appears as a dark line, or it
5 may have a cellular structure.

6 And as I said, all of these characteristics
7 are considered. Their particular arrangement within
8 the hair, or hairs of the sample, give the hair or --
9 and/or hair sample a particular uniqueness, and so that
10 when comparing a question hair, if the question hair
11 exhibits characteristics that are present in a known
12 sample, then the conclusion would be that this hair
13 could have originated from that same source.

14 Q Can you tell us how you conduct a hair
15 examination in the laboratory?

16 A The way an examination is conducted
17 depends on the particular type of evidence that is
18 received, the nature of the crime, but clothing, large
19 items, are carefully scraped using a spatula. It's
20 like a kitchen spatula, except there are different
21 sizes that can be used. The debris that is removed
22 falls onto some paper that is spread out under the
23 table -- on the table which is under the item, and
24 then it's collected in a small pillbox which is carefully
25 gone over using a stereo microscope which has magnifications

1 - - I believe it's five to seventy times the - - the size.

2 REPORTER: That was five to seventy?

3 WITNESS: Five to seventy.

4 A Once the hairs and fibers are separated
5 and mounted on slides, they're imbedded in a - - a medium
6 called permount which allows for a permanent - - permanent
7 slide which can be viewed at a later date if necessary.

8 The hair - - normally the - - the hair samples
9 are - - are identified as to their characteristics. This
10 - - for instance, this - - you get a R-1, or a known
11 sample that - - the - - the sample is - - is examined
12 to identify the characteristics, and then compared with
13 any question hairs. This - - the question material is
14 scanned using, oh, between thirty-five and possibly two
15 hundred and fifty magnification to see if there are any
16 material, whether they're hairs or fibers, like this
17 known source, and then the comparison is actually done
18 with two microscopes that are connected with an optical
19 bridge and allows for the examination of question material
20 and known material in the same field of view so that you
21 don't have to keep going back and trying to remember what
22 - - what the characteristics were.

23 Most people are familiar with the way bullets
24 are compared using reflected light comparing the stria-
25 tions. The same general principle applies to hairs.

1 except that it's transmitted light, the hairs going
2 through the specimen. It's not reflected off. It's
3 so you can look at the internal structure and compare
4 them that way.

5 Q Has evidence been submitted to the FBI
6 laboratory which you had conducted - - conducted examin-
7 ations relative to the Daralyn Johnson homicide?

8 A Yes, I received a large - - large amount
9 of evidence in this case.

10 MR. HARRIS: I would like to direct your
11 attention, then, to the evidence that is in front of you.

12 Q Would you examine State's Exhibits Number
13 Six A through Six N, and tell us if you are in any way
14 familiar with those items?

15 (Whereupon the witness goes
16 through the exhibits as
17 requested by counsel.)

18 A Yes, I am.

19 Q Okay, would you tell us, beginning with
20 - -

21 MR. HARRIS: Excuse me.

22 Q - - Exhibit Number Six A, how, and - -
23 how you identified that exhibit, and in what way you are
24 familiar with it, and proceed on through Six N, if you
25 would, please?

1 A Sure.

2 This is a cardboard mailer that holds two glass
3 slides that are prepared by me. On the outside of the
4 mailer the case number that is applied to this particular
5 case, particular submission of evidence. This would have
6 been the third of -- I'm sorry, the 9th of March, 1982.
7 It was the one hundred and thirtieth case received that
8 particular day by the laboratory. On the outside indicates
9 that within are two slides of Q-5 and Q-29, and my initials
10 appear also on the outside.

11 The two slides which are present within, again
12 Q-5 and Q-29, my initials and the same lab number appear
13 on the slide.

14 That was State's Exhibit Six A.

15 State's Exhibit Six B, again, the same thing
16 pertains to the case number, and the Q - - Q specimens
17 28 and 29. Q refers to question items, hairs or fibers,
18 that are removed from -- from question items of
19 evidence, whether it's clothing or unknown hairs or
20 fibers that are submitted for exam.

21 Within this mailer Q-28 and Q-29 slides.

22 Exhibit Six C has within it two slides of
23 specimen Q-29.

24 Six D are two slides containing hairs from
25 specimen K-103, or a known sample, and it was the one

1 hundred and third known sample that was submitted.

2 State's Exhibit Six E, Q-30 and Q-31. Again,
3 they're - - they're two fiber slides.

4 Six F, specimens Q-29 and Q-30.

5 Six G, 30 and 31.

6 Six H, Q-31.

7 REPORTER: I'm sorry.

8 A Q-31.

9 Q Okay, Mr. Deedrick, when these items are
10 received at the FBI lab, are they marked with a - - any
11 kind of an identification number from the source that
12 is submitting those items to the lab?

13 A (No response.)

14 Q For example, the police agency? Is there
15 a police agency number on it that is - -

16 A Oh, yes, the - -

17 Q - - that it is correlated to these
18 exhibits?

19 A Right, when evidence comes in it's - -
20 it first goes to what is called an evidence control
21 center who gives the case the case number, and the
22 letter which accompanies this is normally found just
23 within the outside wrapper. It's then opened, and the
24 case number and so forth of that particular requesting
25 agency is - - is on the letter of transmittal.

1 It's then assigned to a particular unit who
2 will be doing most of the work in the case.

3 Q And did you examine these particular items
4 of evidence in your lab? Are they associated with a,
5 let's say, a Canyon County Sheriff's Office number?

6 A Yes, they would be.

7 Q And could you, from your examination of
8 that evidence and your examination of your reports,
9 indicate to us what those sheriff's office assigned
10 numbers are to this case, or to those exhibits?

11 A Okay, right.

12 Well, they wouldn't be marked on the slides,
13 or on the mailers. That would be part of the report,
14 or part of the incoming communication. I can refer to
15 it if - -

16 MR. HARRIS: Would you please.

17 A - - if you need it.

18 (Whereupon the witness goes
19 through documents.)

20 A The letter of transmittal of the first
21 submission of evidence which again was the 9th of March,
22 1982. Again, Case Number 130 has on it the case number,
23 the sheriff's office case number, C 82-00275. It iden-
24 tifies the victim, and gives a brief synopsis, and a
25 listing of the evidence.

1 Q And is there a number there that correlates
2 to the - - the source from whence these questioned slides,
3 or questioned evidence comes from? Are there - - is
4 there a particular - - is there a particular link-up
5 number that corresponds to these - - these Q numbers?

6 A Oh, yes.

7 Yes, on the - - when the case first is checked
8 in, the - - a worksheet is prepared. The worksheet is
9 prepared because, well, you work off of it, and also the
10 other examiners in the laboratory who have other areas
11 of specialty may be called on to examine even that same
12 evidence, so they're given a copy of that particular
13 worksheet and they work off of that.

14 The - - the numbers that are assigned the items
15 that we give them are - - would be the Q and X numbers.

16 The numbers that are assigned the items from
17 the contributing agency would be to the right of the - -
18 the specimen listing. For instance, soil and unknown
19 substance was numbers 11-C, 12-C, 9-C, and each of the
20 items has a corresponding number assigned to it by the
21 contributing agency.

22 Q Now, could you tell us, with reference
23 to the Q number that you have in front of you, these
24 exhibits, let's say, Q-29, Q-28, Q-30 and 31; can you
25 tell us the - - the assigned contributing agency number

1 to those items?

2 A Okay, Q-28, identified as fibers, and
3 that was number 2-B, as in bravo.

4 Q-29, hairs and fibers, number 3-bravo.

5 Q-30, hairs and fibers, number 4-bravo.

6 31, hairs and fibers, number 5-bravo.

7 All - - all B exhibits.

8 Q And those are the numbers assigned to
9 them by the Canyon County Sheriff's Office?

10 A That's - - that's the way they would have
11 been listed on the incoming communication, and the way
12 it's listed on the particular item.

13 Q Okay, how about the K-103 number that
14 was assigned by the FBI lab; is there a corresponding
15 number assigned to that piece of evidence by the con-
16 tributing agency?

17 A That would have been 14-F, as in Frank.

18 Q In the laboratory, then, did you conduct
19 an examination, or a comparison examination of the
20 questioned items with the known item that was submitted?

21 A You're referring to K-103?

22 MR. HARRIS: That is correct.

23 A Right.

24 The first - - actually the - - the stages of
25 - - of my work involve primarily at first the identification

1 of any hairs or fibers that were present on items of
2 evidence submitted from the scene, or from the clothing
3 of the victim. Once these were identified, then it
4 was a matter of then comparing them with known samples
5 that would -- were submitted at a later date.

6 With regards to K-103, it was identified as a
7 pubic hair sample from Charles Fain. This sample was
8 compared with two -- two hairs that were found on two
9 of the items submitted, previously submitted, in March.

10 The K-103 sample was submitted September 20th.
11 It was given that particular lab number of that same
12 year, and the comparison was conducted.

13 Q Okay now -- now, can you tell us speci-
14 fically, then, what the purpose of -- of your examination
15 was?

16 A Well, the purpose was to try to identify
17 the source of these two hairs that were found on --
18 one on each of two items from the -- from Daralyn
19 Johnson, and comparing these with a -- with a known
20 source to see if it could be identified to that individual.

SX 6-A - 21
6-N Offered
22 MR. HARRIS: Okay, at this time, Your
23 Honor, I would offer these items in evidence subject to
24 being tied up through other witnesses that will appear
later.

25 (Whereupon State's Exhibit

Six A through State's Exhibit
Six H, inclusive, having been
previously marked, were offered
into evidence.)

5 MR. BISHOP: No objection with the con-
6 tingency, Your Honor.

SX 6-A -
6-H Admitted

(Whereupon State's Exhibit Six A through State's Exhibit Six H, inclusive, having been previously marked and offered, were admitted into evidence.)

Q Could you then tell us, Mr. Deedrick,
what your findings were in this case?

18 A Specifically with the question -- with
19 the question hairs and the known sample of hairs?

20 MR. HARRIS: Well, let's start with the
21 -- with the original submission of evidence to you,
22 and tell us what your findings were with that evidence,
23 and then we will -- then we will get on into the known
samples.

25 WITNESS: Okay.

1 A Well, submitted to me, first of all, for
2 examination were items from the victim. A sheet that
3 the victim was placed in; her clothing, slacks, panties,
4 tee shirt, socks; fingernail scrapings, and some hairs
5 and fibers that were removed -- were submitted separately.
6 Removed -- identified as being removed from particular
7 items of evidence from the victim, her clothing.

8 And in the first submission of evidence back
9 in March of '82, identified, as I have stated, two pubic
10 hairs. One was in -- in specimen Q-29, which was
11 identified as hairs and fibers removed from her panties.

12 Q-31, there was another pubic hair which I
13 identified as -- and this was identified from her --
14 from her socks, which was their number 3-B.

15 And these were suitable for comparison and
16 so reported.

17 I did not have any samples from the victim,
18 and apparently she did not have any pubic hairs at this
19 time.

20 Other hairs -- there were some head hairs
21 that were, in my opinion, dissimilar from hers, and
22 they were also reported and suitable for comparison.

23 Q Now, in the course of the investigation
24 of this case, were other samples for comparison submitted
25 to the lab?

1 A Right.

2 I received a hair sample from sixty different
3 people, and forty-five pubic hair samples. I don't recall
4 exactly how many head hairs, but probably a pretty close
5 number. I didn't get the same samples from - - from the
6 same individuals. One person may have submitted a head
7 and pubic hair samples, or they may have just submitted
8 a head hair sample, or a pubic hair sample; and there
9 were other samples as well, eyebrow and body hairs, and
10 beard hairs, I believe.

11 Sixty people submitted hairs, and then there
12 were a lot of fiber samples that were also submitted.
13 I - - I - - there were in - - within one hundred and
14 two hundred known samples submitted for comparison.

15 Q When was the K-103 sample submitted to
16 you?

17 A Well, that was - - I mentioned that
18 already - - that was - - that would have been September
19 20th. That's when it was received in our laboratory.

20 Q And did you make a comparison, then,
21 between that known sample and the question samples?

22 A In the question hairs, the pubic hairs
23 from Q-29 and Q-31, right.

24 Q And could you tell us what your findings
25 were with reference to that examination?

1 A Well, based upon the - - the appearance
2 of the different characteristics within the question
3 hairs, it's my opinion that these two hairs could have
4 - - could have originated from Charles Fain on the sense
5 that they are compared side-by-side, and all of the
6 characteristics corresponded, in my opinion, and could
7 have come from him.

8 It's unusual to find hairs from two different
9 people that look alike, so the - - this particular com-
10 parison to me is - - is significant.

11 There were - - of course the other fifty, or
12 forty-four people, I guess that submitted hairs, the
13 conclusion reached in that regard was these - - these
14 two hairs could not have come from these people based
15 upon gross microscopic differences.

16 The other conclusion that could be reached in
17 - - in this particular science, is no conclusion, and
18 that there - - there is some differences, yet, mostly
19 - - most - - mostly similarities. The differences
20 which cannot be explained you - - you reach no conclusion
21 regarding that particular hair or hairs.

22 But in this regard they appeared alike enough
23 to me to reach the could have conclusion.

24 Q Could you describe to us the - - the
25 similarities of these hair samples that you observed in

1 the microscope?

2 A Well, first of all, they were light brown
3 Caucasian pubic hairs.

4 The characteristics, which I became very
5 familiar with over the years -- year and a half or
6 so of receiving samples -- included a medulla that had
7 -- that bifurcated, that split, in places. Very coarse
8 texture in the cortex itself. Cracking in the cuticle.
9 Split tips; and that primarily was -- those are the
10 things that I can distinctly remember.

11 Those characteristics being -- giving --
12 giving the sample uniqueness in the sense because not
13 all of them have that, and it's -- in other words, it's
14 not often seen all in --

15 REPORTER: I'm sorry.

16 A It's not often seen in hair samples.
17 The bifurcated medulla, for instance, is not -- it's
18 not a characteristic that is very common, so that's --
19 that's the reason why I remember this particular
20 characteristic.

21 MR. HARRIS: Okay.

22 I don't believe I have anything further of
23 this -- excuse me just a second.

24 Now, you have used the words, I believe, in
25 describing your conclusion that "these hairs could have

1 come".

2 Q Is it equally possible to say that those
3 hairs could not have come from the known source?

4 MR. BISHOP: Your Honor, I would object
5 as to getting into probabilities. There has been no
6 foundation laid.

7 COURT: The objection is overruled if
8 he has any knowledge on the subject. He has testified
9 to his qualifications.

10 A Well, I - - I think that's actually
11 inappropriate because I have already mentioned "could
12 not have".

13 If question hairs were dissimilar to a known
14 source, then I could say "could not have", but if hairs
15 are like a known source, I could not say "could not
16 have". They - - they could have in that regard.

17 An example of that would be, for instance, if
18 one of you took two hairs from your head and submitted
19 them in an envelope to me for exam, and also submitted
20 twelve or twenty known hairs - - actually they would
21 all be known - - but you are submitting two question
22 hairs separate from a known sample to me; and you ask
23 me to compare these and reach a conclusion. The conclu-
24 sion would be that these two hairs could have originated
25 from you. That - - that is a far cry from "could not

1 have", because in fact these two hairs did come from,
2 so it - - it's - - it kind of refutes that "could not
3 have" aspect.

4 MR. HARRIS: Thank you very much.

5 I have nothing further of the witness.

6 COURT: Cross examination.

7 CROSS EXAMINATION

8 BY MR. BISHOP:

9 Q Agent Deedrick, you indicated that you
10 have been in the lab for six years, and you spent a
11 year being trained; is that correct?

12 A That's right.

13 Q Who was your training supervisor?

14 A Myron Schulberg.

15 Q Schulberg?

16 A Yes.

17 Q Now, you indicated that this was the one
18 hundred and third known sample; K-103 was the one hundred
19 and third known sample submitted; is that correct?

20 A That's right.

21 Q But the - - of those hundred and three,
22 forty-five were pubic hair samples?

23 A Well, no, that was the one hundred and
24 third specimen that was submitted for exam that was
25 identified as a known. Known could be fiber samples.

1 They could be given a K number, and hair samples are also
2 given.

3 There were other samples that were submitted
4 after that time.

5 Q Okay, so after, or at the same time there
6 was additional samples submitted?

7 A Right.

8 Q Okay, now you indicated that -- that
9 Q-29 was a sheet that was submitted?

10 A No, Q-29 was identified as hairs and
11 fibers that were removed from the panties of the victim.

12 Q Okay, did you -- did you have the panties
13 of the victim?

14 A Yes.

15 Q And did you remove those hairs, or were
16 they submitted separate?

17 A They were submitted separate.

18 Q Okay, did -- did you yourself -- you
19 indicated that you used a spatula; did you yourself
20 use the spatula on the panties?

21 A Yes, I did.

22 Q Okay, and was anything determined from
23 the panties that -- when you did that?

24 A From my examination?

25 Q Yes.

A I would have to refer to my notes.

? MR. BISHOP: If you would.

5 A There were no hairs that were removed
6 from the panties, and one blue carpet-type of fiber
7 was identified.

8 Q So there was no hairs when you inspected
9 the panties?

10 A That's right.

Q Okay, and the Q-29 which you referred to as hairs and fibers -- I believe initially you stated Q-29 was hairs and fibers number 3-B on the report?

14 A Right

15 Q Okay, then in your testimony you said
16 these were removed from the panties, but you did not
17 remove those, and you do not know that of your own
18 knowledge; is that correct?

19 A I have no direct knowledge of that,
20 that's right.

21 Q Okay, so it's just your information at
22 this point that they were removed from the panties?

23 A That's right.

24 Q And Q-31 you initially identified as
25 hairs and fibers 5-B, I believe?

1 A That's right.

2 MR. BISHOP: And then later you indicated
3 it was some socks.

4 Q Again, did you inspect the socks?

5 A Yes.

6 Q Did you -- did you determine that these
7 were from the socks, or were they submitted separate from
8 the socks?

9 A Well, Q-31 is separate from the socks.

10 The socks -- the socks were given Q-9 and Q-10.

11 MR. BISHOP: Okay, basically it's the
12 same question.

13 Q Did -- do you know from your own knowledge
14 that they were from the socks, or is that information that
15 has been provided to you?

16 A I did not remove them myself. They were
17 removed prior as indicated in the letter.

18 Q Okay, so from your investigation of the
19 items they were separate, contained in pillboxes, I
20 believe you said, or fiber boxes of some sort?

21 A Well, the material I believe that was
22 submitted originally was submitted in -- in envelopes,
23 and then my material was placed in pillboxes.

24 Q Okay, now you also indicated that there
25 was head hair, and I believe that was from the Q-29

1 sample?

2 A There were head hairs from 29, that's right.

3 Q Okay, so as I understand, then, the sample
4 of - - of Q-29 would have contained numerous items which
5 you determined to be pubic and head hair?

6 A Right, there were other - - yeah, right.

7 Head hairs, fibers, and one pubic hair, right.

8 Q Okay, one pubic hair, fibers and head
9 hair? How many head hair was determined?

10 A I count three.

11 Q Three? Well, did you make a comparison
12 of these head hairs among each other to determine if they
13 were microscopically similar?

14 A At the time - - no, I didn't compare them
15 among themselves, no.

16 The - - I had the victim's hair sample, and
17 the purpose here would be to see if there were any hairs
18 that were different than hers so that it would be suitable
19 for comparison. Possibly later to be identified with a
20 given individual.

21 Q Okay, but you did - - did you compare them
22 to the victim's hair?

23 A Yes, I did.

24 Q And your conclusion was it was not her
25 hair; is that correct?

A Well, there was one hair like hers.

$Q_{SO} = -$

3 A And the other hair was of very limited
4 value. It was a very fine light brown head hair, approx-
5 imately two inches in length, that appeared to have
6 fallen out naturally. Very limited value.

7 Q And the third hair - -

8 A Wouldn't actually use this to reach a
9 conclusion with - -

Q And the third hair - -

A The third one was a black - -

REPORTER: One person at a time, please.

13 WITNESS: Excuse me.

14 A The third one is a black artificially
15 created head hair. Very wavy in appearance. Approximately
16 four inches long. It appeared to have been - - been
17 removed naturally, fallen out naturally. It was different.
18 It indicated recent artificial treatment.

19 Q Okay, did you make comparisons of the
20 mother's hair, head hair, father's head hair, to eliminate
21 those from the head hair you found, or which was found in
22 Q-29?

23 A I believe I did. If I could check here
24 just to be sure.

25 (Whereupon the witness goes

through documents.)

2 A I - - I don't believe I - - I knew at the
3 time who was the brother and the father, they didn't - -
4 it wasn't indicated to me. I did receive hairs from
5 Deanna Johnson, Dennis Johnson, and Darcy Johnson.

6 The head hair sample I was - - the only - -
7 well, I received two head hair samples. One from Deanna
8 and one from Darcy. I did not receive a head hair sample
9 from Dennis Johnson.

Q Okay, and did you make comparison of those to the head hair found in Q-29?

12 A Right, I would have compared every head
13 hair sample with every question head hair.

14 Q And did you come to a conclusion as to
15 whether they were - - I believe you said they could be
16 no conclusion, microscopically similar, or definitely not;
17 Is that correct?

18 A (No response.)

Q Would be your three conclusions?

20 A Well, I - - I said either they could,
21 they could not have, or no conclusion.

MR. BISHOP: Okay.

23 A They - - I didn't - - they were not the
24 same. In other words, the question hairs which were found
25 on the items from the victim could not be associated .

1 with the family.

2 Q Now, you indicated that K-103 was submitted
3 as evidence item 14-F, and then you indicated that that
4 was indicated to you that it was hair from Charles I.
5 Fain; is that correct?

6 A Right.

7 Q Did you receive head hair also from Mr.
8 Fain?

9 A I believe I did at a later date.

10 (Whereupon the witness goes
11 through documents.)

12 A I can't find that particular report, but
13 I do have indicated in my notes that I did receive hair
14 - - head hair samples from him as well.

15 MR. BISHOP: I can't find the report,
16 either, but I - - I - - my recollection was that I have
17 read that.

18 Q Did you make a comparison within your
19 knowledge? Did you make a comparison of Mr. Fain's hair
20 with the - -

21 A Yes, I did.

22 Q - - individual hairs on Q-29?

23 A Yes, I did.

24 Q And did you come to a conclusion in regards
25 to those?

1 A Well, the head hairs were dissimilar, and
2 could not have originated from Charles Fain.

3 MR. BISHOP: Just to have a complete under-
4 standing of hair. It's my understanding that I would lose
5 somewhere in the area of a hundred hairs from my body
6 a day.

7 Q Would that be - -

8 A Well, that's - - that's in the literature.

9 Q That is - - I'm - - is that what we believe,
10 or - -

11 A Well, it's - - it's been accepted, yes.

12 MR. BISHOP: Okay.

13 A It depends on the individual.

14 Q And would that be your entire body, pubic
15 region, arms, the chest?

16 A I think they - - they just did a study
17 with head hairs in that regard.

18 Q Okay, so - -

19 A So I have no knowledge of how many pubic
20 hairs fall out.

21 MR. BISHOP: Okay, and you said that these
22 were natural. You made reference that they had fallen
23 out naturally.

24 Q You can tell that versus if it was pulled
25 out; is that correct?

1 A That's right.

2 Q And I guess there is stretching or something
3 that you can determine that by?

4 A Yes, the general appearance of the root
5 and its stage of growth can give an indication as to the
6 way that hair was removed.

7 If the hair is in a growing stage, quite often
8 tissue from the follicle that surrounds the hair is - -
9 also comes out with the hair.

10 It also distends or - - and mis-shapes the - -
11 the root itself.

12 If a hair has - - has fallen out naturally,
13 the - - the root appears to have a club shape, very
14 similar to the appearance of a - - of a wooden matchstick.

15 A hair that possesses this particular character-
16 istic could also have been forcibly removed, not indicating
17 in a violent sense, but depending on the particular stage.
18 If it's in a resting stage, it forms the club. If hairs
19 are yanked out, a resting hair could fall out and give no
20 indication of being forcibly removed.

21 But, on the other sense, hairs that have been
22 forcibly removed in a growing stage would definitely
23 indicate force.

24 MR. BISHOP: Now, I - - I notice on
25 occasion that I get hair on a suit coat, for example.

1 Q Does certain types of items attract hair;
2 a sweater, nylon?

3 A Oh, sure.

4 Q And static electricity?

5 A That's part of it.

6 Q Okay, and then so I -- certain items do
7 pick up hair from other sources? I mean --

8 A Well, yes; hairs -- hairs will transfer.
9 They have scales that have actual ridges, and they will
10 transfer and catch onto other items. Some items, wool,
11 for instance, also has scales on the surface of the hairs,
12 and they collect items, hairs, and -- and other materials
13 very easily.

14 Whereas items that -- textile products that
15 are very finely woven -- pantyhose being a good example
16 -- generally does not pick up hairs and fibers like
17 other items unless there is some electric -- electrostatic
18 charge involved.

19 Q Now, you indicated that you had done the
20 head hairs of Deanna Johnson, and Darcy Johnson in com-
21 parison, but apparently not the father?

22 A That's -- that's right.

23 Q Okay, and, but did you have pubic hairs
24 from those three individuals also?

25 A No, I received pubic hairs from -- I

1 believe they were later identified as the mother and
2 father - -

3 MR. BISHOP: Okay.

4 A - - but not the sister.

5 Q Okay, did you make a comparison of those
6 - -

7 A Yes.

8 Q - - to the Q-29?

9 A Yes, I did.

10 Q And did you come to a conclusion in regards
11 to those?

12 A Right, the - - the two question pubic hairs
13 could not have originated from those individuals.

14 MR. BISHOP: Now, also, and - - and you
15 might have stated already, but I been making reference
16 to Q-29, and I believe on Q-31 was the other sack of
17 hairs and fibers, and there was a pubic hair contained
18 in that which you indicated - - not from your own
19 knowledge, but had been indicated to you it was from
20 the socks.

21 WITNESS: That's right.

22 Q Okay, and was a comparison made of that
23 pubic hair to K-103 and the mother and the father?

24 A Yes, every pubic hair sample that was
25 submitted comparison was conducted.

1 Q And was there a - - a match - -

2 MR. BISHOP: I don't want to say match.

3 Q Microscopically similar characteristics
4 with any sample on the sock, or the Q-31?

5 A Similar tends to denote vagueness. Very
6 similar in color. There are many hair samples that were
7 submitted - - submitted that appeared similar in color,
8 and general shape, and appearance.

9 There were no other pubic hairs that I compared
10 that exhibited the same microscopic characteristics except
11 those submitted by Charles Fain. This would regard to
12 the - - the question pubic hairs Q-29 and Q-31.

13 Q Also Q-31?

14 A Right.

15 Q How many characteristics you indicated,
16 length, and color, many items; how many characteristics
17 are there in a hair that you - - for your comparison
18 purposes?

19 A Well, I - - you really can't count them
20 all, because if you started comparing - - counting all
21 of the characteristics you would have to probably con-
22 sider all of the cells that are present and their
23 particular arrangement.

24 Hairs are - - are different in a sense, even
25 within a given individual body area, such as the pubic

1 region.

2 They - - the sample exhibits a range of character-
3 istics. Some hairs are darker than others. Some hairs
4 are split more than others. Some hairs have - maybe a
5 slightly different pigment arrangement, but generally
6 speaking, though, the - - the sample itself is somewhat
7 uniform. Different yet uniform. Sounds confusing,
8 but they all have characteristics that carry over from
9 one hair to the other.

10 The sample itself is - - is characterized before
11 a comparison is done.

12 The notes that are taken, that I take, are
13 reference points basically for me to form within my own
14 mind a visual image of the particular characteristics of
15 this person's hairs exhibit. The question hairs are then
16 compared.

17 In no way am I saying that a question hair will
18 look exactly like every hair in the - - the known sample.
19 I have already stated that there are - - there are hairs
20 that are even - - even exhibit some different - - differ-
21 ences, but when you compare them with specific hairs
22 through the sample, it can be seen that they are alike.
23 Again, more alike than what you would expect from - - from
24 another person's hairs; and that is how the conclusion is
25 reached.

1 There may be twenty, fifteen, thirty particular
2 characteristics that are itemized in the notes, but I - -
3 I don't use the notes to say with certainty, "Well, this
4 pigment granule is the same as this pigment granule."
5 It's not the same as what you might see with a physical
6 match, a fingerprint, a shoe print, a tire tread, striations
7 on bullets. It's - - it's not the same in that sense.

8 There are biological materials, and there is
9 some variability.

10 Q So it's either fifteen, twenty, thirty, or
11 there is no answer to that question; is that - -

12 A It's a subjective science, and the particu-
13 lar methodology used by the examiner may - - may differ
14 slightly from examiner to examiner. I - - I don't as
15 such count the characteristics.

16 MR. BISHOP: Okay, you've said you have
17 read substantial literature in the area, and I am reading
18 from what you stated, "That each examiner kind of sets
19 up his own criteria."

20 Would that be - -

21 A Well - -

22 Q - - within - - within tolerances, of
23 course, but - -

24 A Sure. Sure, they're some examiners use,
25 well, a system whereby they have a checklist, and they go

1 down the checklist.

2 I initially used the checklist when I first
3 started in -- in the -- in the work that I am doing
4 today, but I found it -- it much easier, and as applicable
5 using the present system that I have, and just identifying
6 the characteristics generally from the sample.

7 The characteristics can be pretty much imprinted
8 on your mind in a very short time, depending on the
9 experience that you have. In five years at looking at
10 hairs in over two thousand cases, it -- it becomes rela-
11 tively easy to visualize the hair characteristics without
12 having to refer back to notes, because you're not comparing
13 notes. You're actually comparing hairs, and these can
14 be seen in the same field of view with a comparision
15 microscope.

16 Q Are you familiar with Michael P. Molone?

17 A Yes, I am. He is in our unit.

18 Q And he is an examiner similar to you; is
19 that correct?

20 A Using similar again.

21 (Laughter)

22 A He --

23 MR. BISHOP: I'm sorry.

24 Q Is he assigned --

25 A He doesn't look anything like me.

1

(Laughter)

2

3 I'm sure.

4

5 Q Is he assigned to the hair analysis unit,
or the hair and fiber analysis unit?

6

7 A Microscopic analysis unit, right. We have
ten examiners. I -- ten or eleven, and he is one of them.

8

9 Q Okay, so if he was to testify he may use
10 a different criteria than you? For example, there are
11 twenty characteristics, or would you all use the same
criteria as to characteristics?

12

13 A Some use numbers, some identify numbers.
14 It -- it can be significant to that particular examiner
15 to use numbers. I do not use numbers when I -- when I
16 show comparison -- when I indicate a match. It can be
17 misleading in a sense for -- for me to say, "I identified
18 twenty characteristics that match," where there may be
19 more, and this may seem to be a lot to some people. I
20 -- I don't use that, because it -- but some examiners
do use numbers.

21

22 MR. BISHOP: Okay, so Molone may refer to
23 twenty characteristics, and some -- somebody else may
24 refer to fifteen that they are -- that they are particu-
25 larly interested in; where you might in your mind break
down one of those areas further. You know, the sub-

1 characteristics.

2 I believe if Molone was to testify he would
3 say, "Well, basically there is twenty areas, and within
4 those areas each may have a one to ten."

5 WITNESS: Well, I haven't discussed in
6 length the particular way each examiner does -- with
7 each examiner. I do speak with them periodically, and
8 we do have conferences concerning what characteristics
9 are seen, and if an unusual characteristic or match is
10 seen, then of course we are all called in and review it
11 to gain some -- some experience from that, but I don't
12 -- I don't recall Mr. Molone specifically using numbers.
13 He may. I -- I don't know.

14 If -- if you have it -- have something that
15 you're referring to, perhaps then it would, you know --

16 MR. BISHOP: Yeah, I do.

17 WITNESS: I -- I figured you did, yeah.

18 (Laughter)

19 MR. BISHOP: I -- I don't mean to put
20 words in your mouth, or -- or confuse you, or goof you
21 up, or anything on that order; but basically as I under-
22 stand the testimony, and -- and limited understanding
23 I have of the whole area.

24 It would appear to me that there is not any
25 tolerances published for hair. For example, in the

1 Pigment area. There are numerous things in the area of
2 pigment you look for, but there is no actual published
3 tolerance that everybody looks for. It's an art with
4 the examiner himself.

5 Q Would that be close?

6 A Yes, it is - - it is close. There recently
7 was held at the FBI Academy a hair symposium. This was
8 getting together all of the people, the different people,
9 that examine hairs throughout the world to see if they
10 could come up with a particular methodology that it could
11 be carried over.

12 The difficulty there is it - - is some like to
13 use computer lingo. They get programs set up for this
14 is - - it's characteristic, and this is that characteris-
15 tic, and this pigment distribution is to the cuticle, and
16 this pigment distribution is to the medulla. I find fault
17 with that, because even within the known sample you might
18 find pigment - - it - - it fluctuates so that to - - to
19 plug in into the program "this is the way it is" can be
20 wrong.

21 The hair comparisons, and expert opinion has
22 been accepted in the courts for years, and it's primarily
23 - - I would say it's primarily an art form. It's some-
24 thing that has developed as any individual who would compare
25 two things over a given period of time. It becomes an

1 art form.

2 MR. BISHOP: That was my understanding
3 compared to a chemistry type with fluids where it would
4 be an absolute science.

5 Q Is that - -

6 A I - -

7 MR. BISHOP: Or maybe I'm wrong on chemicals.

8 A I kind of think hairs are kind of absolute
9 science, but when - - when you're referring to absolute,
10 I think you mean that there is less interpretation in - -
11 involved. When a particular unknown chemical is shot
12 into a mass spectrograph, you will get a printout of the
13 different elements, the different compounds that are
14 present, and comparing these with known material; cocaine,
15 or heroin, or some other substance, it will give the same
16 chart, and they can identify them as - - as that particular
17 substance. Whereas hairs are - - are not quite the same.
18 We haven't come to that point yet where we can shoot a
19 hair into a mass spectrograph, or an infrared spectrograph,
20 or whatever, and come up with a chart specifically to a
21 given individual.

22 MR. BISHOP: That has been tried and turned
23 down.

24 Q Has it not?

25 A It has been tried many different ways using

1 neutron activation analysis, and the gas percolates
2 chromatography, and on and on; and everybody tries to
3 make it to say specifically that this hair came from
4 this person, and no other person. It hasn't been --
5 it hasn't been -- it hasn't reached that point yet.

6 Q Did you write a report, documented report,
7 with your conclusions?

8 A Well, I have about fifteen or so reports.

9 Q In regards to K-103 pubic hair sample?

10 MR. BISHOP: I believe it's the one dated
11 November 1st, 1982.

12 A Yes, that's it.

13 Q On page three, as I understand, is it not
14 true that your conclusion is, "The light brown Caucasian
15 pubic hairs previous -- previously submitted in the
16 Q-29 and Q-31 specimen exhibit the same microscopic
17 characteristics as hairs found in the K-103 specimen,
18 and could have originated from the same source as the
19 K-103 hairs. It is pointed out that hairs do not possess
20 enough individual microscopic characteristics to be
21 positively identified as originating from a particular
22 person to the exclusion of all others"? Is that your
23 conclusion as written in your report dated November 1st,
24 1982?

25 A That's word-for-word except for a reference

1 to a particular lab report, which identified the source
2 of the Q-29 and Q-31 specimens, but that - - that's it.

3 MR. BISHOP: Yeah, the parenthetical I
4 - - I did leave out.

5 WITNESS: That's correct.

6 MR. BISHOP: I have no other questions,
7 Your Honor.

8 MR. HARRIS: I don't believe that I have
9 anything further, Your Honor.

10 COURT: Are you seeking that this witness
11 is to be excused as well as - -

12 MR. HARRIS: Yes, Your Honor.

13 COURT: Do you have any objections?

14 MR. BISHOP: I have no objections. We - -

15 COURT: You may step down, sir, and you
16 may be excused.

17 WITNESS: Thank you.

18 MR. HARRIS: Could we take just a brief
19 recess before we call our next witness, Your Honor?

20 COURT: Yes.

21 MR. HARRIS: And I do have a matter I
22 would like to discuss with the Court.

23 COURT: Very well.

24 MR. HARRIS: Before we reconvene.

25 (Whereupon court then recessed)

at 10:28 a.m. Court reconvened at 10:43 a.m. outside the presence of the jury, and the following proceedings were had, to-wit:)

II DOUGLAS W. DEEDRICK

who, being called as a witness
on behalf of the plaintiff,
The State of Idaho, for the
purposes of a previous motion,
having been previously sworn,
testified as follows:

DIRECT EXAMINATION

18 BY MR. HARRIS:

19 Q Mr. Deedrick, did you have occasion at
20 the FBI laboratory to conduct an inventory of what is
21 commonly known as a sex crime kit that was submitted to
22 the lab by the Canyon County Sheriff's Office, and I
23 believe it bears the Canyon County Sheriff's Office number
24 - - evidence number eight?

25 A That's right.

1 A In the course of conducting the inventory
2 of that exhibit, did you have occasion to observe, or as
3 a part of that sex crime kit certain swabs?

4 A No, there were no swabs in the sex crime
5 kit.

Q And specifically, anal swabs, vaginal
swabs, or oral swabs?

A No swabs were found in the kit.

9 MR. HARRIS: Okay.

10 I don't believe I have anything further, Your
11 Honor.

12 MR. BISHOP: Just a couple of questions,
13 Your Honor.

CROSS EXAMINATION

15 BY MR. BISHOP:

16 Q You stated that it was the sheriff's
17 number eight that was the - - commonly called the sex
18 crime kit?

A Yes, I believe that was it.

20 Q Was that a standard type of kit that you
21 provide, or agencies are provided?

22 A Well, the kit is normally prepared by some
23 company that - - and then generally is - - is standard.

24 Sirchie Company -

25 REPORTER: How is that spelled?

1 WITNESS: S-I-R-C-H-I-E.

2 A Sirchie Company, for instance, is one
3 that prepares a kit, but there are others.

4 They prepare a kit, and they have swabs, and
5 slides which the swabs are smeared onto.

6 They have envelopes for pubic hair samples,
7 pubic hair combings, head hair samples, head hair combings.
8 They have saliva sample, envelopes.

9 It - - it just is prepared to simplify a
10 crime scene specialist so that he knows to remember to
11 get all of these samples, because they - - they may have
12 some pertinence at a later date.

13 Q Okay now, from - -

14 MR. BISHOP: Do you have your report in
15 front of you, the inventory report?

16 WITNESS: They are all here, yes.

17 MR. BISHOP: Okay, from number eight,
18 basically would be the sex crime kit. You received
19 questioned items Q-12 through Q-22.

20 Q Would that - -

21 A Well, it would have been through Q-24.

22 Q Okay, Q-24?

23 A Right. There are Q-23 and Q-24 are
24 identified as an unknown substance.

25 Q So as I understand, that would have been

1 boxed into one box which was, quote, "the sex crime kit",
2 and then - -

3 A Right, a small box within the other items.
4 Right.

5 MR. BISHOP: Okay, and then it was broken
6 down.

7 Okay, have no other questions, Your Honor.

8 MR. HARRIS: I have nothing further, Your
9 Honor.

10 COURT: You may step down, sir.

11 I take it - -

12 MR. HARRIS: Mr. Howlette, I'm wondering
13 if I could have you just stay on the witness stand for
14 just a - - two or three more questions when the jury
15 comes back in, or excuse me, Mr. Deedrick.

16 COURT: Are you ready to have the jury
17 returned?

18 MR. HARRIS: We are ready to have the jury
19 brought back.

20 COURT: Would you ask Dean to bring the
21 jury in.

22 (Whereupon the jury then
23 returned into open court at
24 10:53 a.m., and the following
25 proceedings were had, to-wit:)

1 COURT: You waive roll call of the jury?

2 MR. HARRIS: We would waive the call, Your
3 Honor.

4 MR. BISHOP: We would raise - - waive, Your
5 Honor.

6 DOUGLAS W. DEEDRICK

7 who, being called as a witness
8 on behalf of the plaintiff,
9 The State of Idaho, having
10 been previously sworn, testified
as follows:

11 REDIRECT EXAMINATION

12 BY MR. HARRIS:

13 MR. HARRIS: Mr. Edwards, I am wondering
14 if I could have you show this witness Exhibit Number
15 Seven A and Seven B, or excuse me. Just Number Seven.

16 (Whereupon the exhibit was
17 handed to the witness by the
18 bailiff as requested by
19 counsel.)

20 MR. HARRIS: Okay, Mr. Deedrick, would you
21 examine - - I - - I think you have to examine the shoes
22 that are in the box.

23 Would you take a look at those, please.

24 Q And tell me if any - - if in any way you're
25 familiar with those exhibits?

1 A Yes, these are - - are specimens Q-53
2 and Q-54, and my initials would be right here on the
3 heel area.

4 Q Did you examine those shoes in the lab?

5 A Yes.

Q And what was the purpose of that examination?

8 A Well, to remove any debris such as hairs
9 for comparison.

10 Q And did you find any hairs for comparison,
11 or did you make any comparison as a result of that examin-
12 ation?

13 A Well, I would have to refer to my notes
14 again.

15 (Whereupon the witness goes
16 through documents.)

17 A There were only animal hairs removed from
18 the shoes.

19 Q Okay, do you remember when you received
20 that exhibit at the lab?

21 A They were received with other items on
22 November 3rd, 1982.

23 MR. HARRIS: I don't believe I have any-
24 thing further.

25 MR. BISHOP: I have nothing.

COURT: Very well.

You may step down, sir.

Is this witness now excused?

MR. HARRIS: Yes, Your Honor.

5 MR. BISHOP: I have no objection for him
6 to be excused.

MR. HARRIS: Victor Rodriguez.

VICTOR RODRIGUEZ

who, being called as a witness
on behalf of the plaintiff,
The State of Idaho, after
first having been duly and
regularly sworn, testified
as follows:

DIRECT EXAMINATION

BY MR. MAYNES:

16 Q Will you please state your name and spell
17 your last name for the record?

A Victor Rodriguez.

19 Q What is your present address, after you
20 spell your name?

21 A R-O-D-R-I-G-U-E-Z.

22 My address is 605 North Capital, Idaho Falls,
23 Idaho.

24 Q What is your occupation, sir?

25 A I am presently employed with the Bonneville