

**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.

**PANELA 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?

19 A I'm a forensic chemist at the state crime  
20 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, [REDACTED]?

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?

11           A     - - we supply on a regular basis free sex  
12 crime kits to hospital emergency rooms, including Mercy  
13 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 Now 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 it, 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.

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

1      rope-like horizontal bar is made from various manufacturers.  
2

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 - -

14     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 - -

20     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 . . . . .  
16 (Whereupon the witness goes  
17 through the exhibits as  
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.)

16 Q Could you then tell us, Mr. Deedrick,  
17 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.

11 Q Okay, and the Q-29 which you referred to  
12 as hairs and fibers -- I believe initially you stated  
13 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.

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

23 A That's right.

Q And Q-31 you initially identified as 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 Pain.

3           MR. BISHOP: Just to have a complete under-  
4         standing of hair. It's my understanding that I would lose  
5         somewheres 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:)

## 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