


**FILED**  
  
**JAN 11 1990**

PEGGY J. STEVENS MCGRAW, CLERK  
 WESTERN DISTRICT

IN THE MISSOURI COURT OF APPEALS  
WESTERN DISTRICT

**ORIGINAL**

STATE OF MISSOURI, )  
 )  
 RESPONDENT, )  
 )  
 VS. )  
 )  
 ROBERT DAVID RAINE, )  
 )  
 APPELLANT. )

WD# 41793

IN THE CIRCUIT COURT OF CLAY COUNTY, MISSOURI, AT LIBERTY  
SEVENTH JUDICIAL CIRCUIT - DIVISION ONE  
HONORABLE GLENNON E. MCFARLAND -- JUDGE

STATE OF MISSOURI, )  
 )  
 PLAINTIFF, )  
 )  
 VS. )  
 )  
 ROBERT DAVID RAINE, )  
 )  
 DEFENDANT. )

CASE # CR187-823FX

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TRANSCRIPT ON APPEAL

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**APPEARANCES**

**FOR STATE:**

**FOR DEFENDANT:**

MR. A. REX GABBERT  
 ASS'T PROSECUTING ATTORNEY  
 CLAY COUNTY  
 LIBERTY, MO 64068

MR. FRED DUCHARDT  
 PUBLIC DEFENDER  
 CLAY COUNTY  
 LIBERTY, MO 64068

Jerry W. Davis  
 Official Court Reporter  
 Division One, Seventh Judicial Circuit  
 Liberty, Mo 64068

1 A. WELL, IF HE'S A NON-SECRETOR IT WOULDN'T EXCLUDE IT.  
2 I REALLY DON'T KNOW ENOUGH ABOUT HIM TO MAKE A  
3 DEFINITIVE STATEMENT.

4 MR. GABBERT: THANK YOU. NO  
5 FURTHER QUESTIONS.

6 RE-CROSS-EXAMINATION BY MR. DUCHARDT:

7 Q. JUST TO MAKE SURE, THOUGH, MR. BOOTH, HE COULDN'T  
8 HAVE LEFT THAT "H" SUBSTANCE THAT YOU FOUND, IS THAT  
9 TRUE?

10 A. RIGHT, THAT'S CORRECT.

11 Q. IN OTHER WORDS, IN ORDER TO INCLUDE HIM IN THIS  
12 SITUATION YOU WOULD HAVE TO HAVE THREE INDIVIDUALS?

13 A. THAT'S CORRECT.

14 MR. DUCHARDT: THANK YOU, SIR.

15 MR. GABBERT: MR. BOOTH, THIS TEST  
16 CONDUCTED ON -- I'LL WITHDRAW THE QUESTION, YOUR  
17 HONOR.

18 NO FURTHER QUESTIONS.

19 MR. DUCHARDT: NOTHING FURTHER,  
20 YOUR HONOR.

21 THE COURT: YOU MAY STEP DOWN.  
22 CALL YOUR NEXT.

23 (WITNESS EXCUSED.)

24 (COUNSEL HANDS ITEM TO REPORTER WHO MARKS IT AS  
25 STATE'S EXHIBIT NUMBER 42.)

1 COUNSEL.)

2 MR. DUCHARDT: I MAY HAVE NO  
3 OBJECTIONS. (EXAMINES DOCUMENT.)

4 YOUR HONOR, I HAVE, THE ONLY PROBLEM I HAVE WITH  
5 THE REPORT, OTHER THAN THE OBJECTION I'VE ALREADY  
6 RAISED, CONCERNS THE ITEMS AT THE BOTTOM, WHICH HAVE  
7 NOT COME INTO EVIDENCE YET, WHICH ITEMS WERE TAKEN  
8 FROM MR. RAINE AT THE TIME OF HIS ARREST.

9 AND, OF COURSE, THEY HAVE NO RELEVANCE TO THIS  
10 CASE AND NO RELEVANCE TO THE TRIAL OF THIS MATTER, SO  
11 -- I'D HAVE A PROBLEM WITH BRINGING IN THIS REPORT  
12 AND WOULD OBJECT TO IT, NOT ONLY ON THE GROUNDS AS  
13 RAISED PREVIOUSLY IN BOTH OUT MOTION TO SUPPRESS AND  
14 ALSO OUR MOTION TO CHALLENGE THE COURT'S ORDER FOR  
15 BLOOD SAMPLE, BUT ALSO BECAUSE IT REFERS TO  
16 IRRELEVANT AND HIGHLY PREJUDICIAL MATTERS WHICH HAVE  
17 NOT COME INTO EVIDENCE TO THIS POINT IN TRIAL.

18 THE COURT: SUSTAINED.

19 (THE FOLLOWING PROCEEDINGS WERE HAD IN THE PRESENCE  
20 AND HEARING OF THE JURY PANEL):

21 **REDIRECT EXAMINATION BY MR. GABBERT:**

22 Q. MR. BOOTH, JUST, ISN'T IT A FACT THAT THE TEST ON THE  
23 PAIR OF PANTIES THAT WERE SUBMITTED, THE "H" ACTIVITY  
24 ON THOSE PANTIES DO NOT EXCLUDE THE DEFENDANT, ROBERT  
25 RAINE?

1                   MUCH AS YOU FOUND IN THE PANTIES?

2       A.           RIGHT. SHE COULD'VE CONTRIBUTED THE "A," TOO.

3       Q.           YES, I UNDERSTAND.

4       A.           OKAY.

5       Q.           AND, OF COURSE, IN DAVID RAINE'S SITUATION, SAME  
6                   SITUATION ON THE "A" AND "H," UNLESS HE WAS A NON-  
7                   SECRETOR?

8       A.           RIGHT. IF HE'S A NON-SECRETOR THEN YOU'VE GOT A TYPE  
9                   "O" PERSON THAT, HE COULD'VE STILL CONTRIBUTED THE  
10                  STAIN, BUT A TYPE "O" PERSON ALSO COULD'VE  
11                  CONTRIBUTED THE STAIN.

12                               MR. DUCHARDT: OKAY. I HAVE NO  
13                               FURTHER QUESTIONS, YOUR HONOR.

14                               MR. GABBERT: YOUR HONOR, I HAVE A  
15                               FEW MORE QUESTIONS.

16                               MAY WE APPROACH THE BENCH?

17                               THE COURT: YES, SIR.

18                               (COUNSEL APPROACH THE BENCH AND THE FOLLOWING  
19                               PROCEEDINGS WERE HAD):

20                               MR. GABBERT: YOUR HONOR, I HAVE AS  
21                               FEW MORE QUESTIONS ON REDIRECT I WANT TO ASK, I WANT  
22                               TO GET THE LAB REPORT INTO EVIDENCE.

23                               MR. DUCHARDT: MAY I SEE THE REPORT  
24                               FOR A MINUTE?

25                               MR. GABBERT: (HANDS ITEM TO



1 Q. OKAY.

2 A. HE COULD STILL HAVE CONTRIBUTED THE STAIN.

3 Q. ALL RIGHT. SO, EVEN IF, YOU'RE SAYING EVEN IF HE'S

4 A, IF HE'S A NON-SECRETOR-----

5 A. RIGHT.

6 Q. -----THAT HE WOULD, THEN, HAVE CONTRIBUTED THE "H," OR

7 COULD HAVE CONTRIBUTED THE "H?"

8 A. NO, YOU DON'T CONTRIBUTE ANYTHING IF YOU'RE A NON-

9 SECRETOR. YOU'D GET ZERO.

10 Q. OKAY.

11 A. SO, THERE'S NOTHING.

12 Q. SO, AT LEAST THE "H" ACTIVITY, ACCORDING TO YOUR

13 TESTIMONY, COULD NOT HAVE COME FROM DAVID RAINE, IS

14 THAT CORRECT, OR AT LEAST IN THE AMOUNT IN THE

15 PANTIES THAT YOU'RE TALKING ABOUT?

16 A. YEAH, YEAH, THAT'S CORRECT BECAUSE HE'S NOT A TYPE

17 "O" SECRETOR, HE'S A TYPE "A." SO, HE'S EITHER A

18 TYPE "A" NON-SECRETOR OR SECRETOR. BUT, THERE IS "A"

19 SUBSTANCE ON THERE, SO THERE COULD BE THREE PEOPLE

20 INVOLVED IN THIS THING.

21 Q. SURE, I UNDERSTAND.

22 A. THAT'S A POSSIBILITY.

23 Q. BECAUSE [REDACTED] IS TYPE "A"-----

24 A. YES. AND SHE COULD'VE CONTRIBUTED THAT.

25 Q. -----AND SHE WOULD'VE CONTRIBUTED SOME "H," BUT NOT AS

1                   GROUPINGS LIKE I DID ON THE SWAB, SAME THING.

2                   AND I GOT A DIFFERENT, DIFFERENT TYPE OF GROUPINGS  
3                   THAN I DID ON THE SWAB.   THERE WAS "A" AND "H"  
4                   ANTIGEN ACTIVITY PRESENT.   BUT, IN THIS INSTANCE THE  
5                   "H" FAR EXCEEDED THE "A" CONTRIBUTION.

6                   SO, THE "H" IS NOW HIGHER IN THE SPECTRUM, WHICH  
7                   INDICATES THAT YOU'VE GOT AN "O" PERSON MIXED IN.  
8                   THIS IS, YOU WOULDN'T EXPECT TO SEE THIS WITH AN "A"  
9                   PERSON.

10          Q.        OKAY.

11          A.        ALSO THERE WAS, THE "P.G.M." IN THIS INSTANCE WAS  
12                   ALSO TWO PLUS ONE PLUS, BUT THE ONE PLUS FAR EXCEEDED  
13                   THE TWO PLUS CONTRIBUTION, SO THIS, AGAIN, SUGGESTS  
14                   THAT YOU'VE GOT A MIXTURE OF FLUIDS, POSSIBLY FROM A  
15                   CONTRIBUTOR OF TWO PLUS ONE PLUS AND ALSO A PERSON  
16                   OF THE ONE PLUS GROUPING.

17          Q.        OKAY.   NOW, AT LEAST INsofar AS THAT STAIN IS  
18                   CONCERNED, THAT WOULD BE CONSISTENT WITH DAVID  
19                   RAINE'S BLOOD INsofar AS THE "P.G.M. ONE PLUS," IS  
20                   THAT CORRECT?

21          A.        YEAH, THAT'S CORRECT.

22          Q.        BUT, IT'S INCONSISTENT WITH HIS TYPE "A" BLOOD  
23                   BECAUSE OF THE HIGH "H" ANTIGENIC ACTIVITY, ISN'T IT?

24          A.        IF HE'S, IF HE'S A SECRETOR IT WOULD BE INCONSISTENT.  
25                   IF HE'S A NON-SECRETOR THEN HE'S STILL INCLUDED.

1 BEING-----

2 A. WELL, IT'S ALSO CONSISTENT WITH JUST AN "A" PERSON BY  
3 THEMSELVES OR TWO "A" PERSONS BY THEMSELVES.

4 Q. OKAY. NOW, WHEN YOU ORIGINALLY DID THESE TESTS, AND  
5 BEFORE YOU OBTAINED THE BLOOD SAMPLE FROM MR. RAINE,  
6 DID YOU HAVE AN OPINION AT THAT TIME AS TO WHETHER  
7 YOU WOULD'VE EXPECTED THE PERSON CONTRIBUTING THE  
8 SEMINAL SAMPLE TO HAVE BEEN AN "O" TYPE?

9 A. FROM THE SWAB ITSELF?

10 Q. YES, SIR.

11 A. NO.

12 Q. OKAY. WERE THERE ANY OTHER SAMPLES THAT YOU  
13 OBTAINED, THAT YOU EXAMINED WHICH LED YOU TO BELIEVE  
14 THAT THIS CONTRIBUTOR OF SEMEN WOULD'VE BEEN AN "O"  
15 TYPE?

16 A. YEAH, THERE WAS A PAIR OF PANTIES THAT WASN'T  
17 MENTIONED IN THE DIRECT EXAMINATION.

18 Q. OKAY, WOULD YOU DESCRIBE WHAT YOU DID WITH THOSE  
19 PANTIES TO BE ABLE TO OBTAIN A SAMPLE FROM THEM, SIR?

20 A. OKAY, THESE PAIR OF PANTIES CAME FROM THE RAPE KIT  
21 WHICH IS TAKEN FROM THE, IT WAS TAKEN FROM MISS PLATH  
22 THERE AT THE HOSPITAL, MORE THAN LIKELY.

23 AND I CUT A, IT WAS A STAIN IN THE CROTCH OF THESE  
24 PANTIES THAT, EYE INDICATION, HAD SEMEN PRESENT.  
25 AND, SO, FROM THIS POINT I WENT ON TO DO THE "ABO"

1 WOULD BE THE DOMINANT CONTRIBUTOR IF THERE WAS A TYPE  
2 "O" PERSON INVOLVED.

3 Q. ALL RIGHT. AND, OF COURSE, MR. RAINE, YOU INDICATED,  
4 WAS A TYPE "A" PERSON AS WELL?

5 A. THAT'S CORRECT.

6 Q. SO, THEN I GUESS THE FLY IN THE OINTMENT THERE IS THE  
7 "H" SUBSTANCE, WOULD THAT BE----

8 A. WELL, BOTH OF THEM WOULD PROBABLY HAVE THE "H"  
9 SUBSTANCE ALSO. OKAY, THE FACTOR HERE THAT'S  
10 IMPORTANT IS THE "A" SUBSTANCE EXCEEDED THE "H."  
11 OKAY, IF IT WAS THE OTHER WAY AROUND THEN YOU'D HAVE  
12 TO THINK THAT THERE WAS AN "O" PERSON CONTRIBUTING  
13 MIXED WITH THE "A" PERSON, WHICH IS NOT THE CASE  
14 HERE.

15 IT COULD STILL JUST BE AN "A" PERSON INVOLVED IN  
16 THIS THING, OR TWO "A" PEOPLE, THAT'S POSSIBLE.

17 Q. OKAY, COULD IT ALSO, THOUGH, BE AN "O" PERSON  
18 CONTRIBUTING THAT "H" SUBSTANCE?

19 A. WELL, THAT'S POSSIBLE, BUT THAT WOULD BE FAR, THE  
20 AMOUNT OF FLUID CONTRIBUTED BY THE "O" PERSON WOULD  
21 BE MUCH LESS THAN THE "A" PERSON. OKAY, SO, IF THEY,  
22 THE SEMINAL FLUID, IT WOULD BE JUST A LITTLE BIT OF  
23 SEMINAL FLUID AND LOTS OF VAGINAL FLUID IN THIS CASE.

24 Q. OKAY. BUT, THE "H" SUBSTANCE BEING IN ANY TYPE OF  
25 QUANTITY WOULD BE CONSISTENT WITH AN "O" PERSON

1 GONNA HAVE ANTI-B IN YOUR BLOODSTREAM. AND IF YOU'RE  
2 TYPE "B" PERSON YOU'LL HAVE TYPE, ANTI-A IN YOUR  
3 BLOODSTREAM. AND IF YOU'RE A TYPE "AB" YOU'RE NOT  
4 GONNA HAVE ANYTHING, ANY ANTIBODIES IN YOUR  
5 BLOODSTREAM. AND IF YOU'RE A TYPE "O" THEN YOU'LL  
6 HAVE "A," ANTI-A AND ANTI-B IN THE BLOODSTREAM.

7 SO, WE USE THESE, THESE FACTS IN THE BLOOD  
8 GROUPING AND WE USE THAT TO OUR ADVANTAGE.

9 Q. OKAY, SIR. GOING TO THE SWAB THAT WAS OBTAINED AT  
10 THE HOSPITAL FROM [REDACTED], YOU INDICATED THAT  
11 THERE WAS THE PRESENCE OF "A" AND "H" GENETIC  
12 SUBSTANCES. AND YOU ALSO INDICATED THAT "P.G.M. 2  
13 PLUS ONE PLUS," IS THAT CORRECT?

14 A. THAT'S CORRECT.

15 Q. OKAY. NOW, OF COURSE, YOU INDICATED THAT MISS [REDACTED]  
16 IS A TYPE "A"-----

17 A. SECRETOR.

18 Q. -----SECRETOR. WHICH WOULD ACCOUNT FOR -- AND SHE WAS  
19 ALSO, I BELIEVE YOU SAID, "P.G.M. TWO PLUS ONE PLUS,  
20 CORRECT?"

21 A. I BELIEVE SHE IS, YES.

22 Q. OKAY. SO, THAT WOULD ACCOUNT, FROM HER FOR  
23 EVERYTHING EXCEPT HE "H" SUBSTANCE?

24 A. WELL, SHE CONTRIBUTED "H" SUBSTANCE, TOO, BUT I'M  
25 SAYING THAT THE "A" EXCEEDED THE "H," SO SHE, SHE

1 AND THEY GIVE YOU "B" BLOOD, YOU'VE GOT ANTI-B IN  
2 YOUR BLOODSTREAM IF YOU'RE A TYPE "A" PERSON. AND  
3 THE FOREIGN CELLS, THE "B" CELLS, WOULD CLUMP UP IN  
4 YOUR BLOODSTREAM AND CLOG UP YOUR ARTERIES AND YOU'LL  
5 HAVE A TRANSFUSION REACTION WHICH, WHICH IS VERY  
6 DANGEROUS AND CAN CAUSE A PAINFUL DEATH.

7 Q. ALL RIGHT. NOW, WOULD YOU EXPLAIN TO THE JURY FOR A  
8 SECOND, OR FOR AS LONG AS IT TAKES, OF COURSE, WHAT  
9 TYPES OF CELLS WOULD BE PRESENT IN TYPE "A" BLOOD,  
10 TYPE "B" BLOOD, AND TYPE "O" BLOOD?

11 A. YOU MEAN RED CELLS?

12 Q. NO, BASICALLY ALONG THE LINES OF THE, THE, TO BE ABLE  
13 TO REACT IN THIS ANTIGEN-ANTIBODY REACTION THAT WOULD  
14 BE ABLE TO HELP YOU TYPE THE BLOOD?

15 A. WELL, A TYPE "A" PERSON IS GONNA HAVE CELLS THAT HAVE  
16 TYPE "A" SUBSTANCE ON THEM, NO "B" AND MAYBE A LITTLE  
17 BIT OF "H."

18 A TYPE "B" PERSON WILL HAVE "B" SUBSTANCE ON THEIR  
19 CELLS, NO "A" AND A LITTLE BIT OF "H."

20 A TYPE "A," "AB" PERSON, WILL HAVE "A," "B," AND  
21 "H" SUBSTANCE ON THEIR CELLS.

22 AND A TYPE "O" PERSON WON'T HAVE ANY "A," ANY "B,"  
23 BUT THEY WILL HAVE "H." THAT'S THE WAY THE "A.B.O."  
24 SYSTEM BREAKS DOWN ON THE CELLULAR LEVEL.

25 OKAY. NOW, IF YOU'RE A TYPE "A" PERSON YOU'RE

1 A. OKAY.

2 Q. HOW WOULD THIS SHOW UP IN THE TYPE OF PROCEDURE THAT

3 YOU'RE TALKING ABOUT?

4 A. OKAY. WELL, LET'S SAY THE PERSON IS A TYPE "A." AND

5 WE HAVE THIS SECRETION CELL. I INJECT THAT ON TOP OF

6 PLASTIC, A PIECE OF PLEXIGLASS, JUST A DROP. AND

7 THEN I ADD SOME ANTI-A TO THAT.

8 OKAY, AND I MIX THAT UP AND I LET IT, LET IT

9 INCUBATE FOR OVERNIGHT.

10 AND WHAT HAPPENS HERE IS THE "A" WILL STICK TO THE

11 ANTI-A. IT OCCUPIES THE, THE ANTI-A. SO THEN I ADD

12 SOME "A" CELLS THE NEXT MORNING. AND WHAT'LL HAPPEN

13 IS IF THERE'S NO "A" SUBSTANCE PRESENT THEN THE ANTI-

14 A WILL GO TO THE CELLS.

15 BUT, SINCE THEY'RE OCCUPIED IN THE SPECIMEN WITH

16 THE "A" SUBSTANCE IN OUR SAMPLE, THEY DON'T BOTHER

17 THOSE CELLS AND THOSE CELLS REMAIN FREE CELLS.

18 Q. AND HOW WOULD YOU ACTUALLY SEE THAT REACTION?

19 A. IT'S SEEN UNDER THE MICROSCOPE.

20 Q. OKAY. AND YOU CAN ACTUALLY SEE, LIKE, IS IT CLUMPING

21 OF CELLS?

22 A. YEAH, THE ANTIBODIES CLUMP THE CELLS TOGETHER. THEY

23 HOOK UP TO THE CELL AND ANOTHER CELL COMES BY AND

24 THAT HOOKS UP AND IT BECOMES A BIG CLUMP NETWORK.

25 SO, THAT'S WHAT HAPPENS IF YOU'RE A TYPE "A" PERSON

1 CORRECT?

2 A. THAT'S CORRECT. FOR INSTANCE, IF YOU HAD AN ANIMAL  
3 WHICH ALSO HAS "P.G.M.'S" BUT THEIR "P.G.M." PROTEINS  
4 ARE CONSIDERABLY DIFFERENT, THE PATTERN OF SEPARATION  
5 IS DRASTICALLY DIFFERENT. SO, YOU CAN EASILY TELL,  
6 DISTINGUISH AN ANIMAL FROM A HUMAN.

7 AND THERE'S ONLY TEN PATTERNS COMMONLY FOUND IN  
8 THE HUMAN POPULATION, SOME RARE ONES, OF COURSE, BUT  
9 TEN COMMON ONES ARE FOUND. AND SINCE WE, WE RUN  
10 CONTROLS AND WE KNOW HOW, WHAT WOULD SHOW UP ON A  
11 PARTICULAR JELL.

12 Q. OTHER THAN DOING THIS ELECTROPHORESIS THAT YOU'VE  
13 DESCRIBED HERE, WERE THERE ANY OTHER TESTS THAT YOU  
14 DID?

15 A. WELL, TO DO THE "A.B.O." TESTING, THE ANTIGENIC  
16 TESTING, IT'S A LITTLE BIT DIFFERENT. AND WHAT'S  
17 INVOLVED THERE IS THE USE OF ANTIBODIES THAT WE GET  
18 OUT OF HUMAN BLOOD, JUST ANTI-A AND ANTI-B.

19 AND THIS DETECTS THE PRESENCE OR THE ABSENCE OF  
20 THE "A" AND "B" AND "H" SUBSTANCES. SO, IT'S JUST A  
21 CROSS-REACTION TO THAT REACTION WHERE YOU CAN OBSERVE  
22 INDICATOR CELLS REACT UNDER THE MICROSCOPE.

23 Q. AND HOW, HOW DOES THAT REACTION SHOW UP IF THERE WAS  
24 THE PRESENCE OF, SAY, "A," IF YOU HAD AN "A" BLOOD  
25 TYPE?



- 1           A.        ANYWAY, THE DIFFERENT PROTEINS SEPARATE OUT AT  
2                   DIFFERENT RATES.  AND FROM THIS POINT ONCE THEY'RE  
3                   SEPARATED I CAN DETECT THEM THROUGH VARIOUS METHODS.  
4                   AND IN THE CASE OF "P.G.M.," SINCE IT'S AN ENZYME,  
5                   WHAT I DO IS TRICK, AN ENZYME IS A BIOLOGICAL  
6                   CATALYST THAT MAKES REACTION GO FASTER.  SO, I TRICK  
7                   THE "P.G.M." INTO REACTING IN THE JELL.  AND SINCE  
8                   THEY SEPARATE OUT AT DIFFERENT POINTS, THE REACTION  
9                   TAKES PLACE RELATIVELY WITH THE MIGRATION SO THE  
10                  SEPARATION PATTERNS CAN BE OBSERVED.  
11          Q.        AND AM I CORRECT IN SAYING THAT THE WAY YOU WOULD BE  
12                   ABLE TO TELL THAT A PARTICULAR SUBSTANCE WAS  
13                   SOMETHING THAT YOU KNOW ABOUT, WOULD BE TO COMPARE IT  
14                   TO SOMETHING WHICH YOU ALREADY KNOW ABSOLUTELY IS  
15                   THAT SUBSTANCE?  
16          A.        RIGHT.  
17          Q.        IN OTHER WORDS, YOU'RE TALKING ABOUT THESE "P.G.M."  
18                   TYPE, FOR LACK OF, I'M SURE I'M USING THE WRONG  
19                   TERMINOLOGY, BUT, FORGIVE ME, PROTEINS.  
20          A.        OKAY.  
21          Q.        BASICALLY BECAUSE YOU HAVE SAMPLES OF THAT WHICH YOU  
22                   KNOW ABSOLUTELY IS THAT STUFF, YOU CAN SEE HOW IT  
23                   MIGRATES IN THE SAME TYPE OF JELL AND THEN COMPARE IT  
24                   WHEN YOU DO, WHEN YOU'RE RUNNING THESE UNKNOWN  
25                   SAMPLES TO SEE IF IT MIGRATES SIMILARLY, IS THAT

1 A. WELL, WE SOLVATE THE SAMPLE-----

2 Q. IN OTHER WORDS YOU PUT IN A SOLUTION?

3 A. RIGHT, JUST ADD WATER TO IT, BASICALLY. SOMETIMES WE

4 ADD SOME SOLUTION, DIFFERENT KINDS OF SALT SOLUTIONS.

5 BUT, IN THIS CASE WE JUST USED WATER.

6 Q. OKAY.

7 A. AND THEN WE, ONCE THAT HAS SOLVATED, WE PUT THAT ON,

8 INSERT THAT INTO A JELL, WHICH IS KINDA LIKE A "JELL-

9 O." AND WE THEN RUN AN ELECTRIC CURRENT ACROSS THIS

10 JELL.

11 Q. AND THIS IS CALLED ELECTROPHORESIS, IS THAT CORRECT?

12 A. THAT'S CORRECT. AND THE PROTEINS THAT ARE IN THAT

13 SOLUTION, IN THAT PARTICULAR SPOT IN THE JELL, WILL

14 MIGRATE ACCORDING TO THE ELECTRIC CURRENT.

15 OKAY, AND SINCE THE PROTEINS ARE DIFFERENT,

16 THERE'S THOUSANDS OF PROTEINS IN A GIVEN

17 PHYSIOLOGICAL FLUID, AND THEY ALL SEPARATE AT

18 DIFFERENT RATES.

19 Q. AND, OF COURSE, THIS IS A PROCEDURE THAT'S BEEN USED

20 FOR YEARS, RIGHT, AND IT'S, THERE'S REALLY NO

21 QUESTION AT ALL IN THE SCIENTIFIC COMMUNITY THAT HIS

22 IS AN ACCURATE PROCEDURE FOR DOING THESE THINGS,

23 RIGHT?

24 A. THAT'S CORRECT.

25 Q. I'M SORRY TO INTERRUPT, GO AHEAD.

1 DEFENDANT?

2 A. WELL, SINCE WE DON'T KNOW HIS SECRETOR STATUS WE  
3 CAN'T EXCLUDE HIM.

4 Q. DO YOU HAVE A LAB SHEET WITH YOU?

5 A. YOU MEAN MY REPORT?

6 Q. YES, SIR.

7 A. YES, I DO.

8 Q. MAY I SEE IT FOR JUST A SECOND?

9 A. (HANDS ITEM TO COUNSEL.)

10 MR. GABBERT: NO FURTHER QUESTIONS  
11 OF THIS WITNESS, YOUR HONOR.

12 CROSS-EXAMINATION BY MR. DUCHARDT:

13 Q. MR. BOOTH, I WANT TO START OFF, FIRST OF ALL, DRAWING  
14 ON YOUR EXPERTISE TO BE ABLE TO EXPLAIN TO THE JURY  
15 WHAT SOME OF THIS STUFF MEANS.

16 A. OKAY.

17 Q. BASICALLY, IF MY UNDERSTANDING IS CORRECT, WHAT YOU  
18 ALL TEST FOR IN TESTING BLOOD SAMPLES AND SALIVA  
19 SAMPLES AND EVEN FROM OUR HAIRS, ARE THE PRESENCE OF  
20 CERTAIN PROTEINS, IS THAT CORRECT, SIR?

21 A. WELL, ANTIGENS ARE LACK OF PROTEINS, BUT THE ENZYMES  
22 ARE PROTEIN.

23 Q. OKAY. AND WOULD YOU DESCRIBE FOR US THE TYPES OF  
24 TESTS THAT YOU USED IN DETERMINING THE PRESENCE OF  
25 CERTAIN PROTEINS?

1 A. I DON'T UNDERSTAND THE QUESTION.

2 Q. AGAIN, AS TO THAT TEST YOU CONDUCTED, THE "A" AND "H"

3 ANTIGENIC ACTIVITY, YOU MENTIONED THAT MISS ██████ WAS

4 AN "A" TYPE.

5 A. RIGHT.

6 Q. WHAT WOULD BE A CONTRIBUTOR, MOST COMMON CONTRIBUTOR

7 TO THAT CAPACITY ON THE SECOND PART?

8 A. WELL -- ARE YOU TALKING ABOUT THE SWAB OR THE PANTIES

9 FROM THE RAPE KIT?

10 Q. IT WOULD BE THE SWAB.

11 A. OKAY, THE SWAB, THE "A" AND "H" ACTIVITY, THE "A"

12 ACTIVITY EXCEEDED THE "H," WHICH WOULD BE, WOULDN'T

13 BE ANY INDICATION THAT THERE WAS MIXED FLUIDS FROM A

14 TYPE "O" SECRETOR.

15 NOW, IT'S QUITE POSSIBLE THAT A NON-SECRETOR COULD

16 CONTRIBUTE TO THIS SWAB AND YOU WOULDN'T SEE ANY OF

17 THOSE CONTRIBUTIONS BECAUSE THERE ARE NO SECRETIONS

18 OF THE BLOOD GROUP SUBSTANCES.

19 YOU COULD HAVE TYPE "A" OR "AB" NON-SECRETOR

20 EJACULATE ONTO THAT VAGINAL SWAB AND YOU WOULDN'T BE

21 ABLE TO DETERMINE THE BLOOD GROUP FROM IT.

22 Q. WERE YOU ABLE TO DETERMINE WHETHER THE DEFENDANT WAS

23 A SECRETOR?

24 A. NO, BECAUSE THE SALIVA STANDARD WAS PUTREFIED.

25 Q. THE TESTS CONDUCTED, WOULD THEY HAVE EXCLUDED THE

1 THAT SHE WOULD BE A 2 PLUS 1 PLUS.

2 Q. WERE YOU ABLE TO, YOU MENTIONED THAT YOU WERE ABLE TO  
3 CONDUCTS TESTS ON SAMPLES OF THE DEFENDANT?

4 A. YES, I, THERE WAS A SALIVA SAMPLE SUBMITTED FROM HIM.  
5 BUT, THAT WAS SUBMITTED WET AND BY THE TIME I GOT IT  
6 IT HAD PUTREFIED, RENDERING ANY SAMPLE, I MEAN ANY  
7 INFORMATION DERIVED FROM THAT WOULD BE USELESS.

8 IN ADDITION, I GOT HIS PUBIC HAIR, WHICH SOME OF  
9 THE PUBIC HAIR HAD ROOTS THAT I COULD DETERMINE THE  
10 ENZYME GROUP OFF OF. AND MR. RAINE IS A "P.G.M. TYPE  
11 1 PLUS."

12 Q. AND WITH REFERENCE TO "P.G.M." TESTS YOU CONDUCTED,  
13 WERE YOU ABLE TO DETERMINE WHETHER OR NOT THE TESTS  
14 CONDUCTED INCLUDED MR. RAINE ON THE "P.G.M." TEST?

15 A. WELL, THE RATIO OFF THE SWAB, NOW, WERE CONSISTENT,  
16 UNLESS YOU INSPECTED THE ACTUAL SWAB. THE 1 PLUS  
17 DIDN'T EXCEED THE 2 PLUS ENOUGH TO SUGGEST MULTIPLE  
18 CONTRIBUTIONS. BUT, YOU CAN'T EVER EXCLUDE THAT.

19 Q. AND WITH REFERENCE TO MR. RAINE'S BLOOD TYPE, WERE  
20 YOU ABLE TO DETERMINE THAT?

21 A. I DID THAT YESTERDAY AND MR. RAINE IS A TYPE "A."

22 Q. AND WITH REFERENCE TO THE "A" AND "H" ANTIGENIC  
23 ACTIVITY, YOU MENTIONED -- WHAT'S THAT, WHAT TYPE OF  
24 BLOOD IS USUALLY IN CONTRIBUTION, MOST COMMONLY  
25 CONTRIBUTION ATTRIBUTED TO THAT TYPE ACTIVITY?



1 Q. IN YOUR DETERMINATION, FIRST OF ALL BACK TO THE "A"  
2 AND "H" GENETIC MARKERS-----  
3 A. OKAY.  
4 Q. -----WERE YOU ABLE TO DETERMINE, FIRST OF ALL, THE  
5 BLOOD TYPE OF [REDACTED] ?  
6 A. YES. IN THE RAPE KIT THERE IS SALIVA AND BLOOD  
7 SAMPLES FROM THE VICTIM SUBMITTED. WITH THE "A,"  
8 "B," "O," SUBSTANCE YOU CAN DETERMINE THE "ABO"  
9 GROUP. AND ANDREA PLATH IS A TYPE "A."  
10 AND SHE IS ALSO A SECRETOR. WE DETERMINED THAT  
11 FROM THE SALIVA, SINCE SALIVA IS A SECRETION. AND  
12 HER BLOOD GROUP SUBSTANCES ARE PRESENT IN HER  
13 SECRETIONS.  
14 Q. OKAY.  
15 A. AND, THEREFORE, SINCE THE SWAB CAME FROM THE VAGINA  
16 WHICH CONTAINS VAGINAL SECRETIONS, THE "A" SUBSTANCE  
17 COULD QUITE POSSIBLY HAVE COME FROM HER THAT WAS ON  
18 THE SWAB, THAT COULD'VE QUITE POSSIBLY COME FROM HER.  
19 IN ADDITION TO THE BLOOD, WE CAN DO THE ENZYME  
20 GROUPING OFF THE BLOOD. AND [REDACTED] IS MORE  
21 LIKELY A 2 PLUS 1 PLUS. THE RESULTS WEREN'T  
22 ABSOLUTELY CONCLUSIVE IN THIS CASE BECAUSE THE BLOOD  
23 SAMPLES ARE POORLY PRESERVED IN MOST RAPE CASES AND  
24 WITH RAPE KITS.  
25 BUT, I'D THINK THAT THE MOST LIKELY EXPLANATION IS

1            THEN DRIED.

2            THE SLIDE, ON THAT I LOOK FOR SPERMATOOZOA, OF  
3            WHICH THERE WERE SPERMATOOZOA ON THE SLIDE.

4            THE SWAB FROM THAT POINT, I CAN THEN DO SOME  
5            GROUPINGS ON THE, ON THE SWAB.

6            Q.        OKAY. NOW, BY GROUPINGS, WERE YOU ABLE TO DETERMINE  
7            WHAT TYPE OF GROUPS WERE PRESENT ON THE SWAB?

8            A.        OKAY, YES, I DID.

9            Q.        AND WHAT GROUPS WERE THEY?

10          A.        WELL, THERE IS TYPE "A" AND "H" ANTIGENIC SUBSTANCES  
11          ON THE SWAB. NOW, THIS INDICATES THAT, IF YOU'RE A  
12          TYPE "A" PERSON YOU'RE GONNA HAVE TYPE "A" SUBSTANCE  
13          IN YOUR SECRETIONS. IF YOU'RE, IF YOU'RE TYPE "A"  
14          PERSON YOU'LL HAVE TYPE "A" AND "H" NORMALLY.

15          IF YOU'RE A TYPE "O" PERSON YOU WILL NOT HAVE "A"  
16          OR "B," YOU'LL JUST HAVE THE "H" SUBSTANCE.

17          OKAY, IN THIS INSTANCE THE "A" SUBSTANCE EXCEEDED  
18          THE LEVELS OF THE "H" SUBSTANCE, WHICH WOULD EXCLUDE  
19          THE CONTRIBUTION BY A TYPE "O" PERSON, IT WOULD TEND  
20          TO EXCLUDE THAT.

21          AND IN ADDITION TO THAT, THERE'S A SEPARATE  
22          GROUPING THAT WE CAN DO WHICH INVOLVES ENZYMES, WHICH  
23          THERE IS TEN COMMON TYPES IN THE POPULATION.

24          AND IN THIS INSTANCE WE DETERMINED THAT THE SWAB  
25          WAS A "P.G.M. TYPE 2 PLUS 1 PLUS."

1 CONTINUING OBJECTION, BUT WE'RE ARGUING THAT THE  
2 ITEMS WERE PROPERLY TAKEN. BUT, NO, WE'RE NOT----

3 THE COURT: YOU DON'T OBJECT TO IT  
4 BEING A CONTINUING OBJECTION?

5 MR. GABBERT: AS LONG AS THE COURT  
6 IS OVERRULING IT.

7 THE COURT: ALL RIGHT, PROCEED.  
8 (THE FOLLOWING PROCEEDINGS WERE HAD IN THE PRESENCE  
9 AND HEARING OF THE JURY PANEL):

10 DIRECT EXAMINATION RESUMED BY MR. GABBERT:

11 Q. NOW, MR. BOOTH, AFTER YOUR EVALUATION OF THE ITEMS  
12 TAKEN FROM THE PERSON THAT YOU MENTIONED, WHAT KIND  
13 OF TESTS WERE CONDUCTED ON THESE ITEMS?

14 A. WELL, I WAS LOOKING FOR FOREIGN HAIR AND SEMINAL  
15 FLUID TO COMPARE TO THE DEFENDANT, OR ANY POSSIBLE  
16 SUSPECTS.

17 Q. NOW, FROM YOUR EXAMINATION OF, DID YOU CONDUCT A  
18 VAGINAL SWAB EXAMINATION?

19 A. THAT WAS INCLUDED IN THE RAPE KIT. AND THERE WAS A  
20 VAGINAL SWAB SUBMITTED.

21 Q. AND WHAT KIND OF TESTS WERE CONDUCTED ON THAT?

22 A. OKAY. ACTUALLY THIS CONSISTS OF TWO PARTS, IT HAS A  
23 VAGINAL SMEAR, TOO, WHICH IS TAKEN FROM THE SWAB.  
24 THE GLASS SLIDE, MICROSCOPE SLIDE IS SMEARED, THE WET  
25 SWAB IS SMEARED ON A GLASS SLIDE AND BOTH OF THEM ARE

1 MR. DUCHARDT: BUT, OF COURSE, IT  
2 WILL AMOUNT TO THAT, AND I APPRECIATE COUNSEL'S  
3 CONCERN ABOUT THAT. AND I DO, I SHARE THAT CONCERN.  
4 AND HE'S BEEN VERY KIND TO BE CAREFUL ABOUT THOSE  
5 TYPES OF THINGS THROUGHOUT THE TRIAL AND WE  
6 APPRECIATE IT.

7 HOWEVER, I JUST WISH TO MAKE THIS A CONTINUING  
8 OBJECTION TO ANY TESTIMONY THAT THIS WITNESS MIGHT  
9 OFFER BASED UPON THOSE SAMPLES THAT HE TOOK.

10 I THINK I'VE ALREADY RAISED THE OBJECTIONS TO THE  
11 OTHER SAMPLES TAKEN BY OFFICER BRAUNINGER. I JUST  
12 NOW RAISE THE OBJECTION AND WISH TO MAKE IT A  
13 CONTINUING OBJECTION TO THIS WITNESS' TESTIMONY ABOUT  
14 THE SAMPLES THAT HE TOOK.

15 MR. GABBERT: WELL, YOUR HONOR,  
16 AGAIN THE STATE WOULD HAVE NO OBJECTION TO THAT.

17 MR. DUCHARDT: I'D JUST ASK THAT IT  
18 BE A CONTINUING OBJECTION. DO YOU HAVE ANY  
19 OBJECTIONS TO THAT?

20 MR. GABBERT: AGAIN, WE JUST RENEW  
21 OUR ARGUMENT THAT THESE WERE TAKEN PROPERLY.

22 MR. DUCHARDT: HE'S ALREADY  
23 OVERRULED MY OBJECTION. DO YOU MIND IT BEING A  
24 CONTINUING OBJECTION?

25 MR. GABBERT: IT CAN BE A

1 PROCEEDINGS WERE HAD):

2 MR. DUCHARDT: MR. BOOTH HAS NOT  
3 YET MENTIONED THAT ONE OF THE SAMPLES WAS DRAWN FROM  
4 HIM, DRAWN FROM THE DEFENDANT BY HIM UNDER COURT  
5 ORDER WHICH THE COURT ISSUED LAST WEEK.

6 I JUST WISH TO OBJECT TO TESTIMONY CONCERNING THAT  
7 SAMPLE BASED UPON THE ARGUMENTS THAT I MADE AT THE  
8 TIME THAT THE COURT MADE THAT ORDER, SPECIFICALLY  
9 THAT COMING AS IT DID AT THAT TIME THAT THE ORDER OF  
10 THE COURT DENIED DEFENDANT DUE PROCESS OF LAW AND WAS  
11 AN IMPROPER INVASION OF THE DEFENDANT'S BODILY  
12 INTEGRITY UNDER ALL OF THE CIRCUMSTANCES AS PRESENTED  
13 TO THE COURT AT THAT TIME.

14 THE COURT: AND THE COURT FINDS NOW  
15 THAT THERE WAS NO UNDUE INTRUSION, THAT IT WAS  
16 REASONABLE AND NECESSARY TO DO, AND THERE WAS NO  
17 PREJUDICE THAT SHOULD OR COULD INCUR TO THE DEFENDANT  
18 BECAUSE OF SUCH INTRUSION. AND YOUR OBJECTION IS  
19 OVERRULED.

20 MR. DUCHARDT: THANK YOU.

21 MR. GABBERT: YOUR HONOR, HE HAS  
22 TESTIFIED THAT HE HAS EXAMINED SAMPLES TAKEN FROM MR.  
23 RAINE. AND IT IS NOT THE STATE'S INTENTION TO ASK  
24 HIM WHERE THOSE THINGS WERE TAKEN.

25 THE COURT: OKAY.

1 CHICAGO.

2 I'VE ALSO ATTENDED ARSON COURSES AND OTHER JOB  
3 RELATED COURSES THAT I CAN'T RECALL RIGHT NOW.

4 Q. NOW, IN YOUR DUTIES AS A CHEMIST FOR THE KANSAS CITY,  
5 MISSOURI POLICE DEPARTMENT, DID YOU HAVE OCCASION TO  
6 EXAMINE CERTAIN EVIDENCE WHICH RESULTED FROM A RAPE  
7 AT 6114 NORTH JEFFERSON?

8 A. YES, I DID.

9 Q. AND THE ITEMS THAT YOU OBSERVED FROM THAT RAPE, CAN  
10 YOU TELL THE JURY WHAT, WHERE THOSE ITEMS CAME FROM,  
11 SIR?

12 A. WELL, LET'S GO ONE-BY-ONE. I RECEIVED SOME PANTIES  
13 AND BED LINEN FROM 6114 NORTH JEFFERSON. I THEN  
14 RECEIVED A RAPE KIT THAT WAS COLLECTED FROM NORTH  
15 KANSAS CITY HOSPITAL.

16 I THEN, I RECEIVED SOME WOMEN'S UNDERPANTS AND A  
17 PAIR OF NYLON STOCKINGS FROM NORTH JEFFERSON. AND  
18 THEN I RECEIVED SOME SPECIMENS FROM MR. RAINE.

19 Q. NOW, DID YOU DO AN EVALUATION OF THOSE ITEMS?

20 A. I EXAMINED MOST OF THEM, YES, I DID.

21 Q. OKAY.

22 MR. DUCHARDT: YOUR HONOR, MAY WE  
23 APPROACH THE BENCH FOR JUST A MOMENT?

24 THE COURT: ALL RIGHT.

25 (COUNSEL APPROACH THE BENCH AND THE FOLLOWING

DIRECT EXAMINATION BY MR. GABBERT:

1  
2 Q. WOULD YOU PLEASE STATE YOUR FULL NAME FOR THE RECORD,  
3 SIR?

4 A. ROBERT FRANK BOOTH.

5 Q. MR. BOOTH, WHERE ARE YOU EMPLOYED?

6 A. AT THE REGIONAL CRIME LAB IN KANSAS CITY, MISSOURI.

7 Q. AND, MR. BOOTH, WHAT IS YOUR POSITION AT THE REGIONAL  
8 CRIME LAB?

9 A. I AM A CHEMIST.

10 Q. AND, QUICKLY FOR THE JURY, WHAT IS YOUR BACKGROUND AS  
11 A CHEMIST?

12 A. I HAVE A B.S. DEGREE IN CHEMISTRY THAT I RECEIVED  
13 FROM U.M.K.C. IN 1980. AND I'VE ATTENDED NUMEROUS  
14 MICROSCOPY COURSES AND SEROLOGY COURSES AND JOB  
15 RELATED COURSES WHILE I'VE BEEN EMPLOYED.

16 Q. HOW LONG HAVE YOU BEEN EMPLOYED AND IN WHAT CAPACITY  
17 FOR THE KANSAS CITY, MISSOURI POLICE DEPARTMENT CRIME  
18 LAB?

19 A. ALMOST NINE YEARS.

20 Q. AND DURING YOUR NINE YEARS OF EMPLOYMENT WITH THE  
21 KANSAS CITY, MISSOURI POLICE DEPARTMENT AS A CHEMIST,  
22 CAN YOU TELL THE JURY SOME OF THE CLASSES THAT YOU'VE  
23 ATTENDED AND SOME BACKGROUND?

24 A. I ATTENDED THE MICROSCOPY COURSE FROM THE KRONE  
25 INSTITUTE, A WORLD RENOWN MICROSCOPY COURSE IN

1 THE SAME OBJECTIONS BASED UPON THE ISSUES AS RAISED  
2 IN THE MOTION TO SUPPRESS. I WISH TO RAISE THOSE  
3 AGAIN AT THIS TIME SO AS TO PRESERVE THOSE ISSUES FOR  
4 POSSIBLE APPEAL.

5 THE COURT: OVERRULED.

6 (THE FOLLOWING PROCEEDINGS WERE HAD IN THE PRESENCE  
7 AND HEARING OF THE JURY PANEL):

8 THE COURT: ADMITTED.

9 Q. DETECTIVE BRAUNINGER, THOSE ITEMS TAKEN, AFTER THOSE  
10 ITEMS WERE TAKEN FROM MR. RAINE, WHAT DID YOU DO WITH  
11 THOSE STANDARDS?

12 A. I PACKAGED THEM AND FORWARDED THEM TO THE REGIONAL  
13 CRIME LAB.

14 Q. DID YOU HAVE ANY MORE CONTACT WITH MR. RAINE AFTER  
15 THAT?

16 A. NO, I DID NOT.

17 MR. GABBERT: YOUR HONOR, I HAVE NO  
18 FURTHER QUESTIONS OF THIS WITNESS.

19 MR. DUCHARDT: NO QUESTIONS, YOUR  
20 HONOR.

21 THE COURT: YOU MAY STEP DOWN.  
22 CALL YOUR NEXT.

23 (WITNESS EXCUSED.)

24 ROBERT FRANK BOOTH, BEING FIRST DULY SWORN BY THE  
25 DEPUTY CIRCUIT CLERK, PAM HILL, TESTIFIED AS FOLLOWS: