

Edward Honaker

Honaker was tried and convicted in February 1985 in Nelson County, Virginia, on seven charges: two counts of rape, and one each of using a pistol while committing rape, forcible sodomy, aggravated sexual battery, abduction, and using a pistol while committing abduction. Elmer Gist, Jr., of the Virginia Bureau of Forensic Science testified about both the serology and the hair evidence.

The serology example consisted primarily of a vaginal swab; Gist was unable to determine either secretion or blood type. Cigarette butts were also collected at the scene of the rape, and Gist typed the saliva on the butts as type O. The victim was type O, but Gist was unable to determine her secreter status.

The hair evidence consisted of hair and fibers collected from the victim's body/clothing or the defendant's car. Gist used microscopic hair comparison to compare at least ten hairs, only one of which was consistent with the defendant:

- V's pubic hair combings: 1 Caucasian hair, 2 fragments (of which 1 hair + 1 fragment consistent w/ V, 1 fragment too short for comparison)
- V's shorts: 2 Caucasian head hairs (of which 1 was consistent w/ D, 1 consistent w/ V), one animal hair, one animal hair fragment
- V's blouse: 2+ Caucasian head hairs (of which 1 was consistent w/ V, others were inconsistent with both V and D)
- Clothing in D's vehicle: multiple Caucasian hairs (of which none were consistent w/ V; not compared w/ D); multiple animal hairs
- Vacuum sweepings of D's vehicle: multiple Caucasian hairs (of which none were consistent w/ V; not compared w/ D); multiple animal hairs

Nonetheless, Gist testified that the hair found on the victim matched the defendant: "One of the Caucasian head hairs found on the shorts was consistent with the head hairs reportedly from the defendant. That means the hair either originated from him or from another person of the exact same race who had the same color, the same, physical visual characteristics and the same microscopic characteristics. It is unlikely that that hair would match anyone other than the defendant; but it is possible." (TT 215-16, HON-001088.pdf)

On cross, defense counsel asked Gist whether hair evidence was as exact as fingerprinting. Gist replied, "It's a guaranteed and precise analysis but we cannot pinpoint the source of the hair." (TT 223, HON-001088.pdf)

The prosecutor referenced the hair match in both his opening and closing statements:

[Opening]: "She gave Deputy Hill the shorts and fortunately they matched them up at the lab. There was one of his hairs right on the shorts in addition to her hair. Absolutely puts him there at the scene. Now hair identification is not a positive, absolute. It's just the best that we could come up with under the circumstances. It's a piece of circumstantial evidence, but you give the weight to it. The chemist will tell you that it's highly unlikely that anybody else left that combination hair there." (TT 55-56, HON-001503.pdf)

[Closing]: “What do the facts show? The shorts, and the chemist came in and told you that those hairs on those shorts matched his hair.” (TT 387, HON-001296.pdf)

In denying defendant’s post-trial motion to strike, the judge also relied on the hair evidence: “In the opinion of the court the evidence against you was overwhelming. You couldn’t get around the scientific evidence that one of your hairs was found on her person. With all of the other evidence. Now, that alone would not have convicted you but that with all of the other evidence there is no way the jury could have gotten around it. So that’s the reason I say the evidence was clearly beyond a reasonable doubt that you are guilty.” (ST 29, HON-001296.pdf)

1 A These are my shorts, my Op shorts.

2 Q These are the ones you gave to Deputy Hill?

3 A Yes. And this is my shirt, the shirt I had
4 on.

5 Q I don't have any further questions.

6 MR. FARRAR: No questions.

7 WITNESS STOOD ASIDE

8
9 ELMER GIST, JR., Having been duly sworn was
10 called on behalf of the Commonwealth and testified as follows:

11
12 DIRECT EXAMINATION

13 By: Mr. Turpin

14 Q Would you tell us who you are, please?

15 A Yes, sir, my name is Elmer Gist, Jr.

16 Q And, where are you employed?

17 A I am employed by the Commonwealth of Virginia,
18 Roanoke, Virginia. I work for the Bureau of Forensic Science,
19 which is the State Laboratory for the Commonwealth.

20 Q How long have you been so employed?

21 A Just under eleven years.

22 Q And, during the course of that employment
23 have you had occasion to - well, let me get a little bit of your
24 educational background. What is your educational background?

25 A I hold a Bachelor of Science Degree in Law

1 Enforcement from the American University in Washington, D. C. I
2 hold a Masters of Science Degree in Special Studies in forensic,
3 or crim laboratory science, from George Washington University,
4 also Washington, D. C.

5 Q Now, in the course of your occupation what
6 is your actual duties?

7 A I am responsible for the isolation, identifi-
8 cation and typing of blood, body fluid stains, the isolation and
9 identification and comparison of hairs and natural fibers.

10 Q Now, do you work for any other crime lab?

11 A Yes, sir, I work for the F.B.I. Crime
12 Laboratory in the serology of blood and body fluid testing unit
13 for a period of approximately eight years.

14 Q How about training?

15 A I received approximately six months training
16 at the F.B.I. and I received two years of training with the
17 Commonwealth of Virginia, especially in the area involving hair
18 and fiber identification comparisons.

19 Q Have you previously testified as an expert
20 in any of the Circuit Courts in this State?

21 A I have testified in western Virginia, in
22 northern Virginia, the Tidewater area, approximately a hundred
23 and eighty times total.

24 Q Is that concerning the field of blood, body
25 fluids and hair identification?

1 A That is correct.

2 Q Do you also teach in this field some?

3 A Yes, I teach forensic serology, blood, body
4 fluid identification at Virginia Western Community College in
5 Roanoke, Virginia. I also teach forensic serology in New River
6 Community College in Dublin, Virginia. I also teach a course in
7 hair and fiber identification at Virginia Western Community
8 College and also at New River Community College in Dublin.

9 Q Your Honor, at this time I am going to move
10 to qualify him as an expert.

11 THE COURT: He is a qualified expert. You may
12 ask him his opinion in his field.

13 Q Now, in the course of your employment were
14 certain samples, I am going to ask you to come and look at them
15 right here. They have been identified by Deputy Hill, exhibits
16 one(1) through eighteen(18). Were these items brought to your
17 lab for analysis?

18 A Yes, sir, items were brought out...

19 Q Did you mark each one of the items and was
20 there a request sheet submitted for those?

21 A Yes, sir, there was a request sheet, which
22 I have copies of.

23 Q In addition to that did you return some
24 microscopic slides?

25 A Yes, sir, I did and these are the slides.

1 Q I move that they be called Commonwealth's
2 Exhibit thirty-two(32).

3 THE COURT: They will be received in evidence
4 as marked.

5
6 COMMONWEALTH'S EXHIBIT Number thirty-two(32) so
7 received by the Court and marked at this time by the Clerk.

8
9 Q In the course of your employment did you
10 perform certain standardized tests on these various items that
11 were submitted to you?

12 A Yes, sir, I did.

13 Q Are these the recognized tests within your
14 field?

15 A That's correct, they are.

16 Q Now, would you tell us what samples were
17 submitted to you and what your test results were?

18 A Yes, sir. I received first of all an initial
19 submission, items one(1) through three(3), as I have them labeled.
20 A physical evidence recovery kit reportedly from [REDACTED].
21 A pair of shorts and a blouse. I subsequently received a sleep-
22 ing bag, pants and shirt, blanket, jacket, another blanket, pillow
23 case, a blood sample, reportedly from the defendant. Hair
24 samples reportedly from the defendant, two cigarette butts, a
25 match stem, two pieces of cloth, vacuum sweepings reportedly from

1 a vehicle, and then subsequently I received a hair sample
2 reportedly from [REDACTED]. The physical evidence recovery
3 kit was examined by me. I found the following: Spermatozoa
4 which are male reproductive cells were found on the vaginal
5 slides reportedly from [REDACTED]. I found no semen in
6 the mouth rinse. I found one caucasian hair and two caucasian
7 hair fragments in the pubic hair combings, reportedly from
8 [REDACTED]. I found the blood sample that was included
9 in the physical evidence recovery kit to be type O. In further
10 testing I found that the two hairs, excuse me, on further testing
11 I found the results of testing to determine the secretion of
12 blood type of the material on the vaginal swab was inconclusive.
13 I could not determine the secretion or blood type from the
14 vaginal specimens. I found the caucasian hair and one caucasian
15 hair fragment in the pubic hair combings consistent with the
16 pubic hair reportedly from [REDACTED] and I found the other
17 hair fragment too short for meaningful comparison purposes.

18 In reference the shorts that I listed as item
19 two(2) I found the following: I found two caucasian head hairs
20 on the shorts. I found one animal hair, one animal hair frag-
21 ment. I found no semen, no male reproductive fluid. On a sub-
22 sequent examination the comparison of the hair on the shorts I
23 found the following: One of the caucasian head hairs found on
24 the shorts was consistent with the head hairs reportedly from the
25 defendant. That means the hair either originated from him or

1 from another person of the exact same race, who had the same
2 color, the same physical visual characteristics and the same
3 microscopic characteristics. It is unlikely that that hair would
4 match anyone, other than the defendant; but it is possible. Hairs
5 do not possess sufficient microscopic characteristics to identify
6 the source. So, the hairs were consistent with the sample
7 reportedly from the defendant.

8 The other caucasian head hair was consistent
9 with the head hair reportedly from [REDACTED]. In regard
10 to the animal hair and animal hair fragment on the shorts I found
11 one animal hair to be a reddish brown, black hair. In other
12 words, it was reddish brown and also black. That hair is
13 consistent with a young canine, or commonly referred to as dog
14 hair. One animal hair fragment was black in color. It was not
15 possible to determine the species, whether or not it was canine
16 or some other animal.

17 Regarding the blouse...

18 Q Do animal hairs have a tendency to adhere
19 for a longer period of time to clothing?

20 A Yes, sir, they do. Longer than human hair
21 would because all hairs have an outer wrapping of scales and
22 the scales protrude a great deal on animal hair and so they
23 cling more to clothing, carpet and this sort of thing. They
24 do have a tendency to stay on your clothing longer than a human
25 hair would.

1 Q All right, go ahead.

2 A In regarding the blouse that I have listed as
3 item three(3). I found several caucasian head hairs and I found
4 no semen, no male reproductive fluid present on the blouse.

5 Further examination of the hairs on the blouse
6 I found the following: One of the caucasian head hairs found on
7 the blouse was consistent with the head hairs reportedly from
8 [REDACTED]. The other caucasian head hair was consistent,
9 I am sorry, the other caucasian head hairs were dissimilar to
10 the submitted head hair samples from either, reportedly either
11 from the defendant or from [REDACTED]. There was one
12 hair on the blouse that was consistent with [REDACTED] head
13 hair. There were other caucasian head hairs dissimilar to either
14 sample that I tested.

15 Regarding the next item that I have listed as
16 item four(4), which was the sleeping bag. No semen was identifi-
17 ed on the sleeping bag, no hairs were found.

18 Regarding items five(5) through nine(9) I found
19 the following: No semen, or male reproductive fluid, was found
20 on the pants, the shirt, either of the blankets, jacket or the
21 pillow. I found caucasian hairs dissimilar to the submitted
22 hair samples, some reportedly from [REDACTED] on these items.
23 I made no comparison with the samples reportedly from the defend-
24 ant. It was my understanding it was the defendant's vehicle
25 from which these articles originated. So, I only compared the

1 hairs reportedly from [REDACTED], with the hairs from
2 these various items, from the vehicle.

3 Subsequent examination of the animal hair from
4 these various items I found the following: Animal hairs found
5 on the pants, shirt, the blankets, jacket and pillow consisted
6 of black hairs, white hairs, white and reddish brown hairs
7 consistent with known canine, or basically dog hairs present.

8 Regarding item ten(10) I found the following:
9 The blood sample reportedly from the defendant was type B.

10 Regarding item thirteen(13) I found the follow-
11 ing: The test indicated the presence of saliva on each of the
12 cigarette butts. The test indicated that the secretion type, or
13 the blood type, if you will, of the person who smoked these
14 cigarettes is type O.

15 Item fourteen(14) which was a match stem, it
16 was not examined.

17 Item sixteen(16) were two pieces of cloth that
18 I was asked to see if they could have originated from any of
19 the other items reportedly from the vehicle. I found that the
20 two pieces of cloth were dissimilar to any of the other items
21 that I examined. In other words, they did not originate from
22 any of these items that I just mentioned, short, shirt, bag,
23 pants, blankets, pillow.

24 The vacuum sweepings reported from the vehicle
25 I found the following: I found caucasian hairs dissimilar to

1 the submitted hair samples reportedly from [REDACTED]
2 present in the vacuum sweepings. I found no hairs that were
3 consistent with the hairs reportedly from [REDACTED] in
4 the vacuum sweepings of the vehicle. I did however find several
5 animal hairs. The animal hairs in the vacuum sweepings consisted
6 of white hairs, black hairs, white and black hairs, and white
7 and reddish brown hairs consistent with known canine hairs.

8 Q I don't have any further questions.

9
10 CROSS EXAMINATION

11 By: Mr. Farrar

12 Q Mr. Gist, sort of going backwards. The hair
13 samples, the vacuum sweepings from the vehicle that had some
14 hair samples and I believe that was submitted to you around
15 January 4th had the dog hair samples. These samples that you
16 found from the vehicle that were submitted to you from the
17 vehicle were dissimilar to the canine hair samples found on the
18 shorts, or blouse of [REDACTED] is that correct?

19 A The intact hairs were dissimilar, that's
20 correct.

21 Q And, the hair samples that you found on the
22 blouse of [REDACTED] were likewise dissimilar to the sub-
23 mitted hair samples from Mr. Honaker, the defendant?

24 A That's correct.

25 Q Now, you have indicated that on the test that

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1 you did on the cigarette butt, that it indicated the secretion
2 type O, or blood type O. Would you explain to the jury how you
3 can establish secretion type from the saliva?

4 A Most people, approximately eight out of ten
5 people, are better known to serologist in my field as secreters
6 which means that if you are in fact a secreter that your blood
7 type can be determined from your perspiration, from your semen
8 fluid if you are a male, from your vaginal fluid if you are a
9 female. A non-secreter is a person whose blood type factors
10 cannot be detected in the saliva, semen fluid or vaginal material.
11 The way that's done is to take a cutting of the stain and, such
12 as a saliva swab, or in this case a cigarette butt. You cut the
13 butt of the cigarette into three pieces and you add an antibody
14 to each of the three stains, you have anti-A, anti-B and anti-H,
15 anti-H detects type O. Anti-A detects type A and anti-B detects
16 type B and then you allow that to sit over night and then you
17 add known cells, known type A cells to the tube, you add an anti-
18 A to it. If you get a negative result that means there had to
19 be type A substance in that sample that inhibited or negated or
20 neutralized the anti-A. So, you determine the blood type by
21 either finding that the anti-A is still viable and working or it
22 has been neutralized. And, by the reactions and running standard
23 tests of known samples of type O, type AB and a known non-
24 secreter sample you can determine the blood type, much like you
25 would with a dried blood stain.

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1 Q Now, you determined, I believe, that Ms.
2 Nichols was a secreter, which you refer to in the trade as a
3 secreter?

4 A So, I didn't comment on the fact of her
5 being a secreter. I said she was type O. In the samples that I
6 had reportedly from [REDACTED] I was not able to determine
7 her secreter status. Secreter status is most always determined
8 from a blood sample, but not always. And, in the case of the
9 blood sample reportedly from [REDACTED] this was not possible.

10 Q I noted your remark, the results conducted
11 on the vaginal swabs from the victim to determine secretion type
12 were inconclusive. So, you were not able to determine it from
13 the vaginal swabs. You also received in the Perk Kit though a
14 mouth rinse, and I take it that was because you had stated to
15 the physician that the assailant had ejaculated in her mouth.
16 Were you able to determine anything about the secretion type or
17 whether she was a secreter or not from that?

18 A That would be impossible.

19 Q Why is that?

20 A Because the amount of saliva in comparison
21 to the amount of saline, which as I recall would have been about
22 eight milliliters, almost a full tube of saline and very little
23 saliva so there would be no way that it would be sufficient. In
24 fact, the known saliva swab that I received that was supposed to
25 have had known concentrated saliva was insufficient to determine

1 a known secreter status.

2 Q If you received a pure saliva sample from a
3 person could you determine secreter status from that?

4 A Yes, if you have a saturated well preserved
5 saliva sample you can determine secreter status, that's right.

6 Q But, you didn't receive that from the
7 Sheriff's Department in the course of making your investigation?

8 A I received a saliva sample which was either
9 from a non-secreter, or was insufficient in saliva, and the only
10 way I could determine anything further would be to ask for an
11 additional blood sample, and an additional saliva sample. I saw
12 no need in doing that in this case, since I was unable to detect
13 a secretion type in the vaginal specimens anyway.

14 Q Now, when you and I talked back on January
15 30th I believe and we were discussing the characteristics of
16 head hairs isn't it correct that the individuals will have
17 several different types or your head hair will demonstrate
18 several different characteristics in the same head?

19 A Yes, sir.

20 Q And, is that a common factor among all of
21 us or is that just something that happens on occasion?

22 A It is very common. For instance, gray hair,
23 gray hair is totally different from black hair or brown hair,
24 and reddish hair is totally different from brown hair. Black
25 hair is different from brown hair. That is why when we do a hair

1 comparison we ask for a representative sample so that we can
2 determine the range of characteristics. Can't take just one hair
3 from a person and another hair from the same person and put them
4 together as you would a tool match or a fracture match, you have
5 to have a number of them to look at.

6 Q I guess that is one of the reasons that this
7 is not as exact as perhaps fingerprints have been determined to
8 be. You said yourself that it is not an exact or precise, or a
9 guaranteed analysis that you all make, isn't that correct?

10 A It's a guaranteed and precise analysis but
11 we cannot pinpoint the source of the hair.

12 Q All right. Now, you indicated that on one
13 of the swabs that you looked at that you found the presence of
14 spermatozoa?

15 A Spermatozoa, that's right.

16 Q Could you tell anything, whether it was
17 motile when you got it?

18 A No, the sperm was dead. It is always dead
19 when I receive it.

20 Q Now, you were submitted a pair of pants and
21 a shirt, camouflage pants. Do you recall examining them?

22 A Yes, sir, I do.

23 Q And, did you examine them for semen as well
24 as for hair samples?

25 A Yes, I did. I believe that's item five(5),

1 as I recall, pants and shirt. I believe that's what you are
2 referring to?

3 Q Five(5) through nine(9) which are pants and
4 shirt, a blanket, do you recall the color of that blanket?

5 A It's a pink, orange and white.

6 Q And, a jacket, do you recall what kind of
7 jacket that was?

8 A I can check my notes. I see on the sub-
9 mission form it's a camouflage jacket, but I will check my notes
10 to see what further I have on it.

11 Q I think that's correct.

12 A It is a camouflage jacket according to my
13 notes.

14 Q Do you recall the color of the other blanket?

15 A Let's see, the other one was a light pink
16 blanket.

17 Q And, the other item was a pillow, all of
18 which, I believe, has been testified to as coming from the
19 vehicle of Mr. Honaker. Now, from your evaluation and examina-
20 tion there was no semen on the pants, shirt, blankets, jacket
21 and pillow. Caucasian hairs were found but were dissimilar to
22 the submitted hair samples from the victim, is that correct?

23 A That is correct.

24 Q Did you check to determine whether or not
25 these hair samples were consistent with the hair samples

1 submitted from Mr. Honaker?

2 A No, sir. I testified that I didn't and I
3 testified that it was my understanding that it was his vehicle
4 and therefore it was no need to check his hairs on his belongings.

5 Q Now, you also testified that animal hairs
6 were also found on these items, shirt, pant, blanket, jacket,
7 blanket and pillow, correct?

8 A That's correct.

9 Q But, I take it that these animal hairs were
10 dissimilar from the animal hairs found on the shorts and blouse
11 that were worn by Ms. [REDACTED], is that correct?

12 A That's true but there was one black animal
13 hair fragment that could have been, it was similar to the black
14 canine hair that I found on several of the items that you mention-
15 ed from the vehicle, and also from the vacuum sweepings. I
16 testified that I couldn't say that that black animal hair frag-
17 ment was in fact canine; but it was a black animal hair, a black
18 animal hair fragment and there were black animal hairs present
19 on the articles you mentioned and also in the vacuum sweepings.
20 There was no further comparison that I could make other than
21 that.

22 Q When you say similar you mean, I guess,
23 correct me if I am wrong, they were similar in color?

24 A That's right. That's basically all you
25 could do with especially an animal hair fragment, is you say its

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1 the same color.

2 Q And, did you check to see if the animal
3 hair samples recovered from the vacuum sweepings matched the
4 animal hair samples found on the items, five(5) through nine(9),
5 the pants and shirt through the pillow?

6 A Yes, some of those were the same color. In
7 other words, if I understand your question correctly, referring
8 to my last report. The animal hairs found on items five(5)
9 through nine(9) consisted of white animal hair from a canine,
10 there were also black found in the vacuum sweepings. There was
11 also black and white canine hairs and I found black/white animal
12 hair, canine, in the vacuum sweepings. I also found white with
13 brown hairs on some of the bedding and clothing. It was also
14 found in vacuum sweepings. I believe that was all, white hairs,
15 black hairs, black and white and white and reddish brown on
16 the articles five(5) through nine(9), the pants, the shirt,
17 blankets, jacket, pillow. Hair on those articles were - I did
18 find hairs that were similar to those, color and so forth, in
19 the vacuum sweepings that were reportedly from the vehicle.

20 Q Now, have you been involved in the past with
21 the examination or the taking of evidence associated with a Perk
22 Test?

23 A Actually taking the evidence myself?

24 Q Yes, sir.

25 A No, sir.

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1 Q You have never done that. Yours has been
2 limited to the evaluation of it?

3 A Yes, sir. That's why I testified the hair
4 samples, the blood samples, the swabs, reportedly from either
5 [REDACTED] or reportedly from the defendant. I hadn't seen
6 either one of them before and I certainly haven't taken any
7 evidence from them, nor any other suspect or victim that I may
8 have worked the case on.

9 Q Is it standard procedure to examine for the
10 presence of sperm when you examine the Perk Kit?

11 A It certainly is, yes.

12 Q And, can you determine, or do you know,
13 over what period of time the sperm would be present, or found?

14 A It's my opinion that spermatozoa would not
15 be found after a period of about twenty-four hours, and probably
16 much less than that. Probably not after a period of fourteen
17 or sixteen hours. I would say twenty-four hours to be
18 conservative. I would not expect, in my examinations, to find
19 sperm after intercourse had taken place prior to twenty-four
20 hours from the time the sample was taken from the reported victim.

21 Q Judge, I don't have any other questions.

22
23 REDIRECT EXAMINATION

24 By: Mr. Turpin

25 Q Of the hair samples that you received, both

1 from the victim and from the defendant here, were they randomly
2 selected hair samples, the best you could determine from the
3 samples?

4 A I have no idea. I know they were represen-
5 tative, at least they all resembled basically one or more of the
6 hairs. In other words, I can tell if a hair sample is not a
7 good one if I find twelve to fifteen blonde hairs and two black
8 hairs, and say a gray hair. Then I know that there were hairs
9 present that I didn't get very many of.

10 Q Did these appear to be good samples?

11 A They certainly did. If they had appeared
12 otherwise I would have asked for more samples.

13 Q In fact, you did ask for additional samples
14 of the victim, I believe?

15 A That's right, because the initial evidence
16 coming in, in the physical evidence recovery kit, contained too
17 few hairs for what I thought to be a complete and thorough
18 examination. So, I asked for additional. The practice is if
19 the hairs are insufficient in quantity I don't make a comparison
20 until I have additional hairs.

21 Q And, that's a safeguard, in your opinion,
22 so you have got a representative sample, is that correct?

23 A That's correct.

24 Q And, so you can base your opinion based on
25 the most represented samples that you can obtain?

1 A That's correct.

2 Q I have no further questions.

3 MR. FARRAR: No further questions, Your Honor.

4 THE COURT: Do you want to excuse him.

5 MR. TURPIN: The chemist can be excused.

6 THE COURT: You can be excused.

7 WITNESS STOOD ASIDE

8
9 MR. TURPIN: Your Honor, that would be the
10 Commonwealth's Case and I would move the admission of all of the
11 evidence.

12 THE COURT: The exhibits have all been admitted
13 and so marked. The Commonwealth rests. Call your first witness.
14 We will go on for a little while longer. Go ahead.

15
16 BOBBY HONAKER, Having been duly sworn was
17 called on behalf of the defendant and testified as follows:

18
19 DIRECT EXAMINATION

20 By: Mr. Farrar

21 Q You understand that you are still under oath?

22 A Yes, sir.

23 Q Would you state your name for the Court,
24 please?

25 A Bobby Honaker.