



## Looking Ahead to the 2013 Training Season

### 2013 Gaming Grant - Denied

I'd say "Happy New Year" but once again, our application for a BC Lotteries Gaming Grant for GSAR Tracker training has been denied. Not the Christmas present we were hoping for! This time, the principle reason given was that the Association has been receiving Government funding (i.e.: SAR NIF) and therefore is not eligible for the grant. Previous applications had been denied because other SAR groups have received Gaming Grants to support training programs – principally the BC Search and Rescue Association - which funds SAR Training through Justice Institute of BC (JIBC) courses.

Since the JIBC ceased providing Tracker training in 2010, the Contribution Agreement (CA) received from the National SAR Secretariat New Initiatives Fund (NSS SAR NIF) enabled our Association to provide subsidized GSAR Tracker training throughout BC over the past two years. We are very grateful for the federal funding support received. Unfortunately, this funding will end as of 31 March 2013.

Since 2010, the Association has provided 29 courses for over 566 students at the Novice/Track Aware and Advanced levels of GSAR tracker training. Based on the experience of conducting training over this three-year period, we are working on completing GSAR Tracker Training Standards and a matching Tracking Instructor Manual, which are deliverables under the SAR NIF CA.

### The Way Ahead in 2013

As a result of the denial of a Gaming Grant and the end of the SAR NIF CA, the Association will have to move to a Fee-For-Service financial model. This was already a policy option back in 2010 when we first applied for SAR NIF and Gaming grants. The 2013 budget approved at the 22 Sep 2012 Annual General Meeting included the Fee-For-Service model, in the event that the Gaming grant would be denied.

At the AGM, it was agreed that the Association would continue to provide GSAR Tracker Training in BC. The plan going forward is to offer up to nine Basic (Novice/Track Aware) combined with Advanced courses, plus one Instructor course.

The BCTA will continue to certify GSAR Trackers at the Track Aware level.

However, with no funding support, the full tuition for 2013 will have to be \$100 per course for BCTA members, with no reimbursement for student travel. Non-members will be charged \$200 tuition.

Instructors will still volunteer their time and their out-of-pocket expenses will be reimbursed, within prescribed limits. Additional training costs for manuals, handouts, classroom materials, certificates and some course coordinators' expenses will be paid from the tuition going into the BCTA Training. Other administrative costs, such as insurance, website, annual Society fees, membership cards, postage, Director's out-of-pocket expenses, etc... will be covered under the BCTA Admin from membership dues.

Members will be able to view details of the revised budget on the Members Only link on the website.

This increase in tuition and removal of travel reimbursements reflects the reality of the reduction in training funding available to the Association and the cost of providing the training. The price is very competitive with For-Profit commercial tracker training service providers. Our Association training is focused on EMBC GSAR Tracker specialization. We are recognized as a training provider by EMBC and BC SARA.

Some SAR Groups have helped to promote GSAR Tracker training by subsidizing or reimbursing their members expenses to attend courses. It is recommended that BCTA members consult with their own SAR Groups to see if such funding is available.

It is our intention to continue to promote, provide and develop quality GSAR Tracker training within the Province of BC.



# British Columbia Tracking Association

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## BCTA Executive and Directors 2013

**President:** Mike Neeland  
**Vice President:** Dwaine Brooke  
**Secretary:** Win Koch  
**Treasurer:** Alison Rose

### Regional Directors:

**SE:** Jerome Liboiron  
**Central:** Kelly Carnochan  
**North NE & NW:** Vacant  
**SW :** Vacant  
**VI:** Kathryn Farr

### Committee Chairs:

**Membership:** Peggy Shelley  
**Training:** Kelly Carnochan  
**Communications:** Win Koch  
**Policy:** Dwaine Brooke

### **Contact information at:**

<http://www.bctracking.org>

Details of the revised budget and financial statements will be available on the website in the Members Only link.

### **Training**

This past fall, courses were conducted in Coombs (Arrowsmith) and Squamish for 30 students. For the year-to-date we have conducted 12 In House Novice/Advanced/ Instructor courses for 138 students, plus one Universal Tracking Services course for 31 Advanced students.

**Courses:** Juan de Fuca SAR will host a course 22-24 Feb. This will probably be the last course for SAR NIF mileage reimbursement. Central Okanagan SAR will host a course 3-5 May at Silver Lake. See the BCTA website for details!

### **Memberships**

Currently, our membership stands at 178. Memberships are valid 1 May to 30 April. Application forms for 2013 membership renewals are available on the website [www.bctracking.ca](http://www.bctracking.ca) and can be mailed in, or completed and handed in to the lead instructor when signing in at a course.

Those whose memberships will expire in May will receive an e-mail reminder and an application form. Memberships can also be obtained from the Lead Instructor when attending a course. Fees remain at \$15 for 1-year and \$40 for a 3-year membership.

## **Regional Directors**

The BC Tracking Association Society is still looking for volunteers to fill the positions of Regional Directors in several areas of the Province of BC, including NW, NE and SW. The duties include: liaising with GSAR training officers and trackers within the region, providing tracking training materials and advice, facilitating tracking training, assisting other Regional Directors and providing reports, as required. Directors are voting members of the Executive Board of Directors and play a major role in furthering Tracker Training in BC. Please contact [secretary@bctracking.org](mailto:secretary@bctracking.org) with your resume if you are willing to represent your area of the province!

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## **Jan 2013 Board Meeting Summary**

### **Finances**

With the denied Gaming Grant application, that portion was removed from the 2013 budget and the Fee-For-Service budget was adopted. The tuition for 2013 will be \$100 for members and \$200 for non-members. There will be no reimbursement of travel expenses for students.

The BCTA accounts for the end of December 2012 show a balance of approximately \$12,000 in NIF CA funds, any unspent portion at the end of March will have to be returned.

## **Tracker Rewards – WINNER!**



Congratulations to Wayne Wilson from Metchosin SAR, winner of the BCTA Tracker Rewards program! Wayne's submission can be read in the Tracker Tales section of this newsletter. The reward is a \$500.00 reimbursement certificate towards tracker training, for submitting an essay about what they personally have found most rewarding, challenging, interesting or revealing about their Tracker Training. This reimbursement can be used to subsidize attendance at any tracking course of the Wayne's choosing – it doesn't have to be a BCTA sponsored course. Congratulations!

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## Communications

The website will soon be updated with new instructions on How to Host a Course and the 2013 Course Calendar, as courses are announced. The new 2013 course registration forms will be available at the website calendar with course announcements.

Course announcements will also be sent to EMBC and BC SARA, who will forward them to Regional Managers/Directors and SAR Groups, and also to non-members via the Grapevine.

Our best advertising is still word-of-mouth by our members. Talk to your SAR Group Training Officer, local public safety officials and outdoor professionals and enthusiasts.

Newsletters will be put on the website and Association members will be sent an e-mail notifying them of any  
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news and course announcements, with links to the website. This works better than sending them as attachments, which are blocked as junk mail by some internet service providers.

Newsletters will also be sent to NSS, EMBC and BC SARA.

## Newsletter Contributions

Contributions to the Newsletter are always welcome, especially for Tracker Tales articles. If you have had an interesting SAR or tracking experience, or find an interesting article we might all learn from, please send it in to [Secretary@bctracking.org](mailto:Secretary@bctracking.org)

## Pictures?

If anyone has group pictures of the Elkford and Golden courses, please forward them to [secretary@bctracking.org](mailto:secretary@bctracking.org) We are missing the course pictures for the website.

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## Tracker Tales



## Tracker Rewards - Winner!

Wayne Wilson, Metchosin SAR

When I started Tracking Training I was very intimidated by the process, I was concerned that I would not be able to see the signs or to accomplish what would be necessary to do the tracking. Now I find that I feel challenged and that it is very enjoyable and fun.

Every training, I find is a rewarding experience, it has opened up a new world for me I am not only learning new skills but also building the confidence to use them. I am building new friendships outside my own SAR group. These friendships are built by the teamwork that is necessary in tracking. Teamwork builds trust between the members of the team. The socialization at trainings assists the development of friendships and trust in individual skills. The concept that there should not be one leader, but shared leadership is very important. When all members feel able to bring their ideas on how to proceed, trust is built and the team can be more effective.

The Trainers are important to the learning experience. They are encouraging, supportive and professional. They support, but don't try to take over and only give hints, when the group is so far off to be unable to

continue. They note the positives and help to build esteem in each of the team members.

As I have progressed through the tracking trainings, I feel that I have become a better SAR member. With the skills and knowledge I have obtained, I will be able to keep involved in SAR and tracking for a long time.

All these experiences, I have been able to take back to my SAR group and use them to help others to understand tracking skills and how they can be used, it also increases my ability to work more effectively with other members of my group, I have received positive commitments from several in my SAR group to start tracking training in the new year.

To sum up, although tracking can be difficult, as I push through the difficulties, I build my skills and the other team members build theirs and our trust in each other grows. I will continue to encourage others to take Track Aware. I will continue to teach the values of Tracking Training and its use with my SAR group. Through tracking I know I will become closer to the tracking family and will further develop skills, as well as provide and receive support.

## Follow-up to last issue SAR SILL:

### Body of missing Ohio filmmaker found in B.C. wilderness

*CBC News* Posted: Nov 18, 2012 3:44 PM PT Last Updated: Nov 18, 2012 7:36 PM PT

The body of a missing Ohio hiker and filmmaker has been found in northern B.C., almost five months after he disappeared. Warren Andrew Sill, 26, came to the Gull Creek area of New Hazelton to film a documentary about

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rare Kermode bears, also known as 'spirit' bears. Sill was reported missing in July. An extensive search involving RCMP police dogs, an ATV, a helicopter and a number of volunteers did not find him.



Terrace Search and Rescue volunteers found a green shirt in Whiskey Creek on Nov. 10. (Terrace SAR/RCMP)

RCMP Const. Lesley Smith says a local search and rescue team was at Whiskey Creek area a week ago. Smith said that because water levels in the creek and waterfall pool areas are much lower at this time of year, searchers were able to access hazardous areas that are underwater other times of year.



Searchers navigated waterfalls, chutes, and pools in Whiskey Creek. (Terrace SAR/RCMP)

On Saturday Nov. 10, the team came across a green shirt frozen in debris above a 4-metre waterfall in Whiskey Creek. The team returned Friday to the waterfall, equipped with ropes and swift water search equipment.

Searchers descended below the waterfall and, in a debris jam of logs, sticks, and rock, the team located and recovered a body.

Smith said the body was sent to Vancouver, where dental records confirmed that it was Andrew Sill. She said it is unlikely anyone will ever know how he died.



On Friday, searchers located the body of Andrew Warren Sill in a debris jam. (Terrace SAR/RCMP)

"Well it's pure speculation at this time. I don't think we'll ever know," she said.

"But, due to the fact that it was near a waterfall, you know, two options here: it's possible that he may have fallen into this area, into the terrain that that location is well-known for — the steep terrain. Or, he was swimming," Smith said.

With files from the CBC's Stephanie Mercier

## What Size is That Shoeprint?

<http://forensics4fiction.com/2011/07/15/what-size-is-that-shoeprint/> ul 15

Posted by [forensics4fiction](#)



Shoe sizing label

You know that scene where the detective walks into the crime lab and the examiner explains that the shoe print is from a size 10 shoe? Yeah, that rarely happens. There are no absolutes but there are a few reasons why this doesn't happen with regularity. Before we get into that you should realize that there are two types of "sizes" footwear examiners deal with. The insole size is what you are probably most familiar with (i.e. 9.5US, 11w US, etc.). This is the guide we use to select our shoes at retail stores. The other size is the outsole size. This is the one examiners communicate in most frequently. The outsole size is the physical size and dimensions of the outsole (217mm in length, etc). The two are totally different.

So why do examiners generally ignore insole size? The main reason has to do with the manufacturing processes. A lot of shoes are made in countries with less than "precise" guidelines. Outsoles are often manufactured separately from the uppers. Without boring you with a lot of details it is very possible for a size 10 outsole to be paired with a size 10.5 or 11 upper. Additionally, in a vast majority of cases examiners can only determine a range of sizes unless there is a specific aspect of the actual mold (used to make the outsole) that is only found in that specific size. This was the case with

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the Bruno Magli shoes in the O.J. Simpson civil trial and allowed FBI Agent Bill Bodziak to identify the specific insole size.

All of this is assuming that you have a full and complete impression of the outsole at the crime scene. If you are missing the front 2cm of an impression because of some factor then, at best, the examiner is extrapolating the "true" length (or other dimension). There can also be distortion to the impression if it is in a softer medium such as snow or mud which could lead to an error to the length of the impression.



Shoe impression in snow

Another reason is that knowing the insole size (say 9.5US) really doesn't help an investigation since millions of people wear that same shoe size. When we write a search warrant to seize someone's shoes we don't put the insole size in there because it could have been made by a range of sizes. Likewise, just because a suspect may wear a slightly different size doesn't mean they didn't wear the shoes in question. A person can certainly wear a pair of shoes up to several insole sizes larger than normal and may be able to squeeze into shoes a few sizes smaller as well.

What if a young teenager suspect wore his older brother's shoes to commit a crime? If the footwear examiner determined that the shoe size was 11.5 they may ignore the younger suspect because his shoe size was an 8 US. You could also obviously have a suspect wear the shoes of the opposite gender to throw off police. So while examiners can theoretically estimate an insole size from the impressions left at crime scenes it is something we generally avoid.

## THE DEBUNKING OF LOUISE ROBBINS

ANOTHER REVERED EXPERT (LIKE CHARLES SMITH) TOPPLED; AS TOLD BY MARK HANSEN; AMERICAN BAR ASSOCIATION JOURNAL;

<http://smithforensic.blogspot.com/2009/03/excellent-introduction-to-prof-louise.html>

SATURDAY, MARCH 28, 2009

"BY HER OWN ACCOUNT, ROBBINS APPEARED AS AN EXPERT, MOSTLY FOR THE PROSECUTION, IN MORE THAN 20 CRIMINAL CASES IN 11 STATES AND CANADA OVER THE NEXT 10 YEARS UNTIL A LOSING BATTLE WITH BRAIN CANCER FINALLY

FORCED HER OFF THE WITNESS STAND. SHE DIED IN 1987 AT THE AGE OF 58. BY THEN, HER TESTIMONY HAD HELPED SEND AT LEAST A DOZEN PEOPLE TO PRISON. AND IT MAY HAVE PUT ONE MAN ON DEATH ROW.

THERE'S JUST ONE CATCH. ROBBINS WAS THE ONLY PERSON IN THE WORLD WHO CLAIMED TO DO WHAT SHE SAID SHE DID. AND HER CLAIMS HAVE NOW BEEN THOROUGHLY DEBUNKED BY THE REST OF THE SCIENTIFIC COMMUNITY.

REPORTER MARK HANSEN: AMERICAN BAR ASSOCIATION JOURNAL;"

Reporter Mark Hansen's classic article on Louise Robbins appeared in the American Bar Association Journal in June 1993 under the apt heading "Believe it or not."

"Louise Robbins had but one claim to fame: She could see things in a footprint that nobody else could see," the article began.

"Give her a ski boot and a sneaker, for instance, and Robbins contended that she could tell whether the two shoes had ever been worn by the same person," it continued;

"Show her even a portion of a shoeprint on any surface, Robbins maintained, and she could identify the person who made it."

It might sound amusing, coming as it did from an anthropology professor who once astounded her colleagues by describing a 3.5 million-year-old fossilized footprint in Tanzania as that of a prehistoric woman who was 5 1/2 months pregnant.

It might also be considered harmless, had it remained a subject of academic speculation at the University of North Carolina at Greensboro, where Robbins taught anthropology courses and collected footprints from her students for comparison. By 1976, however, Robbins had taken her quirky ideas out of the classroom and into the courtroom, where her amazing feet-reading abilities seemed to dazzle juries and made her something of a celebrity on the criminal trial circuit. Newspapers called her a female "Quincy." She was profiled in the ABA Journal. Her techniques were even touted in the pages of Time magazine.

By her own account, Robbins appeared as an expert, mostly for the prosecution, in more than 20 criminal cases in 11 states and Canada over the next 10 years until a losing battle with brain cancer finally forced her off the witness stand. She died in 1987 at the age of 58. By then, her testimony had helped send at least a dozen

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people to prison. And it may have put one man on death row.

There's just one catch. Robbins was the only person in the world who claimed to do what she said she did. And her claims have now been thoroughly debunked by the rest of the scientific community.

Melvin Lewis, a John Marshall Law School professor who keeps track of more than 5,000 expert witnesses, dismisses Robbins' work as "complete hogwash." "It barely rises to the dignity of nonsense," he said.

And FBI agent William Bodziak, one of the world's leading authorities on footprints, said that Robbins' theories were totally unfounded.

"Nobody else has ever dreamed of saying the kinds of things she said," he explained.

Robbins' story, as reported last year by the CBS news program "48 Hours," provides a graphic illustration of how far some prosecutors and defense lawyers are willing to go to find an expert witness to bolster a case. It also shows how easily one self-proclaimed expert with little or no credence in the scientific community can make a mockery out of the criminal justice system.

"It's frightening to me that something like that could go as far as it did," said Lewis, who runs a school-sponsored referral service that puts lawyers in touch with qualified experts. "Her so-called evidence was so grotesquely ridiculous, it's necessary to say to yourself, if that can get in, what can't?"

Today, nearly six years after her death, some of the legal ramifications of Robbins' testimony are still being felt.

Stephen Buckley, who spent three years in an Illinois jail awaiting trial for the 1983 murder of a 10-year-old Chicago-area girl, is suing prosecutors for allegedly violating his civil rights.

Buckley's first trial, in 1985, ended in a hung jury, despite Robbins' testimony that a boot print left on the victim's kicked-in front door had been made by him. He was freed in 1987, but only because Robbins was then too sick to testify at his retrial.

Dale Johnston is also suing prosecutors after spending six years on Ohio's death row, due at least in part to Robbins, for the 1982 murders of his teen-age stepdaughter and her fiancé.

Robbins testified at Johnston's 1984 trial that a muddy impression in the cornfield where the victims' dismembered bodies were found came from the heel of Johnston's cowboy boot. He was released from prison in 1990 after an appeals court ruled that the boots on

which Robbins based her testimony couldn't be used against him.

Yet Buckley and Johnston might consider themselves lucky, in light of what has happened to Vonnie Ray Bullard.

Bullard is still serving a life sentence in a North Carolina prison for the 1981 murder of another man after Robbins testified that a bare footprint outlined in the victim's blood was his. Having exhausted his appeals, based largely on Robbins' testimony, Bullard won't be eligible for parole until the year 2001.

Other experts can match feet with footprints or shoes with shoeprints, provided that the two samples being compared share enough of the same ridge details or random characteristics. But Robbins was alone in claiming that she could tell whether a person made a particular print by examining any other shoes belonging to that individual.

Robbins built her reputation on the theory that footprints, like fingerprints, are unique. It was her contention that, because of individual variations in the way people stand and walk, everyone's foot will leave a distinct impression on any surface, including the inside sole of his or her shoe. Those impressions, she contended, show up as "wear patterns" on the bottom of every shoe.

"Footprints are better indicators for identifying people than fingerprints," Robbins told the ABA Journal in July 1985. "With a footprint, you use the entire bottom surface of the foot. With the fingerprint, you only use the tip of the finger."

Robbins' claims were hotly contested from the moment she first set foot in a courtroom. Shortly before her death, a panel of more than 100 forensic experts concluded that her footprint identification techniques didn't work. In hindsight, her theories may seem patently absurd.

In fact, many of her colleagues have been saying as much since 1978, when Robbins joined a scientific expedition at Laetoli, Tanzania, then the site of one of the most important archaeological discoveries ever made. During that expedition, according to her colleagues, Robbins misidentified one set of prehistoric human footprints as belonging to an antelope and concluded that another set of footprints had been made by the prehistoric woman who was 5 1/2 months pregnant. She also claimed to have found fossilized cobwebs that other members of the expedition said did not exist.

Tim White, an anthropology professor at the University of California at Berkeley who was also a member of the expedition, said it was hard enough to determine that the

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footprints they found were indeed human. But it was impossible to tell if any of the prints had been made by a woman, let alone one who was 5 1/2 months pregnant, he said.

"Her observations were unreliable, she was overly imaginative and she was incredibly suggestible regarding the interpretation of evidence," White said. "She kept saying things that could not be documented, and for very good reason. It was all in her mind."

"It truly reveals her as someone who was willing to go to any extremes to come up with an interesting story," said University of Chicago anthropology professor Russell Tuttle, who has studied Robbins' work and appeared opposite her in court. "She'd say anything anybody wanted her to say."

But that didn't keep Robbins from being qualified as an expert, with no known exceptions, from the time she first testified for the prosecution in the arson trial of a Pennsylvania man in 1976, until her last known appearance in court, once again as a prosecution witness, at the 1986 murder trial of a Chicago man.

In some cases, like Bullard's, her testimony may have been cumulative. In other cases, like Buckley's and Johnston's, it constituted the only physical evidence linking the defendant to the crime.

Prosecutors usually succeeded in getting her testimony admitted by portraying Robbins as a pioneer in a new field of science and by putting on testimonials as to her character and credentials from one or two of her peer. One prosecutor noted that it took 400 years for Galileo's theories to win acceptance. Another pointed out that fingerprint evidence also was considered a new science just 80 years ago.

Since Robbins had no competition, her testimony was difficult to refute. But defense lawyers depicted her variously as a fraud, a charlatan, an opportunist and a hired gun. And they presented other experts who testified that there was no scientific basis for any of the claims she made.

**By her own admission, Robbins never took or taught a course on shoeprint identification techniques or the wear patterns of shoes. She never conducted a blind test of her abilities, published her findings in a scientific journal or submitted her work to peer review. And she never accounted for such things as manufacturing differences in shoe wear construction, dynamic changes in a person's foot or the effect of various surfaces on the quality of a shoeprint.**

"She may well have believed what she was saying," said C. Owen Lovejoy, an anthropology professor at Kent

State University who testified on behalf of Buckley, "but the scientific basis for her conclusions was completely fraudulent."

Tuttle said he concluded after hearing her testify at a 1983 murder trial in Winnipeg that Robbins was "either a crook or a self-deluded quack."

Robbins didn't always testify for the prosecution and her testimony didn't always win the case for the side that hired her. On the other hand, she was always willing to make a positive identification that nobody else was willing or able to make, and her conclusions consistently supported the case of the side for which she was testifying.

Several lawyers cite her testimony on behalf of the defendant in a North Carolina murder trial in 1985 as one of the most telling examples of her work. Other witnesses had testified that they saw the defendant go into a dry cleaning store where a clerk was murdered and come out a few minutes later. And the state's own experts had matched two bloody shoeprints in the store with the defendant's shoes.

But Robbins testified that the shoeprints had been made by two people other than the defendant, both of whom were wearing the same size shoes as the defendant.

The defendant was subsequently convicted and sentenced to death, but was awaiting resentencing in May as a result of a 1990 ruling by the U.S. Supreme Court holding that North Carolina's capital sentencing scheme was unconstitutional. *McKoy Jr. v. North Carolina*, 110 S. Ct. 1227.

Bodziak never saw those prints. But he did examine the same evidence as Robbins in two cases. And both times, the FBI expert concluded that Robbins was flat out wrong.

In Johnston's case, Robbins and Bodziak both compared three plaster casts of boot prints taken at the scene of the murders with three pairs of cowboy boots belonging to the defendant. Both agreed that two of the prints could not have been made by the defendant's boots.

The third print was unidentifiable to Bodziak, who said he couldn't even determine through computer enhancement if the impression had been made by a boot or a bare foot. Yet Robbins positively identified the print as having come from the left heel of one of Johnston's boots.

"There was nothing there," Bodziak said. "There was no evidence whatsoever of any recognizable portion of a boot. It literally looked like they had poured plaster over a bunch of rocks."

In Buckley's case, Bodziak and Robbins both compared the defendant's boots with the boot print left on the victim's front door. Robbins said the print was definitely Buckley's. Bodziak says it definitely was not.

"They're different in a lot of ways," Bodziak said of the two samples. "They don't even come close" to matching.

To this day, Robbins still has at least one supporter who backs her work unequivocally.

Thomas Knight, a former Illinois prosecutor who used Robbins as an expert in the case against Buckley, describes her as one of the least controversial experts he has ever encountered. The fact that she alone could do what she did, he says, is a testament to her ability, dedication and hard work.

"I would rank her credibility as a witness and her integrity as a scientist right at the top," he said.

Knight, who now has a private civil practice outside of Chicago, also contends that Robbins has been made a scapegoat by a collection of people with ulterior motives, primarily those who hope to discredit her testimony as a means of getting the convictions she helped secure overturned.

Bodziak has his own ax to grind, Knight suggests, because Robbins was able to identify footprints that he couldn't identify, an assertion that the FBI expert flatly denies.

"She was a terrific person who's been terribly maligned by some of the things that have been said about her," Knight said. "I think it's really sad, and I intend to do whatever I can to set the record straight."

"I don't think he has any other choice" but to defend Robbins, Bodziak responded. "Maybe he really believes her."

Even some of Robbins' once-staunchest defenders now express doubts about the validity of her work.

Ellis Kerley, a retired professor of anthropology at the University of Maryland who used to vouch for Robbins' abilities on the witness stand, today concedes that he was "a little surprised" by some of the things she said in court.

"The question you have to ask in any scientific examination is whether the interpretation has gone beyond the underlying data," he said. "It strikes me that that must be what happened in Louise's case."

Courts have different standards for the admission of scientific evidence. Many state and federal courts still

follow the so-called Frye rule, named after a landmark federal appeals court decision in 1923 barring the use of results from an early form of lie detector test against a criminal defendant. *Frye v. U.S.*, 293 F. 1013.

**Under the Frye rule, expert testimony must be based on a well-recognized scientific principle or discovery that has "gained general acceptance in the particular field in which it belongs" in order to be admitted.**

Since 1975, however, when Congress enacted new rules of evidence, several state and federal courts have liberalized the standards governing the use of expert witnesses. Those rules essentially permit any expert who is qualified in his or her field to testify in a case, as long as the testimony is relevant and it helps the jury understand the evidence or determine the facts.

Critics of the 1975 rules contend that what they call the "let it all in" approach to the admission of expert testimony has allowed the courts to become mired in all sorts of unsubstantiated scientific claims and dubious forms of expertise. They say that judges and juries are too easily swayed by the likes of someone like Robbins, a grandmotherly professor with the right academic credentials, a scientist's demeanor and a matter-of-fact delivery on the witness stand.

But proponents of the more flexible standard argue that much of the evidence needed to prove a scientific claim in court is generally regarded as being on the cutting edge of science. They point out that much of what is universally accepted as science today was once considered to be outside of the scientific mainstream. And they suggest that judges and juries are fully capable of making the distinction between a legitimate scientific claim and an unfounded one.

The appellate record on Robbins is mixed.

In 1980, a California appeals court upheld the conviction of a man whom she linked to the rape, robbery and assault of three elderly women through shoeprints left at the scene of the crimes, finding that Robbins was an expert in her field. *People v. Barker*, 113 C.A.3d 743.

Bullard's conviction also was affirmed in 1984 by the North Carolina Supreme Court. It held that new scientific methods are admissible if they are reliable, which it said was the case with respect to Robbins' techniques. Any rebuttal testimony, the court said, goes to the weight of the evidence, not to its admissibility. *State v. Bullard*, 312 N.C. 129.

Under that standard, which remains in effect, Robbins could still testify in North Carolina if she were alive today, according to Carl Barrington Jr., Bullard's defense lawyer.

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But not in Illinois. An appeals court there threw out the conviction of a man on murder, armed robbery, sexual assault and home invasion charges in 1988 on the grounds that Robbins' techniques didn't meet the "general acceptance" test set forth in Frye. *People v. Ferguson*, 172 Ill. App. 3d 1.

"While there is arguably a scientific basis in Robbins' theory (i.e., measurement techniques), her theory is not only not generally accepted in her scientific community, but is also not shared with any other member of her field," the court said.

Johnston's conviction also was overturned by an Ohio appeals court in 1986, but not on the basis of Robbins' testimony. The court held that Robbins met the test of admissibility under the state's rules of evidence, which require that expert testimony be "relevant and helpful to the finders of fact." *State v. Johnston*, 1986 WL 8799 (Ohio App.).

The judge at Johnston's second trial suppressed the boots, along with other evidence he found had been illegally obtained, in a ruling that was affirmed by an appeals court in 1990.

The narrow issue before the Court is whether Congress' adoption of the new evidence rules in 1975 supersedes the judicially created Frye rule of 70 years ago. But the Court is widely expected to set a definitive standard for the admission of scientific evidence or, at the very least, clear up some of the confusion and inconsistency that exist now.

Although the decision will apply only to the federal courts, most state courts look to the High Court for guidance.

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## British Columbia Tracking Association

[www.bctracking.org](http://www.bctracking.org)

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