

1 (Jury excused)

2 (Whereupon the jury returns to the courtroom and court
3 resumes)

4 THE COURT: Call your next witness.

5 MS. STOLTE: State would like to call John Nichols.

6 J O H N T. N I C H O L S, sworn.

7 DIRECT EXAMINATION BY MS. STOLTE:

8 Q Good morning, Mr. Nichols.

9 A Good morning.

10 Q By whom are you employed?

11 A The New Jersey State Police Chemistry Biology Laboratory,
12 Sea Girt, New Jersey.

13 Q And how long have you been with them?

14 A I've been with the State Police system for approximately
15 twenty-four years.

16 Q And in what capacity are you employed there now?

17 A At the Sea Girt laboratory I am employed as a principal
18 forensic scientist.

19 Q And how long have you been a principal forensic
20 scientist?

21 A A little over eight years.

22 Q Now, Mr. Nichols, prior to going to the laboratory
23 where did you attend college?

24 A I graduated Hunter College City University of New York 1965.
25 I worked in private industries for approximately five years,

1 which included one year at Montefiore Hospital, Bronx, New York
2 and four years at Shell Chemical Company, Princeton, New Jersey.

3 Q And in 1970 did you start with New Jersey State Police
4 laboratory?

5 A Yes, I did.

6 Q Now, when you started with the police laboratory what
7 function did you have when you started off with them?

8 A The primary level coming into the laboratory system I worked
9 in the drug analysis unit for approximately three years.

10 Q And once you finished with the drug analysis, what area
11 did you go to next?

12 A Then I moved into what is known, or what was known then as
13 the criminalistic section which included trace evidence as well
14 as biochemistry, in 1980, the criminalistic section was
15 separated into to a biochemistry unit and a trace evidence unit.

16 Q Tell us, when you say biochemistry unit, what's
17 involved in a biochemistry unit?

18 A The biochemistry unit, as it now pertains to the laboratory,
19 examines any type of biological fluid. This would include
20 blood, saliva, semen, perspiration, fecal material, anything
21 coming out of the body that would be of a biological nature.

22 Q You also talked about a separate unit the trace
23 section. What does that test for or analyze?

24 A The trace evidence unit analyzes such things as hairs,
25 fibers, glass, tire impressions, shoe impressions, just about

1 anything under the sun as opposed to biological evidence.

2 Q And how long were you in the biological and the trace
3 unit?

4 A Approximately seven years.

5 Q And after you were in that section where did you go to
6 next?

7 A For the next six years from 1980 to 1986 I worked for the
8 administrative unit of the laboratory system.

9 Q In 1986 where did you go to then?

10 A I went to the Sea Girt laboratory in Sea Girt, New Jersey,
11 where I am still working.

12 Q Now, when you went to Sea Girt in 1986 what unit did
13 you go into?

14 A I went into the biochemistry unit.

15 Q What position did you have when you first went to Sea
16 Girt in the biochemistry unit?

17 A I am the principal forensic scientist, which is the bench
18 leader of the unit.

19 Q As at principal forensic scientist what is your duties
20 and functions?

21 A The principal forensic scientist in any of the four units --
22 if I may digress for a moment -- the laboratory is broken into
23 four units. Drug analysis unit, toxicology unit, trace evidence
24 unit and biochemistry unit. Each of these units is supervised
25 at the bench level, that is they are working supervisors as

1 opposed to the administrative office. I am the bench level
2 supervisor of the biochemistry unit.

3 Q During your time when you were in the biochemistry unit
4 to combine with when you later came in 1986, did you have
5 opportunity to analyze specimens for bodily fluids or any type
6 of biochemical analysis?

7 A Yes, I did.

8 Q How many cases would you say you worked on last year?

9 A The laboratory receives approximately three hundred fifty
10 biochemistry-type cases. I probably participated in two hundred
11 of those.

12 Q And do you also keep up on the literature in the area
13 of biochemistry through either reading magazines or seminars or
14 anything along those lines?

15 A Yes, I do.

16 MS. STOLTE: Judge, I would like to qualify John
17 Nichols in the field of biochemistry.

18 MR. HARKOV: No objection.

19 THE COURT: All right, the Court will qualify Mr.
20 Nichols as an expert in biochemistry.

21 Members of the jury, ordinarily witnesses can only testify
22 as to facts that they perceive through their various senses,
23 what they see, what they hear, what they smell.

24 Certain witnesses are qualified as expert witnesses because
25 they have some type of special skill or training or experience

1 that's not possessed by the ordinary juror and who can help the
2 jury in their fact-finding responsibilities.

3 Mr. Nichols is being offered as an expert witness and I've
4 qualified him to be an expert witness.

5 What that means is this. He's now in a position to offer
6 you an opinion. The fact that I've qualified him as an expert,
7 all that means is he can offer an opinion to you. Doesn't mean
8 you have to accept it. Doesn't mean you have to reject it.
9 Listen to what he says, how he says it, his credentials, his
10 credibility, and you give his opinion whatever weight you deem
11 it entitled.

12 Q Mr. Nichols, how many, would you say, times have you
13 testified as an expert in Superior Court?

14 A I've testified a total of three hundred nine times in
15 Superior Court in all twenty-one counties of the State of New
16 Jersey. I've testified in municipal court and in Federal court
17 in Trenton.

18 Q Mr. Nichols, how do items get to the State Police
19 Laboratory to be examined?

20 A The submitting agency, in this case the four or five
21 counties that we service in the Monmouth, Ocean, Middlesex,
22 Union and Hudson County areas, will submit to the laboratory
23 what is known as a request for examination of evidence. This is
24 a form used by the State police for the submission of evidence
25 to be submitted to the laboratory for the examinations.

1 Q I'll mark this for you and you can actually refer to
2 this one. I'll mark it as S-21 for identification.

3 (Exhibit received and marked S-21 for identification)

4 Q Okay, I'll have you look at what's been marked S-21 for
5 identification and ask you what is S-21?

6 A S-21 is a copy of the form that I have.

7 Q Now, when the submitting agency brings that down what
8 happens?

9 A The submitting agency, in this case the New Brunswick Police
10 Department, types up the pertinent information, type of crime,
11 investigative group, et cetera. They type in sequential order
12 the number of specimens that are to be submitted.

13 In this first submission, which was received at the
14 laboratory on August 28, 1992, there are a total of twenty-six
15 items to be processed by the biochemistry unit.

16 When the evidence is received at the laboratory it is
17 received and time, date stamped in the upper right hand corner.
18 In the upper right hand corner there is also, there is also
19 placed the laboratory number. This is a unique laboratory
20 number and only applies to this specific case.

21 This case involves the victim by the name of [REDACTED]
22 twenty-one, female, white.

23 Q Now, when you get those items you say there were a
24 number of items, specifically what did you say, twenty-seven
25 or --

1 A Twenty-six.

2 Q Twenty-six items sent down to you. How is it
3 determined which ones you are going to look through or do you
4 look through all of them?

5 A We essentially look through all of them.

6 Q In this case did you have the opportunity to look
7 through the items that were sent down by New Brunswick, the
8 twenty-six items?

9 A Yes, we did.

10 Q First of all I'm going to have you take a look at an
11 item that has also been marked previously S-19 for
12 identification and ask you if you recognize what S-19 is?

13 A This is the standard, what we call a Rape Crisis
14 Intervention Kit. It has the same laboratory case number, six
15 nine three two three, the letter E for East Regional
16 Laboratory. This is usually processed by Roosevelt Hospital,
17 the Rape Crisis Center for Middlesex County.

18 Q Are those the items that come down to you or at least
19 some of the items that come down to you with respect to the
20 request form?

21 A In this bag would be items one through twenty-two.

22 Q And the other items that were sent down to you, I'd
23 like you to take a look at S-18 for identification purposes, was
24 S-18 also brought down to the State Police Laboratory to be
25 examined?

1 A Yes, it was, you can tell by the same laboratory case
2 number, six nine three two three E, specimen number twenty-six
3 with my initials and in the lower right-hand corner.

4 Q And how about with respect to S-20 for identification
5 purposes, was S-20 also brought down to the Sea Girt Laboratory
6 for analysis?

7 A Again, same laboratory case number, six nine three two three
8 E, specimen number twenty-five.

9 Q Now, when you receive the items after they have come to
10 the lab and they've been logged in, what do you do, what's the
11 next part of your procedure?

12 A All right, the whole purpose of forensic science is either
13 to include a potential suspect with a victim or relate either
14 one to a particular scene. The biochemistry aspect of the
15 analysis that we perform is to try to link either the victim and
16 or the suspect together in some type of biochemical manner.

17 In the case of a sexual assault we try to ascertain if there
18 is semen present and or spermatozoa which is a representation of
19 the male, and we try to look for a transfer back then to the
20 suspect, possibly victim's blood.

21 Q Now, in this case when these items came down to you on
22 August 28, did you know whether or not there was any type of
23 suspect picked up in this case?

24 A The request for examination, where it says suspect, it says
25 unknown.

1 Q So, knowing now that you have nothing to compare those
2 items to, what did you do when you received them?

3 A We still go through the examination to aid the law
4 enforcement agency, in this case the New Brunswick Police
5 Department, to try to ascertain whether there was any type of
6 sexual assault or any type of sexual activity.

7 Q Now, in looking through your report I'd ask you to look
8 to number three which indicates blood typing.

9 Now, it says blood typing. What does that test involve?

10 A Blood typing test is a standard test used throughout
11 forensic science as well as hospitals to determine what a blood
12 typist.

13 There are four categories of blood types, there are A, O, A
14 B and B. The victim in this case is a blood group A.

15 Q Now, from her blood typing are you able to tell, first
16 off, if this person is a secretor or a non secretor?

17 A Not from the blood typing. We do another test in
18 conjunction with testing the saliva to determine whether the
19 people involved in this case are known as secretors.

20 If I may explain what a secretor is, approximately eighty
21 percent of the population, now, this is regardless of race and
22 or sex will secrete their blood group substances, that is their
23 blood type in perspiration, seminal fluid, vaginal secretions,
24 any biological fluid coming out of the body will be represented
25 in approximately eighty percent of the population.

1 The other twenty percent of the population will be known as
2 non secretors, that means their blood type cannot be ascertained
3 from seminal fluid, perspiration, saliva, et cetera.

4 Q When you did the blood typing and the next test to
5 indicate whether or not she, the victim, is a secretor, what was
6 the result?

7 A The results of the testing on the first report was that the
8 victim was a blood group A, her Lewis type, is A negative, B
9 positive, which is consistent with somebody who is a secretor;
10 however, because there was no suspect in this case we did not
11 carry the analysis any further to determine or to corroborate
12 whether she was a secretor or not by testing her saliva.

13 Q So, the test that you did do is not a confirmatory test
14 but it indicated she was a secretor?

15 A Based on her blood typing and her Lewis grouping.

16 Q Now, going down your report with respect to number four
17 it's indicated that the specimen is a vaginal swab. Do you see
18 that on your report?

19 A Yes, I do.

20 Q What is the test you perform on the vaginal swab?

21 A Any biological samples that we test for, we test, especially
22 in sexual assault case, we test for a chemical known as acid
23 phosphatase. Acid phosphatase is contained in seminal fluid in
24 very large quantities and is readily detectable by a very simple
25 test.

1 The vaginal swab gave us a presumptive test for the presence
2 of semen, that is it reacted positively for the acid phosphatase
3 reagent.

4 Q What else do you note when you are doing your report
5 with respect to vaginal swabs, what else can you determine when
6 you looked at this vaginal swab?

7 A The only thing we did on the original report was test for
8 the presence or absence of acid phosphatase.

9 Q You later, then, you say first report, do you do an
10 original report when you first start off?

11 A All right, the first report that was generated is generated
12 11/30/92, approximately, I believe, three months after the
13 evidence first came into the laboratory. Since there was no
14 suspect in the case and we were down, I believe one or two
15 people in the unit, what we do is we create this preliminary
16 report to give the police departments sort of an idea what
17 actually happened in this case.

18 Q So, on your preliminary report that's what you did, you
19 just determined whether or not seminal fluid was found on the
20 vaginal swab?

21 A Correct.

22 Q Now, how about with respect to the rectal swab, did you
23 also have the opportunity on your preliminary report to examine
24 that?

25 A Yes, I did.

1 Q And what was the result of that examination?

2 A Again, a positive result for a presumptive test for semen.

3 Q Again, on your preliminary report did you have the
4 opportunity to take a look at and examine what has been marked,
5 today, as S-20 for identification?

6 A All right, S-20 for identification is my laboratory specimen
7 number twenty-five. The results of that test, again, are the
8 same as the vaginal swab and the rectal swab in that it gave a
9 positive presumptive test for the presence of semen.

10 Q And that is the underpants that were sent down to the
11 laboratory?

12 A Yes, they were.

13 Q And how about with respect to your number twenty-six on
14 your preliminary report and State's exhibit S-18 for
15 identification. Did you have the opportunity to look at that
16 item?

17 A Yes, the shorts also reacted positively for the presumptive
18 test for semen.

19 Q And essentially is that your preliminary findings?

20 A There was also an examination on the vaginal washing, which
21 is my specimen number one. The result of that test was it was
22 positive for the presence of spermatozoa, which is the male
23 reproductive sell.

24 Q And is that essentially your findings on the
25 preliminary report?

1 A That is correct.

2 Q Now, then, you say, after you do the preliminary report
3 where you have no suspect, what happens next, do you do a second
4 examination when you do get a suspect?

5 A All right, initially, the report is generated. All the
6 samples that reacted positively are removed from the particular
7 items and placed in the sub zero freezer to preserve their
8 integrity.

9 When, and if, a suspect is ascertained, the submitting
10 agency will then come back to the laboratory with the respective
11 controls from the suspect and request an examination of those
12 controls and a further examination of the samples we placed in
13 the freezer. They also submit the original evidence that we
14 examined for trace evidence.

15 Q And was that done in this case?

16 A Yes, yes, it was.

17 Q On what day, do you know, did you receive the items
18 with respect to the exemplars of a suspect?

19 A The original case was resubmitted along with the numbers
20 twenty-seven through thirty-four from the suspect on April 16,
21 1993.

22 Q Now, when that additional evidence comes down to you,
23 that coming from the suspect, does that go through the same
24 procedure as those original items came down?

25 A Yes, it does.

1 Q And is it given that same unique number you talked
2 about?

3 A It is given the same numbers to show continuity in the
4 evidence.

5 Q And when I say exemplars are brought down with respect
6 to the suspects, what type of items are brought down with
7 respect to the suspect?

8 A Because we are dealing now with two units, the trace
9 evidence unit as well as the biochemistry unit, each unit
10 requests their own specific set of controls. The biochemistry
11 unit requests saliva, and blood, which are the two biochemical
12 pieces of evidence that we examine; and the trace evidence unit
13 requires various types of head pluckings as well as pubic hair.

14 Q Now, with respect to your unit, the biochemistry unit,
15 what items did you specifically look at and examine?

16 A All right, we, all right, we examined the suspect's saliva,
17 which is my specimen number twenty-eight, and the blood from the
18 suspect, specimen number thirty-four.

19 Q Now, when you examine number twenty-eight, your number
20 twenty-eight, first of all, what is that?

21 A Specimen number twenty-eight is a saliva control.

22 Q And what tests do you do and what are you attempting to
23 locate?

24 A The testing that is performed is a test to determine if the
25 suspect in the case or the submitted controls from the person

1 named on the report is a secretor or not. We also examine his
2 blood for his blood type and his Lewis type to confirm whether
3 the person is a secretor or not.

4 Q Now, in this case when you looked at item number
5 twenty-eight, the saliva, what did you determine?

6 A All right, the saliva which is my specimen number
7 twenty-eight, in conjunction with the control sample, number
8 twenty-seven, exhibit had no blood group substances, this would
9 be consistent with a person who is a non secretor.

10 Q So, when you say non secretor according to twenty-seven
11 and twenty-eight the control and the saliva of the suspect, at
12 this point when you say non secretor that's a person that would
13 not the leave their blood group substances in bodily fluids, is
14 that correct?

15 A That's correct.

16 Q So, then you look at that, do you also have the
17 opportunity to look at the blood of the suspect?

18 A Yes, we do.

19 Q And what tests do you do and what are, what were the
20 results with respect to the suspect's specimen?

21 A All right, we tested the specimen number thirty-four, which
22 is the blood of the suspect and we came up with a blood group A,
23 however the results of his Lewis type which would corroborate
24 the saliva results was inconclusive.

25 We also tested for three other genetic markers, P G M, P G M

1 sub typing and Peptidase A.

2 Q After you said you tested and you couldn't determine
3 Lewis type, then is it fair to say in your opinion that your
4 results indicate that he is, the suspect is a non secretor?

5 A It would appear that way, except that the Lewis result does
6 not correspond, or the inconclusive does not corroborate the
7 results from the saliva test.

8 Q So, what you have up to that point indicates a non
9 secretor, but it's not one hundred percent?

10 A Correct.

11 Q Is there any way from the bloody specimens that you
12 received from the suspect that you could compare whether that
13 was the same person whose semen or sperm was found on the
14 victim?

15 A No.

16 Q And why is that?

17 A If I could use the board I can explain it a lot easier.

18 All right, the victim in this case is what is considered A
19 secretor. The suspect in this case is an A. We have an
20 inconclusive here, and blood group substances, which is the test
21 of the saliva, she came up an A, and he had nothing detected.

22 The samples where we had positives which subsequently when
23 the samples, when all the controls came into the laboratories we
24 went back to the freezer and we tested the samples that we had
25 put away like four or five months previously, results of the

1 testing on those, which is specimen number four, which is the
2 vaginal swab, came up with blood group substances A and H.

3 The underpants, which is specimen number twenty-five, came
4 up also an A and H.

5 The two other genetic markers that we tested for are P G M,
6 P G M sub typing and Peptidase A. The results on the victim, on
7 P G M 2-1, on the P G M sub typing, there was no remarks, and on
8 Pep A the result was inconclusive.

9 The defendant came up, one P G M. A one plus P G M sub
10 typing, and no remarks on the Peptidase A.

11 If any of you have been watching the O J Simpson case this
12 is essentially the same thing they are trying to link O J
13 Simpson to the crime scene with the P G M sub type.

14 The results on the vaginal swab are not detected,
15 inconclusive --

16 THE COURT: Excuse me for a second, nobody objected to
17 that statement about the O J Simpson case but --

18 MR. HARKOV: It was out already.

19 THE COURT: Listen to what the witness has to say about
20 this case. Anything he may have learned about the O J Simpson
21 case, please, don't consider it in this case.

22 A All right, the vaginal swab there was no reaction for P G M
23 and no reaction for Peptidase A.

24 On the panties there was no reaction for, it was not
25 detected on P G M and the Peptidase A was inconclusive.

1 Because of the defendant is a non secretor, he could not
2 have caused the A or the H to be the positive on the vaginal
3 swab and or the panties.

4 The victim, because she is a secretor, these two genetic
5 markers here could have been caused by her, we have no way of
6 delineating go whether the sample, these blood group substances
7 here, came from either the semen or vaginal secretions or from
8 perspiration.

9 Q But they are consistent with her?

10 A They are consistent with her.

11 Q And there's no way you can determine what his is,
12 correct?

13 A Correct, he appears to be a non secretor.

14 Q And, additionally, was there also trace evidence that
15 was examined by the State Police Laboratory?

16 A Yes.

17 Q And to your knowledge was there any evidential value of
18 the trace items found?

19 A I don't know. I don't have that trace evidence report.

20 Q You don't do that, is that correct?

21 A That's correct.

22 MS. STOLTE: I have no further questions of this
23 witness, Judge.

24 THE COURT: Cross examine.

25

1 CROSS EXAMINATION BY MR. HARKOV:

2 Q Mr. Nichols, just trying to clarify this, so basically
3 what you are saying, there was no way of determining, there was
4 no match with the defendant's samples, correct?

5 A Correct.

6 Q Now, to put what you said in a different way, if a
7 person had the blood type B, he would have left, and he was a
8 secretor, he would leave blood groups B and H, correct?

9 A Correct.

10 Q And if, you didn't find that, but if you found that
11 then that would not, it would have ruled out that the source of
12 that was from the victim, correct?

13 A Correct.

14 Q So, what you are basically saying is that the
15 underpants, the panties, and vaginal swab, the source of the
16 blood groups A H could have either been from the victim or from
17 the attacker?

18 A Correct.

19 Q Because the victim is a secretor and she secretes A and
20 H?

21 A Correct.

22 Q Now, P G M and these other things they are called
23 Peptidase and P G M sub type, those are other genetic markers,
24 correct?

25 A Correct.

1 Q And you found P G M in the victim's blood, correct?

2 A Yes.

3 Q And P G M sub type there was no reaction?

4 A. Correct.

5 Q Which means?

6 A Didn't react. We didn't get a result.

7 Q Does that mean that it's not there?

8 A No.

9 Q Well, why, why doesn't it not mean that, clarify that?

10 A Everybody has P G M in their blood. Everybody has a P G M
11 sub typing. Often times the blood might me too old, something
12 went wrong with the test. We just didn't get a reaction for it.

13 Q When you conducted this test, this part of the test do
14 you know when you conducted it from your report?

15 A They were conducted, we set up the additional samples on
16 4/22/1993.

17 Q So, this part of the test wasn't conducted until April
18 of '93?

19 A Correct.

20 Q And when you conducted the same test on Mr. Cromedy's
21 sample that was submitted back in April, '93, what did you find?

22 A In regards to the P G M sub typing?

23 Q Yes.

24 A He was a conventional P G M one and a P G M sub typing one
25 plus.

1 Q Now, in the swab and in the panties you found, you
2 didn't find any P G M sub type, correct?

3 A Correct, we didn't find any P G M, which is, it's a
4 sequential type of testing, first we do what is called the
5 conventional P G M, then we submit it to P G M sub typing.

6 Q So, one of the possibilities could be that the rapist
7 doesn't have P G M in his blood, correct?

8 A No, no. P G M is separate from a secretor. They are two
9 different enzyme systems.

10 Q Okay.

11 A A person who is a non secretor will have P G M or Peptidase
12 A in their blood and in their semen if they have it.

13 Q What I'm trying to say, is you didn't find any P G M in
14 the samples from the vaginal swab and from the panties, correct?

15 A Correct, and there's an answer for that.

16 Q Okay.

17 A The enzymes, P G M and Peptidase A are very age sensitive.
18 Once these samples, even though stored under great conditions
19 degenerate in approximately three or four months.

20 In this case the analysis took place well beyond that time
21 frame which could account for the no reactions on the P G M as
22 well as the Peptidase A.

23 Q You had these same samples, the samples from the victim
24 back in August of '92, correct?

25 A Correct.

1 Q And you did not run this test?

2 A Correct.

3 Q And this test would have given you additional genetic
4 markers, correct?

5 A Possibly, yes.

6 Q So, basically what you are telling us is by the time
7 that you compared the samples from the victim to the samples
8 that you got from Mr. Cromedy, some of the samples were too old
9 to make an accurate comparison?

10 A Correct.

11 Q Now, just a few more questions.

12 The A H that you found in the vaginal swab and the panties
13 could not have come from Mr. Cromedy if he was a non secretor?

14 A Correct.

15 Q Now, with regard to the hair samples, didn't you ask
16 the New Brunswick Police Department to provide you with samples
17 from the suspect when they caught, if they caught a suspect?

18 A Yes, that's a standard form we send out with all sexual
19 assault cases.

20 Q Based on your records did they ever send you additional
21 samples?

22 A They sent the hair samples along with his blood and saliva
23 samples in 1993, August, excuse me, on April 16, 1993.

24 Q Okay, and was there any hair test or comparisons done
25 to the best of your knowledge?

1 A I don't know.

2 Q You don't know.

3 Now, just to clarify one part, I notice that on your
4 preliminary report and on your April or May, 1993 report, you
5 notice -- you note, excuse me, in the pubic combing, positive
6 for hair?

7 A You mean on the November 30, 1992.

8 Q Yeah, let's look at that first, number twelve?

9 A Yes.

10 Q What does that mean?

11 A That means we found hair in the pubic combings.

12 Q Does that mean you found hair not consistent with the
13 victims?

14 A Since we work in biochemistry we don't make the
15 determination, we just say it's hair, then we subsequently put
16 out the hair request report.

17 Q And your final report has the same indication, I
18 assume, that's what that indication means under number twelve,
19 the report dated May 19, '93?

20 A Positive hair, correct, it's just a copy of the preliminary
21 report.

22 Q And you have no report of any comparison?

23 A I didn't do the comparison. You'd have to talk to Theodore
24 Mozer who did the analysis on the trace report.

25 MR. HARKOV: That's all, Judge.

1 MS. STOLTE: No further questions, Judge.

2 THE COURT: Thank you, you may step down, please.

3 MS. STOLTE: May I see you at sidebar?

4 (Following discussion was held at sidebar)

5 MS. STOLTE: Judge, I really only have two more
6 witnesses. My only problem is John Selesky is the next one. We
7 let him go because he had to leave a little early. He can be
8 here at 1:30, but that's the States witnesses for this morning.
9 I had him coming in and Jim O'Brien this afternoon.

10 THE COURT: Mozer is not going to testify?

11 MS. STOLTE: Actually, we talked about it, we had no
12 problem allowing Nichols to say nothing was found because
13 nothing was found, but he did not want to say that, so my
14 thought was to ask Andy if he had any problem stipulating to
15 that. We already discussed it prior.

16 MR. HARKOV: We did. We discussed a number of things
17 we agreed to. I forget it was examined, they couldn't make any
18 comparison.

19 MS. STOLTE: Exactly.

20 THE COURT: I have no problem with that.

21 THE COURT: Write out a little stipulation, I'll read
22 it to the jury.

23 MR. HARKOV: Just for your own information, we
24 discussed a number of things that O'Brien --

25 THE COURT: Should I excuse the jury for lunch, then we