Illinois v. Wardell & Reynolds

Review Report
Dated January 9, 2001
FSA File No. 00-675

and

Trial Testimony of
Pamela Fish

Illinois v. Wardell & Reynolds

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Re: Wardell and Reynolds v. Pamela Fish and the City of Chicago
Court No. 98 C 8002 and 99 C 1856
Our File No. 00-675

Review of the Testimony of Pamela Fish

Dear Ms. Zellner:

We have completed a review of court transcripts and supporting documents in several cases in which there was significant analytical work and expert testimony by Pamela Fish during her tenure as a criminalist in the Chicago, Illinois Police Department Crime Laboratory. In many of these cases, Ms. Fish misrepresents the scientific significance of her findings either directly or by omission. The nature of these errors are such that a reasonable investigator, attorney, or fact finder would be misled concerning the ability of her work to either include or exclude relevant individuals as potential sources of biological evidence. A synopsis of each reviewed case is described below.

Illinois v. Willis

In *Illinois v. Willis,* Fish conducted an ABO typing analysis on an essentially neat semen stain from a toilet paper wrapper. In her laboratory

report concerning this analysis, Fish characterized the analysis of the semen evidence as "inconclusive". In fact, her findings revealed that the semen source was most likely an A secretor based on the analysis of two semen stained areas from the toilet wrapper. Willis was determined to be a B secretor. Fish did not conduct an ABO typing analysis on the victim's [Karen Eady] blood or saliva. At trial Fish claimed that her ABO analysis of the semen stains from the toilet paper wrapper were inconclusive because of erroneous results from unstained portions of the toilet paper wrapper. Her notes of this analysis do not support this contention; nor is there any indication that she attempted to repeat her analysis in light of the fact that she had discovered an ABO blood type [A] that could not have been contributed by Willis.

Willis was ultimately exonerated by a DNA analysis that simultaneously inculpated convicted rapist Dennis McGruder.

Illinois v. Larry Ollins, Calvin Ollins, and Omar Saunders

In the case of *Ollins et al.*, Larry Ollins, Calvin Ollins, and Omar Saunders were separately tried and convicted of the rape and murder of Lori Roscetti. Roscetti was killed during an alleged takeover of her vehicle. Marcellius Bradford, an alleged co-conspirator in this crime, testified that he, Larry Ollins, Calvin Ollins, and Saunders were present when Larry and Calvin raped Roscetti.

As is revealed in her laboratory reports dated October 30, 1986 and October 20, 1987, Fish determined that Roscetti was an ABO type O non secretor with PGM type 2-1+ [2 minus and 1+]. Fish found semen to be present on the Roscetti vaginal swab. Her examination of the vaginal swab revealed the ABO H blood group substance which must originate from an O secretor [assuming a correct ABO testing process]. She also found a PGM typing mixture containing PGM alleles 2-, 1+, and 1-. Since the victim, Roscetti is a non secretor, the H ABO blood group substance must originate from an ABO type O secretor semen source. The only PGM trait which could not originate from Roscetti is the PGM allele 1-. From this analysis Fish's

findings are compatible with a single semen source who is an ABO type O secretor with PGM type 1-1- or 1+1- or 2-1-.

Fish determined that **Larry Ollins** was a non secretor with PGM type 1+1-. She determined that **Calvin Ollins** was a non secretor with PGM type 1+1+. She determined that **Omar Saunders** was a non secretor with PGM type 2+2+. She also determined that **Marcellius Bradford** was a non secretor with PGM type 2-1+. None of these individuals could account for the finding of the H antigen from the semen bearing Roscetti vaginal swab. Furthermore, the only individual who possesses a PGM allele that must be from the semen source is Larry Ollins whose PGM type is 1+1-; however Larry Ollins could not be the source of the semen because as a non secretor he could not produce the H ABO blood group substance. Therefore, in order to account for Fish's findings another unknown male must be responsible for at least some of the semen found on the Roscetti vaginal swab. In her laboratory reports and in her trial testimony Fish failed to state that her findings eliminated Larry and Calvin Ollins, Sanders, and Bradford unless there was another semen source who was an ABO type O secretor.

Fish Testimony in the Trial of Larry Ollins

On direct examination in the trial of Larry Ollins, Fish testified she generally cannot, and in this case was unable to, determine whether or not there was more than one semen donor. [TT639, ln 11-21] However, when she was asked what she determined about the vaginal swab results compared to Larry Ollins and Calvin Ollins she responded merely that "the PGM results were consistent with the types, PGM type I got on the vaginal swab" [TT640, ln 2-7]. This response completely ignored the ABO test findings from the vaginal swab that are not compatible with Larry and Calvin Ollins. This testimony also failed to consider the normally expected PGM contribution from Roscetti, herself.

On cross examination, Fish revealed the presence of H blood group substance on the vaginal swab from a secretor semen donor, and she admitted that Larry Ollins could not be the source of this genetic trait. Then defense counsel asked the following:

Q. It is entirely consistent with all your testing that someone other than Larry Ollins, without Larry Ollins, deposited semen in Lori Roscetti is it not?

A. No sir it is not. [TT 654-655]

The only possible response was "Yes." An O secretor individual must be the source of the H blood group substance and a single semen source, or any number of persons other than Larry Ollins in combination with an O secretor could account for the results Fish generated from her testing. The response by Fish asserts a definitive association of Larry Ollins to the Roscetti vaginal swab, which is not possible.

On redirect there was the following exchange:

Q. Counsel one time referred to the fact that the semen had to be deposited by someone other than Larry Ollins, but in fact **the semen had to be deposited by Larry Ollins** plus at least one other person, is that correct?" [emphasis added]

A. That's correct. [TT 665 - 666]

When it was clear that Larry Ollins was eliminated as a potential semen source under the prosecution's theory of this case, Fish's representation of her data in this fashion can be viewed only as scientific fraud. Even if Fish's findings were different from her actual findings such that they reflected semen from a non secretor with Larry Ollins's PGM type of 1+1-, it is scientifically insupportable to claim that Larry Ollins is the only person who could produce semen with these genetic characteristics.

Fish Testimony in the Trial of Calvin Ollins

In the Calvin Ollins trial Fish testified on direct examination that "the PGM type of Calvin Ollins was consistent with the PGM type that I received on that vaginal swab" [TT 1429]. When asked by the prosecutor "And what conclusion did you come to with regard to the semen that you found on the

vaginal swab and Calvin Ollins?" Fish responded, "I came to the conclusion that the semen present on that vaginal swab could have come from Calvin Ollins" [TT 1429].

Calvin Ollins is neither a secretor nor does he possess the requisite PGM 1- allele to account for Fish's findings. Neither he nor Larry nor Omar Saunders in any combination of these individuals can account for Fish's findings from the vaginal swab. As in Larry Ollins's trial, the fact that at least some of the semen must originate from a secretor was completely avoided on direct examination. It was also ignored that the PGM allele 1+ that Fish attributed to Calvin Ollins in her testimony could have simply originated from the female victim herself.

As for the presence of semen from more than one source, the prosecutor asked Fish if it was possible to determine whether one was dealing with one or more semen sources in a stain, to which Fish replied "No, sir, you cannot" [T1426]. This is false testimony. It was and is, in fact, possible to make such a determination. Whether or not more than one semen source can be determined depends on the test results. A PGM test result that reveals three PGM alleles which could not originate from a female victim demonstrates the presence of at least two semen sources.

On cross examination, Fish testified that she could not reach a conclusion as to whether the semen donor on the vaginal swab was a secretor or not [TT 1434 - 1435]. In light of her testimony in Larry Ollins' trial, this testimony is false. Later, Fish again denied that she was even capable of determining whether or not seminal fluid originates from a secretor or non secretor [TT 1437]. This too was false testimony. When Fish was forced to admit there was semen from a secretor on the Roscetti vaginal swab, that she knew could not have been deposited by any of the four defendants, she cast doubt on this finding by undermining the forensic utility and reliability of this genetic trait [secretor status]. The fact that she relied on the secretor system as a reliable genetic trait will be revealed in *Wright, Adams,* and *Wardell* below.

Fish Testimony in the Trial of Omar Saunders

Like her direct testimony in the trials of the Ollins brothers, in her direct testimony in the Saunders trial there was no mention of the ABO testing that revealed semen from an O secretor on the vaginal swab. There was no testimony that the PGM 2- and 1+ traits could all have originated from the victim, nor did Fish reveal that all four male suspects were determined by her to be ABO non secretors who could not produce the H antigen she detected from victim's vaginal swab.

The prosecutor again invoked the potential for a mixture of semen from two males by the phrasing of his questions to Fish. Fish responded "the markers I obtained on the swab were consistent with the PGM markers from Calvin Ollins and Larry Ollins" and that she "can conclude that it is possible that Calvin Ollins' and Larry Ollins' semen may be present on that vaginal swab" [TT 117 -118]. These statements misrepresented what Fish already knew about the H blood group substance from the vaginal swab because neither Larry nor Calvin Ollins could have contributed the ABO H antigen. This testimony also misrepresented what the vaginal swab PGM results were capable of proving -- that only the PGM 1- trait was foreign to the female and, therefore, attributable to the semen source or sources.

Fish "excluded positively" Omar Saunders as possibly contributing semen to the Roscetti vaginal swab, then included Bradford "as an individual who could have contributed his genetic markers" and Larry Ollins was "also included in the group of people who contributed to the genetic markers on that vaginal swab" and Calvin Ollins was included "in a group of people that could have been the donor of that semen" [TT 127]. Here Fish lumped <u>three</u> of the four defendants together as possible contributors to the Roscetti vaginal swab knowing full well there was no way any of them alone or in any combination could account for her findings. Even though Fish correctly eliminated Saunders as a possible source of the genetic traits attributable to the semen on the Roscetti vaginal swab, given that the State's theory required the presence of semen from at least two males, even Saunders cannot be eliminated as a potential contributor to the vaginal swab specimen.

Finally, Fish was asked if she did "any further testing of the vaginal swab and the blood workup of the four individuals" to which she responded "There was no further testing for me to do on that vaginal swab so therefore I ended my testing" [TT 130]. This was false testimony in two different ways. First, in the Saunders trial Fish never mentioned during her testimony on either direct or cross examination that she had conducted ABO typing on the victim's vaginal swab and found the H antigen which could not have originated from any of the "four individuals." Nor did she mention that the four individual suspects had been determined to be non secretors.

Secondly, it was a common practice for Fish to conduct peptidase A typing on sexual assault evidence at the Chicago Police Department Laboratory. This enzyme genetic marker is useful for distinguishing between members of the Black population and is present in semen at high levels. Fish did not conduct such an analysis on the evidence from Roscetti.

Illinois v. Wardell; Illinois v. Reynolds
Illinois v. Wright; Illinois v. Adams
Illinois v. Torry

In *Wardell, Reynolds, Wright, Adams,* and *Torry* Fish attempted to develop genetic information from semen alleged to be present on vaginal swabs collected from the complaining victims in each case. Just as in *Ollins et al* , only the detected genetic traits that are foreign to the female victim provide information about potential semen sources[1]. In each of these cases, Fish misrepresented or erred in drawing conclusions relevant to potential semen sources. Some of these cases yielded identical data, yet Fish offered different opinions -- and always she offered the opinion most damaging to the defendant. In each of these cases, Fish relied heavily on the secretor trait that she attempted to undermine or ignored in the *Ollins et al* case.

[1] The only exception to this restriction in interpreting results from commingled body fluids such as vaginal fluid and semen occurs when there is a quantitative showing of the presence of semen at a concentration (ca 1:100 or greater) from which one would expect to be able to detect genetic traits from a secretor semen source. Absent such a showing, no genetic information in regard to the semen source can be inferred from data that is entirely compatible with the female.

In *Wardell* and *Reynolds, Wright,* and *Adams* all of the genetic data developed as a result of Fish's testing was compatible with the female victim. Thus, no information concerning potential semen sources was obtained by her analysis. Therefore no male in the population could be eliminated as a possible semen source. Yet in each of these cases, Fish inappropriately narrowed the population of potential semen sources to a subset of the population that always included a defendant.

The Reynolds & Wardell Case

In *Reynolds & Wardell,* Fish detected A and H blood group substances from the vaginal swab preparation. The source of the swab, Jeannie Coscia, was determined to be an A secretor, which means her vaginal fluid can account for all of Fish's findings from the vaginal swab preparation. Thus, no information concerning potential semen sources was obtained and none of the population could be eliminated as a possible semen source.

Fish testified that the vaginal swab contained a contribution from an A individual and an O individual [TT 872] and used this data to erroneously eliminate Billy Wardell, a B secretor, as a possible semen source and to include Donald Reynolds, an O secretor, "in 'the group' that could have deposited semen on that swab" [TT 875].

Even if Fish could have narrowed the population somehow, she failed to give this narrowing any meaning by not defining the subset of potential semen sources or their frequency of occurrence in the population. For example, Fish eliminated Wardell as a potential semen source apparently because she failed to detect the ABO B blood group substance and she had determined that Wardell was an ABO type B secretor. This conclusion is only correct if she also demonstrated that the semen concentration in her typing extract was sufficiently high that she would always detect the ABO antigens from a secretor. This quantitative assessment, however, was not a practice employed by Fish. Even assuming that the semen concentrations were sufficiently great, the semen source could be from an ABO non secretor [20%],

ABO type A secretor [32%], or ABO type O secretor [36%][2] . Thus, 88% of the population are potential semen sources based on the Fish analysis. Fish failed to provide this information in her testimony.

On cross examination defense counsel elicited from Fish a frequency for type O in the general population, this "group" was never clearly statistically defined, which was essential to understanding the significance of Fish's findings [TT 876]. Fish could not be referring to the general population as 'the group' because of the elimination of a group of people that included Wardell.

Both Wardell and Reynolds were subsequently eliminated as potential semen sources in this case through post-conviction DNA analysis.

The Adams Case

In *Adams*, Fish was confronted with the exact same set of data as in the Wardell case. In Adams, Fish detected A and H blood group substances from the Shaunton Finner vaginal swab. She also determined that the female victim was an ABO type A secretor. Since nothing foreign to the victim was detected in the Finner vaginal swabs, the semen source could be a non secretor or a secretor of any ABO type. Thus, no one could be eliminated as a potential semen source based on the Fish analysis.

Fish determined that Eddie Adams was an ABO non secretor. Fish then inappropriately eliminated all of the population as potential semen sources except for non secretors, and she testified that only 20% of the population (rather than 100%) are potential semen sources. In Wardell, Fish included secretors (Reynolds was an O secretor) using the exact same test results as in *Adams*. These two cases clearly illustrate a pattern of misrepresentation in Fish's casework.

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[2] This ABO frequency data is for the Caucasian population. The frequency date for the Black population is ABO non secretors [20%], ABO A secretors [19%], ABO O secretors [40%]. The total for the Black population is 79%.

Even the Court understood that Fish had found nothing attributable to the semen on the Finner vaginal swab, as is revealed by the following exchange between the judge and Fish [TT 273 lines 2-20]:

Q: So, the reason that you are saying that the semen that was found is consistent with that of the Defendant is because what you found was you did not find anything really, right?

A. Well, what I found was the semen could not have come from a B secretor because then on the vaginal swab, I would have picked up A (sic) and H. It could not have come from an AB secretor. I would have picked up that B.

Q. How about from an A non secretor or B non secretor, or O non secretor or AB non secretor?

A. That's correct, all of them.

Q. What would be the percentage of any of that whole group of non secretors?

A. Twenty percent of the population are non secretors.

Q. So, what we are talking about it is consistent with twenty percent of the population?

A. Correct.

Rather than telling the Court in direct response to the Court's question that, in fact, she had found nothing in her analysis that could be attributed to the semen source, Fish went on to claim that because she did not detect the "B" antigen, she could eliminate B secretors and AB secretors. This claim could only be supported if Fish had conducted quantitative estimates of the semen levels in the extracts employed for the ABO typing analyses. There is no indication that such quantitative estimates were made by Fish is this case or in any other case in her laboratory. Thus, Fish could not eliminate A secretors, B secretors, O secretors, or AB secretors.

Even if Fish had conducted quantitative analyses of the semen concentrations in the extracts employed in the ABO analysis and even if those estimates proved that the semen concentration was sufficiently concentrated

such that the ABO antigens from a secretor would always be detected, her findings would only eliminate B and AB secretors as potential semen sources. B and AB secretors constitute only 12% of the Black population; that is, 88% of the Black population, like the defendant, would not be excluded as potential semen sources based on this evidence.

In further response to the court's inquiry, Fish stated that all non secretors are potential semen sources and that non secretors constitute 20% of the population. While this answer is correct with regard to the frequency of non secretors, it misrepresents the full constellation of the population who, like the defendant, would not be eliminated as a semen source based on her analysis. That is, all secretors and all nonsecretors or 100% of the population are potential semen sources based on the Fish analysis.

Fish provided completely different interpretations for the same data set in *Wardell* and *Adams*, and in each case the interpretation was erroneous, misleading, and the most damaging interpretation for the particular defendant.

The Wright Case

In the Wright case, like the cases described above, all of the genetic traits Fish detected in the victim's vaginal swab were genetically compatible with the victim herself. Fish never described her PGM findings from the vaginal swab or from the victim, Feemster. The ABO typing analysis from the Feemster vaginal swab revealed the ABO H antigen; and Feemster was determined to be an ABO type O secretor. Since the H antigen and the PGM typing traits from the Feemster vaginal swab are all genetically compatible with Feemster, herself, no genetic information concerning the semen source was developed by the Fish analysis.

Preliminary Hearing Testimony in Wright

At the preliminary hearing, Fish testified that both Feemster and Paul Wright were determined to be ABO type O secretors [HT 331, ln 15; HT 331 ln 19]. Fish testified that ABO inhibition testing of the Feemster vaginal swab revealed the presence of only H blood group substance [HT 312, ln 21; HT 313 ln 18]. She then testified that 40% of the population could have placed body fluids on the Feemster vaginal swab [HT 314, ln 22 through 315, ln 12, overruled objection omitted, emphasis added]. This testimony misrepresented the significance of Fish's findings because all of the H antigen activity could simply have originated from the victim, herself:

> Q. Miss Fish, did you conclude what percentage of the male population could have placed their semen on the swab that you examined from Jacquelyn Feemster?
>
> A. I could determine the percentage of the population that could have--the percentage of the Black population, that could have placed body fluids on that swab; I could not determine the percentage of the male population, no.
>
> Q. What percentage of the Black population?
>
> A. Approximately forty percent.

Under cross-examination, Fish admitted that she could not determine whether the H activity she detected was attributable to vaginal fluid or semen on the swab [HT 321, ln 19-24]. Fish also conceded that all non secretors would be included as potential semen donors [HT 322-324]. On re-direct, Fish re-affirmed her findings [HT 329, ln 20-23, emphasis added]:

> Q. And, the test of Paul Wright's blood, was that also consistent with the blood typing of the semen on the swab?
>
> A. That is correct.

On re-cross, Fish re-affirmed her testimony that O-secretors, and all non secretors are included as potential semen donors [HT 330, ln 12-19]:

Q. He's not excluded from a large group of the population, isn't that correct?

A. As I testified, approximately forty percent of the population.

Q. That forty percent that you testified to, is that including the A and B non secretors that we talked about?

A. That is correct.

As in *Wardell* and *Adams*, none of the population of potential semen donors can be excluded as a result of Fish's findings in this case. As she admitted, all of the H blood group substance she detected from the vaginal swab extract could be attributable to Feemster. Absent an objective quantitative assessment of the semen concentration on the vaginal swab, only blood group substances foreign to Feemster can provide information about the semen source. This is a fundamental principle in the forensic examination of body fluid evidence. Although Fish opined there was a high level of H blood group substance on the swab [HT 329, ln 14], she had no way of knowing whether that H substance originated from semen or vaginal fluid. Therefore, attribution of some or any of the H substance to the semen was pure speculation.

As we have previously discussed above, an objective quantitative assessment of the semen concentration in the vaginal swab extract would have entailed either a quantitative acid phosphatase assay or P30 titer determination. From this quantitative data an estimate of the semen concentration in the swab extract could have been estimated. This data would then provide a scientific basis for determining whether or not the semen concentrations were sufficiently high that one would be assured of detecting antigens from the semen if the semen originated from a secretor. Absent this information the Fish analysis was simply uninformative concerning the ABO type and secretor status of the semen source; that is, the semen could originate from any male.

Even if one assumes that the semen concentration from the Feemster vaginal swab was adequate, the Fish analysis could only demonstrate that the

semen originates from an O secretor or non secretor. O secretors occur in 40% of the Black population and non secretors occur in 20% of all populations. The total population of non excluded males would then be 60%; not the 40% alleged by Fish.

Fish made similar misrepresentation regarding her data from the electrophoretic analysis results from the Feemster vaginal swab. Fish testified that the enzymes types determined from Feemster and the vaginal swab were all the same type for each of four genetic systems [HT 314, ln 2-8].[3] Thus, as with the ABO blood group test results, there was nothing foreign to the female detected in her vaginal swab by the electrophoretic testing. Feemster's vaginal fluid could be the source of all of the electrophoretic results. No male can be excluded as a possible semen source based on this analysis. However, in contrast to the ABO test results, Fish refused to admit that Feemster could be the source of all of the electrophoresis results [HT 322, ln 14-20]:

> Q. So, if a non-secretor with type A blood was responsible for the semen that you found on the vaginal swab taken from Jacqueline Feemster, you would come up with the same results that you came up with when you tested the swab, isn't that correct?
>
> A. For the absorption inhibition, but not necessarily for the enzyme typing.

This was reiterated later [HT 324, ln 24 though HT 325, ln 3]:

> Q. So, it is even possible that a type A or type B secretor could have deposited this semen, and still come up with the results that you came up with?
>
> A. For the absorption inhibition test, but not for the enzyme.

When giving her final assessment as to what groups of the population are included as potential semen donors in this case, Fish again included the

[3] It is unclear from the Fish testimony exactly what electrophoretic systems she employed and what types she obtained for both Feemster and the Feemster vaginal swab. There are only two electrophoretic systems that are relevant to the analysis of semen evidence. They are PGM and Pep A.

electrophoretic test results as being capable of providing discrimination [HT 329, ln 4-6]:

> Q. But, it is A non secretors, B non secretors, and A and B non secretors, and O secretors?
>
> A. Correct, plus the enzymes.

Not only did Fish fail to acknowledge that her electrophoresis typing data could all be attributable to Feemster's vaginal fluid, her response of "not necessarily for the enzyme typing" implied that the electrophoresis data is attributable to semen. Even though Fish's testimony implied that the "electrophoretic data" originated from the semen source, she never defined the "electrophoretic types" she obtained, nor did she provide the genotype frequency data that would normally be employed to limit the population of semen sources if, in fact, the "electrophoretic data" could be attributable to the semen.

Trial Testimony in Wright

The Fish trial testimony in Wright was as misleading as her testimony at the preliminary hearing. She testified on direct as she did at the hearing that Feemster and Wright were determined to be blood type O and secretors, that she detected H blood group substance consistent with type O blood on the vaginal swab, and that the electrophoresis results for the vaginal swab were the same as Feemster and Wright. Again the electrophoretic systems subjected to test were never defined; nor were the types obtained from each test described. However, when assigning statistical significance to her findings, Fish again failed to reveal that she has no information regarding potential semen sources and, therefore, 100% of the male population was included as possible semen donors. At trial both Fish and the prosecutor were careful not to assign population frequency statistics directly to the analytical findings. Instead, the prosecutor asked [TT 848, ln 24 through T849, ln 5]

> Q. So, what percentage would be -- of the population would be O secretors?

A. For the black population?

Q. For the black population.

A. Excuse me. Type O secretors would be, approximately, 40 percent, type O secretors.

This misleading testimony left the impression that Fish could determine that the semen source was an O secretor even though she had previously testified that the semen could also originate from non secretors.

On cross-examination in the trial, in direct contrast to her pre-trial testimony, Fish refused to admit that all of the H blood group substance on the Feemster vaginal swab could have originated from the victim [TT 854, ln 7-11]:

Q. So, it is possible that the H activity that you observed on the swab was attributable to the vaginal secretions of Jacqueline Feemster, isn't that correct?

A. Part of it could have been, yes.

Fish did admit that she could not determine whether the H activity was attributable to semen or to vaginal fluid [T855, ln 5-11].

Contrary to her pre-trial testimony, defense counsel was able to get Fish to admit that her 40% figure misrepresented the facts as presented [TT 858, ln 18 through TT 859, ln 1]:

Q. And 60 percent of the male black population, according to the tests that you conducted, the absorption inhibition test, 60 percent of the male black population could -- could be responsible for the semen that you found on that swab, isn't that correct?

A. Sixty percent of the black population, yes.

Fish again falsely included Wright in the group of O secretors and non secretors that comprises 60% of the black population as potential semen

donors when she had no information about the semen source from which to narrow the population of potential donors from 100%.

Even after the judge had stricken Fish's testimony on direct about electrophoresis testing in this case, Fish refused to abandon it [TT 857, ln 7-12]:

> Q. If that -- if a type B non-secretor was responsible for the semen on that swab, you would come up with the same results that you testified to today in the absorption inhibition test?
>
> A. For the absorption inhibition test only, yes.

and again [TT 858, ln 12-17]:

> Q. Okay. And -- so -- Paul Wright would just be one person in a group of 60 per cent of the male black population based upon your tests, isn't that correct?
>
> A. In the black population, based only on the absorption inhibition tests only.

The same pattern of overstating the strength of her test results is repeated by Fish in *Wardell & Reynolds*, *Adams*, and *Wright*.

Other Examples

In *Illinois v. McKinley*, Fish declined to conduct conventional serology testing of rape evidence. Her explanation for not conducting testing in this case was that there was potential for more than one semen source because the victim had been subjected to a gang rape. In McKinley, Fish provided the following testimony:

> Q. Miss Fisch [sic], does the fact that a gang rape situation occurred with more than one person affect your ability to perform any such tests?
>
> A. Yes, it does.

This testimony [TT 227] appears to contradict her testimony in the *Ollins* cases. Additional information should be obtained concerning laboratory practices where there is the potential for multiple semen donors.

It is noteworthy that the same misrepresentation of conventional serology findings exhibited by Fish in this review was also present in one of the most famous false conviction cases in the history of Illinois, the case of *Illinois v. Gary Dotson*. ABO typing information in Dotson, all of which was attributable to the female, was attributed to Dotson at his trial by an Illinois State Police analyst. Not only did the alleged victim recant her testimony that she was raped; ultimately, Dotson was exonerated by a DNA analysis conducted in our laboratory. One can only conclude from this observation that some things never change.

If you have questions concerning this review, please contact us.

Sincerely,

Alan Keel,
Criminalist

Edward T. Blake, D.Crim.

Illinois v. Wardell & Reynolds

Trial Testimony of Pamela Fish

WARDELL

serologist Pam Fish.

Again there would be a stipulation to the chain of custody to those exhibits was never broken to the time they were taken from the defendants Wardell and Reynolds until the time they were handed over and received by the serology unit of the Chicago crime lab.

So stipulated as to that testimony, counsels?

MR. NICHOLS: So stipulated.

MR. GRZECA: So stipulated.

THE COURT: You may call your next witness if you have one at this time.

MR. GRINBARG: Thank you, your Honor, we do.

MS. REYES: Your Honor, the People at this time will be calling Ms. Pam Fish.

THE COURT: Ms. Pam Fish, please take the witness stand. Please remain standing, face me, raise your right hand to be sworn by the Clerk of the Court.

(Witness sworn.)

PAMELA FISH,

a witness called on behalf of the People, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. REYES:

THE COURT: Ma'am, before you begin testifying I ask you do not volunteer any information, only answer the questions that were asked of you. If you don't understand the question or you do not know the answer indicate. If an objection is raised with reference to a question that is asked of you by any of the parties involved herein and I sustain that objection you are not to answer the question. If you do not know whether or not you answer a particular question you can look to me for guidance.

Speak up loud enough and clear enough so that we can all hear you, okay. There is a microphone embedded in the witness box directly if front of you. If you move up a little closer it will probably be easier to pick up your voice, okay.

THE WITNESS: Okay.

THE COURT: Thank you.

Ms. Reyes, your witness. You can commence questioning and proceed at your will.

MS. REYES: Thank you, your Honor?

Q State your full name?

A My full name is Pamela Ann Fish.

Q Ms. Fish, do you have an occupation?

A Yes, I do.

Q What is your occupation?

A I am a forensic scientist.

Q And whom are you employed by?

A I am employed by the Chicago Police Department.

Q And how long have you worked for the Chicago Police Department?

A I've worked there for approximately five and-a-half years now.

Q And where are you assigned?

A I am assigned to the Serology Unit of the Crime Laboratory Division.

Q And how long have you been assigned to the Serology Unit?

A I've been in serology for the five and-a-half years that I've been with the police department.

Q Please tell the ladies and gentlemen of the jury your educational background as well as any specialized training you have in your field?

A I have a Bachelor Degree in biology that I received from Loyola University in 1980. I also have a Masters Degree also in biology which I received from

Loyola University in 1982. I had nine months on the job specialize training in the field of serology plus I went to two different seminars in the field, both put on by the Midwestern Association of Forensic Scientist. I also attended the F.B.I. Academy in Quantico, Virginia, in studying the electricforesis and blood stain analyses of sexual assault case.

Q Can you just tell the ladies and gentlemen of the jury what is serology?

A Serology is the study of bodily fluids; we are talking about things such as blood semen, saliva, things of that nature.

Q And what are your duties at the Chicago crime lab?

A My duties include preserving as well as analyzing evidence for the presence of these body fluids.

Q And can you tell the ladies and gentlemen of the jury approximately how many times you've analyzed fluids to determine whether or not they are bodily fluid?

A I have analyzed objects for bodily fluids thousands of times.

Q And are you a member of any professional

organizations?

A Yes, I am.

Q And what is that, please?

A I am a member of the Midwest Association of Forensic Scientists.

Q And have you ever qualified as an expert in the courts in Illinois in your field?

A Yes, I have.

Q Approximately how many times?

A Approximately fifty times.

Q And have you ever testified as an expert in the courts of Illinois in your field?

A Yes, I have.

Q And approximately how many times?

A Approximately fifty times.

MS. REYES: Your Honor, at this time I would be tendering her as an expert.

THE COURT: Defense counsel Nichols, any further questions?

MR. NICHOLS: No question.

THE COURT: Any, Grzeca?

MR. GRZECA: No, Judge.

THE COURT: Based upon the testimony of this witness it is the opinion of this Court that this

witness can testify as an expert in forensic scientist serology and accordingly no further questions are necessary she can. And the jury can accept her testimony as an expert.

Ms. Reyes, you may continue with the question of this witness, thank you.

MS. REYES: Thank you, your Honor.

Q Ms. Fish, please explain to the ladies and gentlemen of the jury the nature of your work?

A My work involves looking at various physical objects for the presence of any kinds of bodily fluid, we're specifically looking for blood. And then we find blood to determine if it's human blood. And if it is human blood then you determine the various types. What I mean by types is that each individual blood sample has a specific ABO type and specific enzymes and proteins that are found in it.

I also look for the presence of semen. If it is semen then again to look for the various components that make it up, the different ABO types that are present in semen, the various enzymes that are present in semen. I do the same sort of work looking for perspiration and saliva and other bodily fluids.

Q And what is the purpose of your analyses?

A The purpose of the analysis is to be able to determine the different types or different genetic characteristics of each of those stains so that you can narrow it down into a percentage of the population which could have contributed that stain to that object.

Q And, Ms. Fish, did you examine any evidence submitted to you by the Chicago Police Department or by the Cook County Sheriff's Department in this case?

A Yes, I did.

MS. REYES: Your Honor, may the record reflect that I'm showing People's Exhbit No. 7 to defense counsels at this time for identification purposes.

THE COURT: Gentlemen, any objections?

MR. NICHOLS: No objection.

THE COURT: For use in questioning of this witness.

MR. GRZECA: No, Judge.

THE COURT: Mr. Nichols?

MR. NICHOLS: No objection.

THE COURT: Accordingly there being no objections you may approach the witness and question her with regards to this exhibit.

MS. REYES: Thank you, your Honor.

THE COURT: Thank you.

MS. REYES: Q Ms. Fish, I'm going to show you what has been previously marked as People's Exhibit No. 7 for identification.

Can you please take a look at that and tell the ladies and gentlemen of the jury do you recognize it?

A Yes, I do recognize it.

Q And what do you recognize People's Exhibit No. 7 for identification to be?

A This is a Vitullo evidence examination kit which is a sexual assault examination kit that I received on this case.

Q And how do you recognize it to be that?

A I recognize it because I actually put this R.D. number and my initials on the box.

Q And did you perform any tests of the contents of People's Exhibit No. 7 for identification?

A Yes, I did.

Q And is People's Exhibit No. 7 for identification in substantially the same condition as when -- as when you last saw it?

A Yes, it is.

Q Now, again, Ms. Fish, directing your

attention back to People's Exhibit No. 7 for identification --

Your Honor, may I approach the witness one more time, please?

THE COURT: Yes, you may.

MS. REYES: Q Can you please explain to the ladies and gentlemen of the jury what is contained within People's Exhibit No. 7 for identification?

A Within the exhibit we will find there is what we call a microscope slide mailer which is just a container which can hold a microscope slide, it protects it from breaking.

Also contained within this is a cardboard container that contains a swab. The swab was a vaginal swab. And also in here are three manila envelopes one labeled pubic hair, one labeled right hand fingernail scrapings and one labeled left hand fingernail scrapings.

Q And what is contained in People's Exhibit No. 7 for identification they contain specimens, isn't that correct?

A That's correct.

Q And how are these specimens obtained?

A These specimens are obtained from the victim

at a emergency room facility where the physician on staff will take a, what amounts to a long Q-tip swab, it has has a long handle on it, and insert that swab into the orifices of wherever the victim claims that the sexual assault occurred. For example, in this case it is a vaginal swab. They will insert that swab into the area and will pick up some of the fluids that is in the vagina.

He will then take the microscope slide and with that vaginal swab smear some of the contents that were on this swab right onto this microscope slide. He will then air dry the swab, air dry the swab and put them in this kit and submit them for analyses into the laboratory.

Q Now, did you perform any tests and/or examinations on the specimens contained in People's Exhibit No. 7 for identification?

A Yes, I did.

Q What tests and/or examinations did you initially perform on People's Exhibit No. 7 for identification?

A My initial examination is to examine this microscope slide for the presence of spermatozoa.

Q And, based on your --

What specific tests or examinations did you perform to determine whether or not there was spermatozoa?

A The specific test is to take this microscope slide and stain it with a stain that is specific for sperm and then put it underneath the microscope. And underneath the microscope I will then scan the area and looking if I see any spermatozoa present. If I do I will indicate that it is positive and go on.

Q Now, based on your education, training, experience and on the results of the tests that you performed do you have an opinion within a reasonable degree of scientific certainty whether, on the sperm, the specimen that you examined, whether or not there was spermatozoa present?

A Yes, I do.

Q And what is that opinion?

A That there was spermatozoa present on that vaginal smear.

Q Now, what is the next step in the analysis process?

A The next step in the process is to take this Q-tip swab which was used to make this smear and to actually preserve this swab so that any further

testing can be done on the swab. To preserve it what we do is we just actually take the Q-tip portion of the swab off and put two in a freezer so that when we are submitted the blood and saliva standards from the individuals involved we can perform further analyses on this swab.

Q Now, in order to perform further analyses on that swab you need to receive blood and saliva standards, is that correct?

A That's correct.

Q And did you receive blood and saliva standards in this case?

A Yes, I did.

MS. REYES: Your Honor, may the record reflect that I'm showing defense counsels People's Exhibit 8-A and B.

THE COURT: They have previously had an opportunity to examine, they had no objections to have them marked as requested.

You may approach the witness and question her with reference to those two exhibits.

MS. REYES: Thank you.

Q Now, Ms. Fish, I would ask you to look at People's Exhibit 8-A and 8-B for identification and

tell the ladies and gentlemen of the jury if you recognize People's Exhibit 8-A and 8-B?

A Yes, I recognize both of these exhibits.

Q And what do you recognize these exhibits to be?

A This was the blood specimen that I was submitted and this was the saliva specimen that I was submitted on a Jeannie Coscia.

MS. REYES: Your Honor, again for the record I'll show defense counsels what was previously marked 9-A been 10-A, B.

THE COURT: Any objection to having them marked as requested?

MR. NICHOLS: No objection.

THE COURT: Accordingly there will be no objections from either side, that is either defense attorneys.

Accordingly being marked beforehand you may approach the witness with reference to these four exhibits, is that correct?

MS. REYES: That's correct.

THE COURT: Okay, you may proceed.

MS. REYES: Thank you.

Q Now, Ms. Fish, I'm going to show you what

has been previously marked as People's Exhibit 9-A and 9-B for identification.

Do you recognize people's Exhibit 9-A and 9-B?

A Yes, I do.

Q What do you recognize them to be?

A These were the two vials of blood that I was submitted from Billy Wardell and there is the seliva sample that I was submitted from Billy Wardell.

Q Now, at this time I'm going to show you what has been previously marked as People's Exhibit No. 10-A and 10-B for identification.

Do you recognize People's Exhibit 10-A and 10-B?

A Yes, I do.

Q And what do you recognize People's Exhibit 10-A and 10-B to be?

A This is the two vials of blood, 10-B is the two vials of blood that I was submitted from Donald Reynolds and 10-A is the saliva sample that I was submitted from Donald Reynolds.

Q Now, Ms. Fish, as to People's Exhibit No. 10-A and 10-B can you tell the ladies and gentlemen of the jury what tests you performed?

A The first test that we go to perform is the test on the blood sample to determine the ABO blood type of the sample that is present in the tube.

Q Can you explain to the ladies and gentlemen of the jury the ABO blood type, what that is?

A Okay. Every individual has -- is one of four different types; the four types being, you can be a Type A individual, a Type B individual, a Type O individual or a Type AB individual, okay. Everybody is broken down into one of those four types.

To do that test it is a very simple test where we put just a drop of the blood on a microscope slide, put some commercially prepared antiserum that is specifically prepared. We look for the red blood cells for them to clump together or agglutinate. If they agglutinate in the Type A commercially prepared antiserum then we have Type A blood. If they agglutinate with the Type B then we have Type B.

Q Based on your education, training and experience and the results of the tests that you performed on People's Exhibit 8-A for identification do you have an opinion of reasonable scientific certainly what the blood type of Jeannie Coscia is?

A Yes, I do.

Q What is her blood type?

A She has blood of Type A.

Q Now, as to People's Exhibit 8-B for identification did you perform any tests?

A Yes, I did.

Q And tell the ladies and gentlemen of the jury what tests you performed?

A What the test I performed on the saliva sample is to confirm a test that we call a secretor test or not. What a secretor is is an individual who will secrete their ABO blood type or substance similar to their ABO blood type in body fluids such as in their saliva, in their perspiration in their semen, things of that nature, okay.

We, from the blood, will be able to determine a person's secretor's status or not, if they are a secretor or if they are not a secretor. From a saliva we go to confirm that. If we run a saliva sample, if we are able to determine the ABO blood type then we know that they are a secretor and then we know their blood type.

Q Now, based on your education, training, experience and the result of the tests that you performed on both 8-A and 8-B do you have an opinion

within a reasonable degree of scientific certainty whether or not Jeannie Coscia is a secretor or non-secretor?

A Yes, I do.

Q What is your opinion?

A That she is a Type A secretor.

Q Now, Ms. Fish, as to People's Exhibit 9-A for identification did you perform any tests on People's Exhibit 9-A for identification?

A Yes, I did.

Q Again, tell the ladies and gentlemen of the jury what tests you performed?

A On the blood samples that were submitted from Billy Wardell I went to determine first the ABO blood type and then the secretor status. From the saliva samples I went to confirm the secretor status of the individual and again confirm the ABO blood type.

Q Now, based on your education, training and experience and results of the tests that you performed both on People's Exhibit 9-A and 9-B do you have an opinion within a reasonable degree of scientific certainty what the blood type is of Billy Wardell?

A Yes, I do.

Q And what is that blood type?

A Billy Wardell is a Type B secretor.

Q And you were able to determine whether he was a secretor and non-secretor?

A Yes, I was.

Q And what is he?

A He is a secretor.

Q Now, again, I would like you to tell the ladies and gentlemen of the jury what tests you performed on People's Exhibit 10-A and 10-B.

A From the samples that were submitted from Donald Reynolds from the blood samples I again went to do the ABO blood type and the secretor status of the individual and again went to confirm that ABO blood type and the secretor status from the saliva that was submitted.

Q And, again, based on your education, training and experience and the results of your tests do you have an opinion within a reasonable degree of scientific certainty the blood type of Donald Reynolds and also whether he is a secretor or non-secretor?

A Yes, I do.

Q And what is that opinion, Ms. Fish?

A That Donald Reynolds is a Type O secretor.

Q Now, after you performed these tests what is

the next analyses that you did?

A The next analysis is to run the vaginal swab to determine the blood types of the vaginal fluid and the seminal fluid that is present on that swab?

Q And did you in fact do this?

A Yes, I do.

Q And what particular test or what is the process that you used to determine the fluid on the swab?

A The test is called an absorption inhibition test. What it basically amounts to is taking a small cutting, approximately three millimeter by three millimeter cutting, from the vaginal swab and placing it in a set of test tubes. We take it and put it in exactly three test tubes. We put it in a test tube to determine if it's a Type A, a test tube to determine if it's a Type B and Type O. The test tubes also take into account the four test types.

We take a commercially prepared antiserum, place it in a swab and let it stay overnight in a refrigerator and absorb in the bodily fluids present on the swab. And in the morning we come in, back in and take off that commercially prepared antiserum and run into a series of tests with no indicator test and

put it underneath the microscope.

What we're looking for is the agglutination of the red blood cells. If they agglutinate in the A you're dealing with the Type A. If they agglutinate in the B you're dealing with the Type B. If they agglutinate in the O we say that there is H active and when you say H activity we say that it is indicative of Type O blood and then we know we're dealing with a Type O individual.

Q Now, based again on your education, training, experience and on the results of the test that you performed on the part of that swab do you have an opinion within a reasonable degree of scientific certainty what blood types were found on that swab?

A Yes.

Q And what is that?

A When I ran that swab I picked up both A and H activity which is indicative of a Type A individual and a Type O individual.

Q Now, after you performed this -- these tests are there any other tests that you can perform?

A Yes, there are.

Q And what is the next test that you can perform?

A The next test I can performed is a procedure called electric foresis where we actually look for a protein which is present in the blood and is also present in semen, that protein being the PGM protein.

Q And did you attempt to perform this electric foresis on the samples that you received?

A Yes, I did.

Q And were you able to perform this examination?

A I was not available able to get a result from that examination.

Q And why is that?

A The reason I was not able to get a result could be very varied. It could be due to the amount of time between when the swab was taken and when I ran it. It could be due to the amount of PGM activity of the individuals involved. There are many reasons why I cannot be able to pick up the enzyme activity.

Q And approximately how much time was it between the time that you received the, initially the kit was made and the time that the electro foresis examination was attempted to be made?

A Well, if you can --

Q Approximately?

A Approximately I would say a year and-a-half, almost two years.

Q Now, again, Ms. Fish, based on your education, training, experience and on the results of the tests that you performed on these exhibits do you have an opinion within a reasonable degree of scientific certainty whether Billy Wardell would be included in the group that could have deposited semen in Joannie Coscia's vagina?

A Yes, I do.

Q And what is that opinion?

A That he could not have deposited the semen that I found on that vaginal swab.

Q Now, based on your education, training and experience and on the results of the tests that you performed do you have an opinion within a reasonable degree of scientific certainty whether Donald Reynolds could be included in the group that could have deposited the semen in Jeannie Coscia's vagina?

A Yes, I do.

Q And what is that opinion?

A That Donald Reynolds is included in the group that could have deposited the semen on that swab.

MS. REYES: Judge, may I have a moment.

THE COURT: You may.

(Whereupon, a brief pause was had.)

MS. REYES: Your Honor, I have no further questions.

Would the Court like me to retrieve the exhibits at this time?

THE COURT: Yes, if you will, please.

MS. REYES: Thank you.

THE COURT: Mr. Nichols, you may cross examine this witness at this time.

MR. NICHOLS: Thank you, Judge.

CROSS-EXAMINATION

BY MR. NICHOLS:

Q Ms. Fish, it's nice to meet you I've spoken to you many times before.

Now, you determined that my client has Type O blood, is that correct?

A That's correct.

Q That's the most common type of blood, isn't it?

A That's correct.

Q Forty-three percent of the population has that type of blood, don't they?

A Actually in the black population it's a tad

higher.

Q Now, you rendered your opinion regarding the agglutination and secretor status on October the 13th, 1987, didn't you?

A That's correct.

Q And I immediately asked you for further tests, didn't I?

A Not to the best of my knowledge, no, sir.

Q I had served upon you an order upon the motion of the defendant that a test be performed as to electro foresis, didn't I?

A No, sir, I received no such order.

Q You never received an order?

A For electric foresis to be performed and a sample, no, sir, I did not.

Q In your supplementary report you indicated that biochemical testing will be conducted on specific request, didn't you?

A That's correct.

Q Now, I spoke with you regarding this biochemical testing, didn't I?

A No, sir, I do not recall ever speaking to you, I'm sorry.

Q Well, didn't I speak to you regarding the

breakdown of the PM meter that made it impossible for that test to be performed for some two or three months?

MS. REYES: I'm going to object at this time.

THE COURT: Sustained. Let's have a sidebar on this.

(The following proceedings were had out of the hearing of the jury.)

THE COURT: Mr. Nichols.

MR. NICHOLS: Yes, Judge.

THE COURT: This witness indicated that you had no communications with her with reference to this matter. It could very well be that you spoke to somebody else, I don't know or somebody who identified themselves as this particular witness.

What do you intend to go further with reference to this question at this particular juncture pertaining to the questions?

MR. NICHOLS: Judge, I would like to go into that matter with the possibility of someone else.

MR. GRINBARG: As to someone else?

MR. NICHOLS: As to someone else regarding --

THE COURT: Mr. Nichols, you can't do that, you know that.

MR. NICHOLS: Well, perhaps someone else misrepresented themselves.

THE COURT: I don't know what anybody did but she said that she never spoke to you. I don't know how you can go any further with reference to that. I believe that will take care of this particular matter, to go into it any further.

MR. NICHOLS: Judge, I just like to ask a few more questions along those lines.

THE COURT: How are you going to get by improper questioning of this witness. She has indicated that she has not spoke to you about this matter and what have you.

What I believe we'll do is we'll have an in-camera discussion with reference to this matter outside of the presence of the jury to determine whether or not the jury would be misinformed as to any further questioning in this particular light.

What I will do is I'll excuse the jury and I'll allow you to ask questions outside of their presence to determine whether or not any further questioning in this vain should be allowable.

Does the State have any objections to that?

MR. GRINBARG: No, your Honor.

MS. REYES: No.

THE COURT: Okay. Fine.

(The following proceedings were had in the presence of the jury.)

THE COURT: Ladies and gentlemen of the jury.

Ladies and gentlemen, I'm going to have a short recess, ask you to be -- to leave the courtroom and you will be returned back here very shortly. Thank you.

(The following proceedings were had out of the presence and hearing of the jury.)

THE COURT: For purpose of the record let the record show that the jury is not present. The witness who has previously been sworn under oath is still in the witness stand.

There were some questions raised regarding certain matters that been asked of this witness. It will be the opinion of this Court that before those matters can be presented to the jury for their -- information Mr. Nichols can continue to question with this witness outside of the presence of the jury so that this Court can make a determination whether or not he can proceed with those questions.

Mr. Nichols, go ahead.

MR. NICHOLS: Q Now, did you receive an order that biochemical testing be done on Exhibits K-2 and W-1 and W -- strike that, k-2 and W-1?

A I do not recall receiving such an order.

THE COURT: If you would have received such order would you have remembered it?

THE WITNESS: I would have remembered it.

THE COURT: I know you get a lot of requests.

THE WITNESS: We get tremendous amounts of requests.

THE COURT: Is it a possible that you received it and might have forgot it?

THE WITNESS: It is more of a possibility that my supervisor received it.

THE COURT: Who is your supervisor?

THE WITNESS: Marianne Caporusso.

THE COURT: So that --

THE WITNESS: She takes care of all the requests that comes through the laboratory.

THE COURT: I understand. You don't get these questions directly to you by attorneys?

THE WITNESS: No, sir.

THE COURT: Mr. Nichols.

MR. NICHOLS: Q Do you recall whether you seen an order of this case?

A I do not recall seeing it.

Q Is there anything that would refresh your recollection?

A Seeing the order maybe.

MR. NICHOLS: Could I retrieve the order from the court file, Judge?

THE COURT: Go ahead, get it. This is outside of the presence of the jury go ahead. The formality would be required during the trial.

By the way, in-camera determination of whether or not we can proceed so that we don't get the jury misconstrued what is going on. Just to advise you what is going on.

THE WITNESS: Thank you.

THE COURT: Mr. Nichols, I would like to advise you that I have some parts of the file here that I used during the trial but none of that covers this order, okay.

MR. NICHOLS: Yes, Judge.

THE COURT: Thank you.

THE WITNESS: Would I be able to get a copy of my file that is in the back room?

THE COURT: Go ahead. Yes, go ahead get it.

(Whereupon, a brief pause was had.)

THE COURT: Okay. Mr. Nichols, go ahead.

MR. NICHOLS: Yes, Judge.

THE COURT: I would like to indicated for the purpose of the record the witness requested permission to get her file. The Court granted her to do so just for these particular proceedings now.

And, Mr. Nichols, you may proceed, okay.

MR. NICHOLS: Yes.

THE COURT: Thank you.

You have that order that you say.

MR. NICHOLS: Yes, I do.

Judge, may I approach the witness?

THE COURT: Go ahead, this is not the trial. You just proceed as though the matter were conducted in chambers, okay.

MR. NICHOLS: Q I ask you to examine this order. Have you ever seen that order?

A I can't say I have ever specifically seen that order. I've seen orders similar to that.

THE COURT: Does your file reflect that any such order being given to you?

THE WITNESS: No, sir, I do not.

THE COURT: If an order of that kind was issued to your supervisor would she necessarily turn that order to you or advise you of that order?

THE WITNESS: Yes, sir, she would. She would either turn the order over to me or generally what she does is write up a specific request and turn a copy.

THE COURT: But to your knowledge after reviewing your files and reviewing the order to your knowledge you have never seen that order, is that your statement?

THE WITNESS: That's correct, Judge.

THE COURT: Mr. Nichols, accordingly I'm going to preclude you from going --

MR. NICHOLS: Well, Judge, I do have some further questions.

THE COURT: Go ahead.

MR. NICHOLS: Q Now regarding the PM meter, was the PM meter ever out of service?

A A lot; yes, sir.

Q And was it out of service in October, November and December of 1987?

A I am not exactly sure of the exact time but there was a good two month period of time in '87, I would say late '87 where we did not have an

operational PM meter in the laboratory.

Q Now, it is your testimony that if that -- if that order had been served on your office you would have received a copy of that order?

THE COURT: No, I don't think she said that.

MR. NICHOLS: Did you say that?

A No, sir, I would not directly receive a copy of that order.

THE COURT: I believe her statement, Mr. Nichols, when I asked her is that if she was given an order she would have had it in her file or she would have remembered it.

Isn't that what your statement is?

THE WITNESS: That is correct.

THE COURT: Okay, go ahead.

THE WITNESS: Could I ask one question.

Do you recall what the date was on that order?

MR. GRZECA: I believe it was October the 19th.

THE COURT: October the 19th.

THE WITNESS: Of 1987, yes.

THE COURT: I have a question here. In front of me that's dated 13 October 87 that says there is no need to do PGM typing.

What does that mean?

THE WITNESS: That is the electric foresis typing. That is the only thing that I have in my file referring to the electric foresis of the sample.

THE COURT: Do you know why such an order would be in the file?

THE WITNESS: I spoke with the state's attorney on the case.

THE COURT: And he told you that it wasn't necessary.

But as far as you know you never received any communications from any of the defense attorneys representing either one of the defendants?

THE WITNESS: To the best of my knowledge, no, sir, I don't recall talking to any.

THE COURT: Okay, she doesn't remember.

MR. NICHOLS: Q Now, subsequent to October the 13th you did conduct an electric foresis; you did attempt to conduct an electric foresis?

THE COURT: That's what she said on the witness stand to the jury, I believe.

THE WITNESS: No, sir, I did not not before October the 13th.

MR. NICHOLS: Q I said after?

A After I did.

Q After you noted on your file that there was a indication of the state's attorney that there was no need to perform a electric foresis test?

A Yes.

THE COURT: Why did you do it?

THE WITNESS: In January of this year I was asked to.

THE COURT: By whom.

THE WITNESS: By the State.

THE COURT: Okay.

MR. NICHOLS: Q Judge, it appears that --

THE COURT: Don't smile because I don't want somebody to come back later on and say the attorney was smiling. I am not a psychosis.

MR. NICHOLS: Judge, I'm obviously going to have to call Caporusso.

THE COURT: I don't want to mis-advise or you get yourself involved in this situation with reference to this matter. I don't know what you want to prove by it. She testified that she made the test and that it was inconclusive and she said there are various reasons why it could be in inconclusive.

MR. NICHOLS: Okay, if the jury can be called back

I have a few more questions.

THE COURT: Oh, fine, sheriff bring the jury out.

I don't want you to bring it up any more on this matter as far as this witness is concerned, okay. Do you understand, Mr. Nichols?

Acknowledge whether you do or not.

MR. NICHOLS: Judge, I understand that I am not to bring up the fact that I ordered her --

THE COURT: Okay, thank you.

(The following proceedings were had in the presence of the jury.)

THE COURT: For purpose of the record the jury has again returned to the courtroom.

Accordingly, Mr. Nichols, you may resume your questioning of this witness Ms. Fish who had previously been sworn under oath. You may proceed, sir.

MR. NICHOLS: Yes.

Q Now, Ms. Fish, on the 13th of October, 1987, you rendered your opinion, didn't you?

A Yes, sir.

Q That's regarding agglutination test, that is the ABO and AB, is that correct?

A And a secretor status of individuals; yes,

sir.

Q And later that week you received an order that no further testing be needed from the state's attorney, didn't you?

MS. REYES: Objection, Judge.

THE COURT: Basis of your objection?

MS. REYES: Your Honor, can we have a sidebar?

THE COURT: Yes.

(The following proceedings were had out of the hearing of the jury.)

THE COURT: Go ahead.

MS. REYES: What I'm asking for, he has indicated an order when we had an in camera. She said she had a conversation with a state's attorney. Well, I think that a proper foundation has to be made. Is he talking about written order, is he talking about a conversation. He knows that she indicated that it was a conversation and that she wrote it down.

THE COURT: I want you to lay a proper foundation indicating whether it was oral or written in nature and with whom you spoke to.

MR. NICHOLS: Yes, I certainly will, Judge.

THE COURT: Whether it was with her or what have you and you can also indicate the surrounding

circumstances, thank you.

(The following proceedings were had in the presence of the jury.)

THE COURT: Ladies and gentlemen, an objection was raised by the state's attorney. I rule on the objection. Sustaining the objection and allow the defense attorney to restate the question.

Proceed.

MR. NICHOLS: Thank you, Judge.

Q Now, did you have a conversation with someone regarding whether any further testing should be done, any further biochemical testing should be done on or about October the 13th, 1987?

A Yes, sir, I did.

Q Do you remember what date you had that conversation?

A On the 13th of October of 1987 at 9:10 in the morning.

Q Who did you have that conversation with?

A I had that conversation with A.S.A. Grinbarg.

Q And A.S.A. Grinbarg at that time told you that no biochemical testing regarding -- strike that, that no further biochemical testing would be needed in this case, is that correct?

A Specifically PGM typing is what we talked about.

Q But you did perform that test in January, didn't you?

A That's correct.

Q Now, those tests are able to exclude and include up to an one-percent degree of certainty, aren't they?

A I do not believe that's appropriately true; no, sir.

Q Well, in some cases it can include up to one-percent degree of certainty, can't it?

A Probably even better than that.

Q And you performed this test after the state's attorney indicated that no further tests would be needed?

A When I was again asked to do the test I performed the test.

MR. NICHOLS: I have no further questions, Judge.

THE COURT: Mr. Grzeca.

CROSS-EXAMINATION

BY MR. GRZECA:

Q Just a couple of questions, Ms. Fish.

The tests you performed, the first test that

you performed on Jeannie Coscia showed that she was a Type A, is that correct?

A That's correct.

Q You tested my client's blood, Billy Wardell, he is Type B, is that correct?

A That's correct.

Q And when you tested the four -- strike that.

The first test you did and the final test that you did excludes my client, right?

A It excludes him from contributing the semen on that vaginal swab.

MR. GRZECA: Thank you, no further questions.

THE COURT: Ms. Reyes.

REDIRECT EXAMINATION

BY MS. REYES:

Q Ms. Fish, who requested that the Vitullo Kit be worked up?

A Can I refer to my notes, please?

THE COURT: Any problem?

MR. NICHOLS: No objection.

THE COURT: Okay, permission granted for her to look at her notes to answer that question.

THE WITNESS: A The initial request came on the 14th of May and it was from a Detective O'Leary and

Redmond.

MS. REYES: Q And who made the initial request for the blood and saliva samples to be worked up with that Vitullo?

A That request came from the State's Attorney's Office.

Q And do you recall from who in the State's Attorney's Office?

A From A.S.A. Grinbarg.

Q Now, in January you were told to perform the the electro foresis test. Who did you receive that request from in January of 1988, I believe it was?

A From the State's Attorney's Office, A.S.A. Grinbarg.

Q And it was A.S.A. Grinbarg in January of 1988 who asked you to perform that test, is that correct?

A That's correct.

Q Now, calling your attention back to October the 13th, 1987, when you had a conversation with A.S.A. Grinbarg about the electro foresis did that conversation include as to the chances for error on that examination?

A It included a conversation about the fact that the swab was bloody and the fact that if a bloody

swab is run electro foretically you tend to get very erroneous results because of the blood interferring with the test.

Q And isn't it also correct that you testified on direct examination that the longer the swab sits the more probability that the enzymes would be dead and therefore you could not receive results even if you make these tests, isn't that correct?

A That is correct.

Q And these swabs and these samples and these specimens were taken on May the 3rd, 1986, isn't that correct?

A That's correct.

Q And you had this conversation with A.S.A. Earl Grinbarg October of 1987, isn't that correct?

A That's correct.

MS. REYES: May I have a moment, Judge?

THE COURT: You may.

(Whereupon, a brief pause was had.)

MS. REYES: Q Now, Ms. Fish, did either Attorney Nichols or Attorney Grzeca specifically request from you that these tests be performed?

MR. GRZECA: Judge, I would object.

THE COURT: Any objections?

MR. GRZECA: Judge, I wasn't involved in this previous.

THE COURT: Well, what is your objection?

MR. GRZECA: I would -- I'll withdraw it.

THE COURT: You certainly have a right to object based on legal grounds.

MR. GRZECA: I'll withdraw that, Judge.

THE COURT: Okay, what about you, Mr. Nichols?

MR. NICHOLS: I have no objections.

THE COURT: You may answer, ma'am, thank you.

THE WITNESS: A No, I never received such a request.

MS. REYES: I have no further questions.

THE COURT: Mr. Nichols.

MR. NICHOLS: Yes, please, Judge.

RECROSS-EXAMINATION

BY MR. NICHOLS:

Q Ms. Fish, you have a superior in Chicago Police Department named Ms. Caporusso?

A She is my supervisor.

Q And she is the one that conveys orders from the Court or request and often conveys requests from attorneys whether defense or state's attorneys to you, isn't she?

MR. GRINBARG: Judge, objection.

MS. REYES: Objection.

THE COURT: Basis.

MR. GRINBARG: Judge, relevancy.

THE COURT: I'm going to overrule the objection and allow her to answer whether she does or does not.

THE WITNESS: She takes certain requests, I take requests directly from individuals when contacted.

MR. NICHOLS: Q And she is the one who processes orders that she receives that are received in the Serology Department from the courts and orders further work be done, isn't she?

A In some cases.

Q By the way, were you sick in October and November of 1987 for a brief period of time?

MR. GRINBARG: Objection.

MS. REYES: Objection.

THE COURT: Sustain your objections. Relevance is a matter before the Court.

MR. NICHOLS: Q Was the PM meter broken during the latter part of 1987?

MR. GRINBARG: Objection, Judge.

THE COURT: Sustained.

MR. NICHOLS: I have no further questions.

THE COURT: Mr. Grzeca?

MR. GRZECA: No questions, Judge.

THE COURT: Any reason to recall this witness?

MS. REYES: I have no further questions, your Honor.

MR. NICHOLS: Not that I can foresee now, Judge.

THE COURT: You are excused, ma'am, thank you for coming in.

THE WITNESS: Thank you.

(Witness excused.)

THE COURT: Ladies and gentlemen, I believe we've reached a point whereby we will recess for lunch. Accordingly you will be excused. We will reconvene approximately ten minutes to 1:00. Please do not discuss this case among yourselves.

Now, the time that I set is based upon you being served and there is a dining room and what have you and that you be able to be here. But we try to start soon approximately at that particular time.

Accordingly you are hereby excused. Enjoy your lunch, thank you.

(The following proceedings were had out of the presence and hearing of the jury.)