



E14 Don't Tell The Defense: A Case Study in Forensic Misconduct and Wrongful Conviction

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Attendees will learn about the need to follow ethical and legal requirements to turn over exculpatory information to the defense, the hazards of creating injustice from failing to reveal exculpatory test results, the costs of laboratory refusal to remedy institutional failures, and the promise of post trial DNA testing to correct erroneous convictions.

This presentation will open the eyes of attendees in the community about how scientific misconduct can happen, how responses can become a denial of responsibility and circling of the wagons, the costs of such misconduct in wrongful conviction, loss of focus on alternate suspects, the loss of public trust, and million dollar judgments against government entities. The presentation will also show the community the benefits of open discovery and how the fear of turning over results and information to the defense is short-sighted.

In 2004 the City of Chicago and Cook County Illinois paid John Willis \$2.5 million to settle his legal claim of forensic fraud. Willis had been erroneously convicted as the "Beauty Shop Rapist," on eyewitness testimony for a string of unusual serial rapes and armed robberies in Chicago's Chatham neighborhood during 1989 and 1990. No physical evidence or confession linking Willis to the crimes was introduced at either of the trials. Before trial, however, Willis had requested serology testing on a toilet paper wrapper into which a victim had spat the attacker's semen. On March 19, 1991, counsel for Willis filed a discovery motion under the rules of the Illinois Supreme Court, and asked for test results and exculpatory information. The motion also asked for "any report and results of any and all scientific tests, experiments and examinations made by experts or others and the names of such persons who conducted the tests, (including, but not limited to, such tests as ballistics, fingerprints, blood, semen and other stains) pertinent to this case."

The Chicago Police Department laboratory, however, contended in a report that testing was "inconclusive," and the lab's analyst repeated this contention at trial. No test results were provided to the defense. After Willis was arrested, the string of crimes continued in the neighborhood, until another man, Dennis McGruder was arrested and charged with committing five more of the unusual serial rapes and armed robberies in the same neighborhood. Prosecutors succeeded in keeping information about McGruder from the jury. Willis was convicted of two of the cases, and sentenced to 100 years. McGruder pleaded guilty to five cases, and was sentenced to 40 years.

In July 1997 Willis, then represented by the presenter, requested DNA testing on the semen-stained toilet paper wrapper and other evidence. It was the first request under what was then the nation's second post trial DNA statute. Upon hearing of Mr. Willis' request, the prosecutor told the press that such testing would be meaningless, because "John Willis absolutely, positively is the rapist." Nonetheless, a court granted Willis' request for DNA testing. In late 1997, police, the lab, and prosecutors contended that all evidence had vanished without explanation. In 1998, defense investigation revealed that, from the nineteen-eighties until his arrest, Dennis McGruder lived in the center of the crime spree attributed to Mr. Willis. Also that year, the defense discovered key evidence was concealed from Willis for eight years—blood typing results performed by the Chicago Lab in 1991 but not given to the defense that showed he was type B, while the rapist was type A.

The Chicago lab's analysts test results excluding Willis as the semen contributor in the rape were test results that the law required to be produced to the defense. They were not turned over. The test results were also exculpatory—evidence of innocence—that must be turned over to the defense by Supreme Court rules. Indeed the U.S. Supreme Court ruled in *Brady v. Maryland* that government has a continuing duty to disclose such evidence of innocence to the accused. No test results were turned over to counsel for Mr. Willis before trial, and the lab analyst testified that the results were "inconclusive" without saying a word about the fact that they excluded Mr. Willis.

In the Willis case, and possibly other recently revealed cases, the Chicago Police Department laboratory engaged in a pattern of concealing exculpatory test results. This began in the Willis case when the results were not turned over to the defense before trial in 1991. It continued when the laboratory report indicated that the results were "inconclusive," and was compounded by the deceptive and inaccurate trial testimony about the supposedly "inconclusive" results. Ironically, according to the serology protocol then used by Chicago lab "the goal of the expert witness should be the ascertainment of scientific truth." More startling, personnel at the Illinois State Police laboratory in Chicago, which absorbed Chicago's lab in 1996, were aware of the exculpatory results in 1997, when Willis requested testing, and never told the defense.

In August 1998, the defense interviewed the analyst, now working for the Illinois State Police, who acknowledged the authenticity of the test results. Forty-five minutes into the interview, the prosecutor said he had found the slides from the semen-stained wrapper in the "trial file." No explanation was ever provided for



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why they had claimed all evidence was missing, or what became of other evidence, including the semen-stained wrapper, which had been used by the prosecution as an exhibit at trial. The defense had the slides documented at Microtrace in Elgin, Illinois. The amount of sperm from the semen remaining on the slide was the size of a pinhead. The defense then drafted a testing protocol, and had the slides tested under the direction of Pamela Newall and Ed Blake, at the Center for Forensic Sciences in Toronto. In February 1999 testing cleared Willis. The defense obtained a court order to have a DNA sample from McGruder tested, and it matched the attacker. In March of that year, all charges against Willis were dismissed. One week later newspapers reported the analyst had been promoted to head the Illinois State Police DNA section in Chicago—an ASCLAD/LAB accredited forensic laboratory. Willis had spent over nine years in prison as a notorious serial rapist, his eldest son, John Jr., was murdered while he was in prison, and his life was left in tatters. In 1999 Governor Ryan granted Willis a pardon based on actual innocence. In 2004, the City and County settled Willis' suit for \$2.5 million. No action or discipline was taken against any government agency or individual.

Ethics, Discovery, Fraud