



E7 “I No Longer Agree With My Trial Testimony:” The Legal Implications of Changed Expert Opinions

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After attending this presentation, attendees will gain understanding of the legal impacts and implications of an expert who, following trial, rethinks or otherwise comes to disagree with the opinion testimony that he or she gave in light of advancements in the field. Evolution of theory and technology is, after all, synonymous with good science. The law; however, has a strong interest in finality and must resolve disputes and allegations fairly but quickly. How, then, does the law address experts who recant or modify their trial opinions after a criminal defendant has been convicted?

This presentation will impact the forensic science community by reassuring experts that courts do recognize the reality of evolving scientific theories and technology, but must also create workable standards to protect against wrongful convictions based on invalid scientific conclusions. It will describe how the California Supreme Court resolved these questions in a recent decision.¹ While *Richards* is a California case, its reasoning and holding should be of interest to forensic scientists nationwide, all of whom must face the issues considered in the case.

Richards involved the 1993 murder of Pamela Richards at the remote high desert home she shared with her husband William Richards. Pamela was strangled and her skull smashed with a cinder block. Forensic evidence included clothing fibers, DNA, blood patterns, footprints and tire tracks, and a bite mark. William was charged with her killing. Four trials ensued, with the fourth resulting in his conviction for first-degree murder and a 25-year-to-life prison sentence. Among the prosecution witnesses at the final trial was a forensic dentist who testified that a lesion on the victim's hand was a human bite mark consistent with William as the biter. The expert further opined that William possessed unusual dentition because of a displaced tooth, and gave a population frequency estimate.

Ten years later, William Richards sought to have his conviction overturned with a writ of *habeas corpus*. He alleged that false evidence had been presented against him at trial, and that there was newly discovered evidence of actual innocence. Both claims were premised, in part, on a declaration by the dental expert that his trial testimony about statistical occurrence of William's tooth pattern was not scientifically accurate, and that he could no longer say with certainty that the lesion on Pamela's hand was a bite mark. He later stated at a hearing that William's teeth were not consistent with the mark. Supporting declarations from other experts discussed advancements in digital photography since the trial allowing for the correction of angular distortion in photographs of bite marks and, consequently, more accurate comparisons.

The California Supreme Court decision will be discussed, including its acknowledgment that a changed expert opinion may be perfectly reasonable and need not imply a lack of integrity on the expert's part. Further, attendees will learn under what circumstances an expert's trial opinion can be shown to be objectively untrue, and when that finding will justify *habeas* relief. The example of SWGDAM DNA mixture interpretation guidelines—unrelated to the case—will be discussed. Finally, the fate of William Richards will be revealed in view of the court's reaction to his claims of false trial evidence and newly discovered evidence of innocence.

Reference:

1. Re: *Richards*, 55 Cal. 4th 948 (2012).

Expert Witness, Opinion, Recant