

CRIME LAB REPORT

Media and public policy analysis for the forensic science community

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Crime Lab Report is an independent organization that analyzes media coverage, industry trends, and public policies related to forensic science and its application within the criminal justice system. In this capacity, our authors and editors seek to contribute reliable and informative content to the public record so that decisions related to this critical profession will be more responsible, effective, and well-informed.

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John Grisham – fresh face with same false message

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People have come to expect great stories from attorney and best-selling author John Grisham. His twenty-one fictional legal thrillers have sold nearly 300 million copies. Nine of them have been adapted for the silver screen.

But when Grisham testified before a United States Senate Committee hearing on the subject of forensic science, one would expect him to separate fact from fiction.

He didn't.

Grisham was on Capitol Hill December 7th representing the Innocence Project, for whom he serves as a member of the Board of Directors.

Grisham spent considerable time talking about the case of Ron Williamson and Dennis Fritz, two men who were wrongfully convicted for the 1982 rape and murder of Debra Sue Carter in Ada, Oklahoma. We expect Grisham to know the facts since he wrote a non-fiction book about the case in 2006.

This was no rush-to-judgment case. Nearly five years passed before Williamson and Fritz were arrested. The serological evidence indicated that the donor of suspect semen was a non-secretor; both Williamson and Fritz were also non-secretors. Forensic DNA testing did not exist at the time.

Grisham alleged that “the most damaging testimony” against Williamson came from a hair analyst with the Oklahoma State Bureau of Investigation (OSBI), who stated that “two scalp hairs and two pubic hairs were microscopically consistent with Ron’s samples and, he incorrectly testified, therefore there was a positive match.”

The analyst in question was Melvin Hett, who is now retired from the OSBI. *Crime Lab Report* obtained copies of the transcripts from both the Williamson and Fritz trials. Both men were tried separately yet evidence was introduced in both trials implicating each defendant.

The testimony that Grisham claims to be so “damaging” may surprise you.

The following are excerpts of the direct examination by prosecutor William Peterson during the Williamson trial and the first time the word “match” was used:

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Q: Did you find any pubic hairs that matched that of Dennis Fritz?

A: Yes, sir, I did. I found one pubic hair from the washcloth that I determined is consistent microscopically and could have had the same source.

The defense immediately offered an objection:

Objection: If the Court please, we're going to object either to that answer or the form of the question. Mr. Peterson asked him if he found any hairs that matched. His answer was yes, and then his explanation didn't say that.

The Court sustained the objection before the prosecutor properly re-phrased the question to ask if Hett found any hairs that were *microscopically consistent* with that of Dennis Fritz.

Later, Hett was asked specifically about comparisons with Williamson's hair:

Q: And did you find any hairs, pubic hairs, that were consistent microscopically with that of Ronald Williamson?

A: Yes, sir. There were two pubic hairs also from the bedding that I made a comparison to Ron Williamson. These two hairs were consistent microscopically and could have had the same source as Ron Williamson's known pubic hair.

Q: Direct your attention to the scalp hair identifications in your Item 17. Did you find any hairs that were consistent with that of Ronald Keith Williamson, and where were they labeled from?

A: ... I found two scalp hairs that I compared to Ronald Williamson's. These hairs are consistent microscopically and could have had the same source. These were the only scalp hairs that matched or were consistent with Ron Williamson.

This illustrates a clear example of how *attorneys* often introduce the improper terminology, not the forensic witnesses.

The defense, to their credit, expanded on the opportunity during cross-examination to emphasize the limitations of hair testimony:

Q: You couldn't pull one (hair) from either side of your own head and tell they came from the same source?

A: Are you talking absolute identification?

Q: Yes, you bet, this is absolute, Mr. Hett.

A: No, sir, I said you cannot do an absolute identification on hairs.

Q: What are -- you can't get absolute -- what are you doing? Are you playing guessing games in your field?

A: No, sir, I'm doing detailed, scientific analysis of approximately 25 to 30 microscopic characteristics in hairs.

Q: All right, but 25 to 30 or 125 or 130, you still can't say they came from the same source; can you?

A: Sir, I've testified hairs are not absolute personal identification.

During the trial of Dennis Fritz, the word "match" was used again, but this time during direct examination by DA Peterson about what results can generally be obtained from a hair examination. It was not used in the context of potentially determining the defendant's identity:

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Q: Are there varied results that you can get from a hair examination?

A: Yes, sir. There's generally three main results can be considered, but there's actually five or more ways of reporting hair examinations. One is that the hairs are consistent microscopically and could have the same source. This means that they match if you want it in one word.

While under cross examination, Fritz's attorney correctly took exception to the use of the word match and specifically asked about the significance of the comparison:

Q: So, your opinion is not – and you're not telling these jurors that the evidence hair absolutely came from Dennis Fritz, the ones that you have said were microscopically consistent and could have come from the same source?

A: No, sir, I'm not positively identifying Dennis Fritz by a hair comparison.

Q: Couple of times you used the word matched. That's not really a word of science or a word of art in your science; is it? You don't ever say these hairs match. You say they are microscopically consistent and could have come from the same source; isn't that the preferred and accepted opinion?

A: That's correct. Generally, the word match would be more of a slang word that might be used.

Grisham later went on to opine that “research into the causes of wrongful conviction has revealed that the reliance on unvalidated and/or improper forensics is the second–greatest contributing factor to wrongful convictions, contributing to approximately 50% of those cases overturned by DNA testing.”

Similar research conducted by *Crime Lab Report* editors John Collins and Jay Jarvis contradict Grisham's claim in peer-reviewed literature. In **The Wrongful Conviction of Forensic Science**, released in 2009, Collins and Jarvis use data from the Innocence Project to illustrate that the actual percentage of cases attributable to bad forensic science is likely no more than 11% and probably much lower.

Grisham's attack on forensic science continued.

“Most of the forensic practices used in law enforcement have no other application; they were developed for the purpose of investigation, prosecution and conviction and, because they were not developed in a scientific setting, they took on a life of their own without being subjected to the rigors of the scientific process,” he testified.

The fact is that most of the forensic science disciplines that Grisham decries have their origins with some of the most distinguished scientists of the day. Jeserich, Reiss, Popp, Locard, just to name a few, all with doctorate degrees and with ties to the most prestigious universities in Europe. Even the early studies related to the comparison of fingerprints did not have their origins in criminal investigation or prosecution.

Forensic science laboratories became associated with law enforcement solely due to the sheer volume of work generated when crime rates skyrocketed. Privately compensated scientists with sufficient time to devote to assisting investigators were simply not available, and municipalities could no longer afford to pay outside experts. Early attempts to establish independent crime labs, such as the Scientific Crime Detection Laboratory at Northwestern University, failed due to the lack of proper funding.

Compelling arguments have been made for and against more separation of crime laboratories from law enforcement and prosecutors, but there is no evidence that any particular remedy will ensure that miscarriages of justice, such as the Williamson and Fritz convictions, will be prevented. Criminal justice is too chaotic and

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adversarial to ever become neat and tidy, although forensic science does wonders to make things better.

Mistakes are made in our justice system each and every day the courtroom gavel strikes. Courts have long acknowledged that errors can and will be made; that is why the system has extensive avenues of appeal built in.

It should be noted that Prosecutor William Peterson was quick to agree to DNA testing in 1997, which led to the two men being exonerated. Peterson also disputes much of the information presented about the case in Grisham's book.

The stories of Ron Williamson and Dennis Fritz are tragic. They both spent years in prison for crimes they were found not to have committed. But to state that their convictions were based largely on improper hair examination testimony is simply untrue, and we are certain that John Grisham and his colleagues at the Innocence Project know it.

In the meantime, forensic scientists across the United States must be willing to educate themselves and defend the profession against attacks rooted in falsity and carelessness. It is the only way that the wrongful conviction of forensic science can be overturned. *****