

**PRESENTED AT**

The University of Texas School of Law  
2015 Robert O. Dawson Conference on Criminal Appeals  
May 27–29, 2015,  
Austin, Texas

**Scientific Evidence: When to  
Open and Close the Door as Gatekeeper**  
**How to determine the qualifications of the witness as a  
scientist or expert and insure the integrity of the criminal  
process.**

**CYNTHIA EVA HUJAR ORR**

**CYNTHIA EVA HUJAR ORR  
GOLDSTEIN, GOLDSTEIN & HILLEY  
310 S. ST. MARY'S ST.  
29<sup>TH</sup> FLOOR TOWER LIFE BLDG.  
SAN ANTONIO, TEXAS  
210-226-1463  
210-226-8367 FACSIMILE  
E-MAIL: [whitecollarlaw@gmail.com](mailto:whitecollarlaw@gmail.com)**

## **EXPERT WITNESSES**

A 17-year-old boy is accused of a triple homicide. He purportedly gave a written statement to police in broken English, admitting that he possessed a knife which the State's serologist swears contains one of the victims' blood. The serologist testified that the other weapons, an axe and knife, also contained hair and blood of the victims. A college student testified for the State that he supplied the weapons, agreed to trash a house, and drove his co-defendants to the crime scene. The police recovered the weapons from this college student's home.

However, the blood on the murder weapons is not that of the victims at all. It is animal blood. Latent fingerprints lifted from the murder scene have been destroyed or lost. Worse yet, the State suppresses the fact that its expert witness likely perjured himself. In fact, the weapons have been tampered with and most likely have never been tested at all. This is a true story. The defendant was my client who was on death row.

Through tenacious and creative discovery techniques, aggressive litigation and negotiating from a position of strength, my client's case became the first confession of error in a capital murder case in Texas and my client is no

longer on death row. What brought the State around? And more importantly, how did I know that the State's blood expert was lying?

### **NOT AN ISOLATED INCIDENT**

A 1996 Department of Justice study reported twenty-eight persons were released from prison as a result of post-trial DNA testing. *Convicted by Juries, Exonerated by Science: Case Studies in the Use of DNA Evidence to Establish Innocence After Trial*, p. 2. The State's expert witness in four of these cases was Fred Zain. Even though Fred Zain was discredited by the West Virginia Supreme Court, and was tried on charges of theft of services based upon his routinely perjurious testimony, Texas defended convictions supported by his testimony and no office undertook a review of his cases.

My point is, I did not know the State's expert was lying about the blood evidence in Miguel's case with competent scientific evidence. Defense lawyers cannot afford to rely upon the prosecution to reveal discovery, or count on local forensic labs to provide competent forensic testing, nor accept hair and fiber comparison, serology, RFLP, DNA, fingerprint, voice spectrography, mass gas spectrometry and pathology, among other matters. The scientific community's interest in evolving science coupled with law enforcement's often competitive

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First appeared as part of the conference materials for the  
2015 Robert O. Dawson Conference on Criminal Appeals session  
"Scientific Evidence: When to Open and Close the Door as Gatekeeper"