

You almost could have mistaken the start of the three-day Justice for All conference on forensic science at Duquesne University for a DNA revival.

Forensics Under The Microscope

By Martin Yant

"Thank God for DNA!" *Chicago Tribune* reporter Maurice Possley exclaimed.

"I almost jumped and cheered when the first DNA test results came back!" exclaimed former FBI Director William Sessions.

But there was good, rational reason for Possley's and Sessions' religious-like fervor. Possley noted that, in addition to helping prove over a hundred prisoners were innocent, DNA testing has opened the public's mind to the possibility that others have been wrongly convicted even if physical evidence isn't available for DNA testing to prove it. Sessions' joy, on the other hand, was because 30 percent of the first suspects whose DNA was tested by the FBI proved to be innocent. DNA, Sessions said, quickly proved its worth to defense attorneys as well as investigators, and FBI tests still exclude 25 to 26 percent of the suspects whose DNA is tested. Sessions, who along with DNA exoneree Kirk Bloodsworth headed the Washington D.C. based Justice Project's campaign to get the Innocence Protection Act of 2004 passed by Congress, said that was not an easy task. "Mother Justice is a demanding woman," the tall Texan said with his folksy accent.

Other speakers and panelists at the intense April 2006 conference sponsored by The Cyril H. Wecht Institute of Forensic Science and Law, the Duquesne University School of Law, and The Justice Project, noted that DNA is not a panacea for the ills of the American criminal-justice system.

"Don't forget Josiah Sutton, who was convicted with DNA evidence and later exonerated," said Frederick W. Fochtman, an associate director of Duquesne University's five-year master's in forensics and law program. Sutton's tale, Fochtman noted, is a red flag about the limits of forensics science, no

matter how good it is, as long as human beings are involved.

Sutton was exonerated in 2004 after serving 4-1/2 years of a 25-year sentence for a rape he did not commit. Sutton's conviction was the result of a mistaken identification and faulty DNA testing performed by the scandal-plagued Houston police laboratory. As a result of that scandal, Sutton's case gained the attention of University of California criminology professor William Thompson, who said the lab's DNA report was the worst he had ever seen. Thompson's finding led to retesting that concluded the semen once identified as Sutton's was actually that of a different man.

Sutton's case has shed light on many other Houston area cases where a potentially innocent prisoner is incarcerated as a result of a faulty crime lab examination. Since 2002, errors also have been exposed in the labs divisions that test firearms, body fluids and controlled substances. The Houston Police Department Crime Laboratory was subsequently shut down pending a full-scale investigation of its many problems.

In 2005 the Houston PD chose Michael Bromwich, a former U.S. Justice Department official, to conduct a special investigation of the lab. In his most recent report Bromwich said lab analysts skewed reports to fit police theories in several cases, ignoring results that conflicted with police expectations because of either a lack of confidence in their own skills or a conscious effort to secure convictions.

Houston PD officials hope to introduce enough reforms for the lab to be accredited. But Fochtman said that accreditation has not proved to be a guarantee of lab accuracy. He said the major accreditation agency, the Society of Crime Lab Directors, is dominated by law enforcement agencies and it protects

member labs as much as it inspects and reports their deficiencies.

As important as improvements in true forensic science, as opposed to junk science, has been in the past decade, many conference speakers stressed the importance of not accepting the conclusions of crime lab forensic analysts without confirmation.

George Castelle, the affable chief public defender in Charleston, West Virginia, spoke about Fred Zain, the most notorious crime lab forensic fraud artist yet discovered. Various investigations of Zain over the years found that he testified in West Virginia and later Texas cases about forensic tests and conclusions he was unqualified to conduct and interpret. But testify he did, always saying what the prosecution wanted to hear.

Then came the case of Glen Woodall, who was convicted in 1987 of multiple felonies, including two counts of sexual assault. At Woodall's trial, Zain testified that based upon his scientific analysis of semen recovered from the victims, "[t]he assailant's blood types ... were identical to Mr. Woodall's." Woodall's conviction was affirmed on appeal. However, DNA testing later established that he could not have been the perpetrator. Woodall was freed when his conviction was overturned in 1992. He sued for false imprisonment and received a \$1 million settlement.

The irregularities in Woodall's case ultimately led to a massive investigation of Zain's work ordered by the West Virginia Supreme Court. It concluded that the actual guilt of 134 people was in doubt because the convictions were based on inculpatory reports and/or testimony by Zain. Nine men have been freed because without the suspect expert testimony of Zain – who had never passed a college science course – the remaining evidence offered against them was insufficient for conviction, had.

But the Zain scandal didn't necessarily change the attitude of West Virginia Crime Lab workers. Castille told how, while working on an appeal, he found that a state forensic analyst had greatly exaggerated a scientific rule to gain a conviction. "Don't take anything for granted," said Castelle, who is currently representing the interests of West Virginia prisoners in a new investigation of the crime lab.

One place jurors did take things for granted was in Oklahoma. Jeffrey Pierce spent 15 years in prison there for a rape he did not commit because jurors assumed the truthfulness of Oklahoma City crime lab chemist Joyce Gilchrist, who testified she had matched

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Endnotes:

- 1 Tracy Bowden, 'Corby Defence Team Hopes for Breakthrough', *The 7:30 Report*, ABC, March 16, 2005
- 2 Transcript of Schapelle Corby Verdict, May 27, 2005, <http://www.usp.com.au/fpss/news-indonesia95.html#TWO>
- 3 Jonathon Harley, 'Airport Baggage Handlers Linked to Drugs, Court Told', November 5, 2005, *The 7:30 Report*, ABC.
- 4 Corby Trial Statement 'I ask for you...to find me innocent', <http://www.usp.com.au/fpss/news-indonesia74.html#FOUR>

- 5 Indonesian police admit Corby case flaws, ABC News Online, May 8, 2005, <http://abc.net.au/news/newsitems/200505/s1362510.htm>
- 6 Hamish Fitzsimmons, 'Political Parties Express Sympathy for Corby', May 27, 2005, Lateline, ABC.
- 7 The Corby Case Timeline, *Nine News*, March 17, 2005, <http://ninemsn.com.au>.
- 8 Schapelle Corby: Kerobokan Prison Conditions, Herald Sun (Melbourne), May 29, 2005.
- 9 Corby's Brother 'not linked to her case', January 23, 2006, <http://usp.com.au/fpss/news-indonesia/news-indo-schapelle121.html>.
- 10 John Stewart and Renata Gombac, 'Corby's Next Door Neighbour Faces Drug Charges', *The 7:30 Report*, ABC, January 30, 2006.
- 11 Cameras 'worked for Corby', April 4, 2006, <http://www.usp.com.au/fpss/news-indonesia/news-indo-schapelle136.html>.



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hair and semen samples from the crime scene to Pierce. DNA testing later proved Gilchrist's testimony was wrong. A review was then begun of hundreds of cases in which Gilchrist participated. Paul Giannelli, a law professor at Case Western University, noted that in the resulting report Gilchrist's testimony in many cases was described as "at best incomplete and at worst inaccurate and misleading." The report also noted that in her missionary zeal to promote the cause of the prosecution, Gilchrist "had put blinders on her professional conscience so that the truth of science took a backseat to her acting the role of an advocate."

Giannelli also noted that while dishonesty is a major problem at crime labs, so is error. His handout reported a *Chicago Tribune* finding that, of nearly 200 "DNA and Death Row exoneration cases since 1986 ... more than a quarter involved faulty lab work or testimony."

The vaunted FBI crime lab has had serious problems with dishonest employees. In 2004, the Justice Department's Inspector General found that in 90 cases FBI lab employee Jacqueline Blake failed to properly complete testing of evidence that had the presence of DNA. The IG's report said Blake also "falsified her laboratory documentation to conceal" her improper work. Blake later plead guilty in federal court to making false statements in her lab reports.

Giannelli also mentioned that there have been problems at the FBI crime lab for at least three decades. A 1977 investigation of sloppiness at the FBI crime lab turned up serious allegations that lab analysts were pressured by investigative agents to lie about their scientific findings, and that their conclusions were sometimes changed by a lab supervisor to support a criminal prosecution.

Several former and current lab officials have also alleged conduct by FBI investigating agents and supervisors that raised fundamental questions about the integrity of some FBI employees.

As the result of an Inspector General's report, FBI crime lab employees were ordered to seek accreditation; explosives unit examiners were required to have scientific backgrounds in chemistry, metallurgy or engineering, and each examiner was required to sign a report instead of turning in a composite report "without attribution to individual examiners."

But after that report things got worse instead of better. In 2004, the FBI offered a rare public apology for mistakenly linking the fingerprint of an American lawyer,

Brandon Mayfield, to a fingerprint on a plastic bag found near the scene of a terrorist bombing in Spain. The blunder led to Mayfield's imprisonment for two weeks.

Giannelli noted that the FBI originally insisted on the accuracy of the fingerprint match even though Spanish officials matched the fingerprint on the plastic bag to an Algerian national. An independent report of the error later stated that the "dissimilarities . . . were easily observed when a detailed analysis of the latent prints was conducted. The error was blamed on the "inherent pressure of a high-profile case" and "confirmation bias."

There will likely be more apologies in the future as government crime labs are forced to admit that some of their trusted investigative techniques are not accurate as they thought. In his handout Giannelli noted that the FBI stopped outside quality control audits in 1997. In 2003, internal fingerprint examiners got high grades, but the tests were not very demanding. In fact, a New Scotland Yard examiner said after he saw the test: "It's not testing their ability. And if I gave my experts these tests, they'd fall about laughing."

But the reliance of crime labs on fingerprint identification is not a joke. It's very much for real.

Although Giannelli didn't mention it, the FBI suffered another embarrassment in 2005 when it announced it would no longer conduct the examination of bullet lead because of the potential for inaccuracy. Bullet lead examinations have historically been performed in limited circumstances, typically when a firearm has not been recovered or when a fired bullet is too mutilated for comparison of physical markings. Bullet lead examinations use analytical chemistry to determine the amounts of trace elements (such as copper, arsenic, antimony, tin, etc.) found within a bullet. In theory that analysis allows a crime scene bullet to be compared to bullets associated with a suspect. Since the early 1980s the FBI Laboratory has conducted bullet lead examinations in approximately 2,500 cases submitted by federal, state, local, and foreign law enforcement agencies. However, as mentioned in 2005, the lack of a scientific basis for the bullet tests caused the FBI to abandon conducting them.

So what has the U.S. Department of Justice learned from the problems it has uncovered with the FBI crime labs testing techniques? Apparently not much. Giannelli's handout information noted a *Science* magazine editorial written by editor-in-chief Donald Patrick, titled *Forensic Science: Oxymoron?* Patrick noted that the National Institute of

Justice (NIJ), a division of the DOJ, supports an annual Conference on Science and the Law. However, "In planning the agenda for these conferences, NIJ has regularly resisted including comprehensive evaluations of the science underlying forensic techniques."

The session closed with a bang – the presentation that many attendees were waiting for – The CSI Effect. Katherine Ramsland, an assistant professor at DeSales University and the author of 25 books, gave a fast-paced explanation on the impact of *CSI*, *Law & Order*, *Forensic Files* and the many other related programs on American television. Ramsland quoted the commonly held belief that *CSI* has permeated our culture so much that it actually affects verdicts. Unfortunately for all who buy into this theory, Ramsland, says, there is no empirical evidence to back it up. All we have at this point is anecdotal tales, and the rise in such tales could be due to other factors:

- People are less trusting of investigators.
- Prosecutors are not as good as they think they are.
- Rather than causing more acquittals, *CSI* could just as easily cause more convictions.

Yet a CSI Effect is consistent with other types of psychological studies, which suggest that juries can be influenced by media exposure. So there could be a subtle effect not yet tested for. But media biases in general are likely to have far greater influence on the judgment of jurors than a few *CSI* shows.

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