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'CSI' isn't like real-world crime labs

Forensic science is plagued by errors. More oversight is needed.

By Peter Neufeld and Barry Scheck

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DNA IS THE HOT TOPIC in forensic science, but such evidence isn't used in most criminal cases. The Los Angeles County Sheriff's Department, for instance, reports that only 10% of its lab's work involves DNA, and a national study found that DNA accounted for just 5% of crime lab work. In most courtrooms, verdicts are still being swayed by methods that have undergone very little scientific scrutiny.

Public attention has been focused on the DNA samples that have swamped crime labs throughout California since Proposition 69 passed in 2004. (That law requires cataloging samples from all convicted felons and people arrested on suspicion of murder or certain sex offenses — and 175,000 samples now await processing.)

But that backlog is just part of the problem plaguing crime labs, as came out in testimony last month before the California Commission on the Fair Administration of Justice — a state panel that is investigating the causes of wrongful convictions and will recommend remedies. The crime-solving potential of crime labs is also thwarted when analysts face excessive caseloads, insufficient training and inadequate resources.

The bulk of crime lab analysis uses a range of forensic disciplines, including pathology, serology, hair microscopy, fingerprints, bite marks and arson analysis. Some of these are simply more art than science. Others utilize processes that have not been scientifically validated before being relied on to decide questions of guilt or innocence. Even when the science is relatively straightforward, crime labs feel pressure to "get the bad guy off the street," setting the stage for potential negligence and, sometimes, willful misconduct.

Wrongful convictions based on the misapplication of forensic science are all too common. Nationwide, in about two-thirds of the exonerations proved through post-conviction DNA testing, sloppy or fraudulent forensic evidence contributed to the wrongful conviction.

In a notorious Riverside County case, Herman Atkins was convicted in 1988 and sentenced to 47 years in prison for a rape and robbery he did not commit. A state crime lab serologist provided inaccurate and misleading testimony suggesting that Atkins was one of a small group of people who could have produced the semen found on the victim's clothes. But 12 years later, DNA evidence excluded Atkins.

When the misleading testimony in the Atkins case was brought to the attention of the California Department of Justice, its lab conducted an internal audit that concluded there were no other instances of misconduct by the same examiner.

But an independent scientist who reviewed the examiner's data from other cases concluded that he had provided misleading and inaccurate statements in several instances.

How do we improve forensic science? Before any forensic discipline is used in court, it should be scientifically validated through peer-reviewed research and published in respected scientific journals. Right now, a new test to diagnose strep throat requires greater scientific scrutiny than the methods used to identify bite marks on the skin of an accused killer facing the death penalty.

The best way to accomplish these and other reforms is to create a California Commission on Forensic Science, with regulatory responsibility and oversight for all state and local crime labs in California, just as the state oversees its clinical labs, enforcing standards that ostensibly guarantee health and safety. Surely when liberty and public safety are at stake, it is also important to establish standards for crime labs.

Membership in the commission should include stakeholders such as forensic scientists, prosecutors, judges and defense attorneys, as well as a selection of top research and clinical scientists, including some with a background in statistics and laboratory quality assurance.

After hearing from all corners of the scientific and criminal justice communities last month, the California Commission on the Fair Administration of Justice is now well positioned to recommend reforms that could make the criminal justice system more scientific and ultimately more just. Without these essential reforms, innocent people will continue to be wrongfully convicted and the guilty will go free.

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