



Physical Anthropology Section – 2003

H15 Introducing *Daubert* to the Balkans

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The goal of this presentation is to review the impact of recent technological advances—most notably, DNA analysis and physiochemical testing, as integrated with traditional forensic anthropological and archaeological approaches—on legal decisions made by local courts and commissions in the former Yugoslavia.

The conflicts of the 1990s in the former Yugoslavia left perhaps 30,000-40,000 missing, with most presumed dead. Since 1996, vast resources have been committed by international organizations to the recovery, examination, and repatriation of mortal remains in this region. Much of this effort has been conducted under the auspices of organizations such as the International Criminal Tribunal for the former Yugoslavia (ICTY), which focuses on exhumations of mass graves for the purpose of war crimes investigations. However, two important considerations are that (1) ICTY is not responsible for the systematic personal identification process of the recovered mortal remains, and (2) ICTY is required by the international community to operate in accordance with accepted international standards of evidence collection, analysis, and legal presentation. By presenting such evidence before an international court, ICTY can effectively bypass local laws and customs.

The International Commission on Missing Persons (ICMP), in contrast, assists in the systematic personal identification process and promotes cooperation and coordination among local commissions, courts, and exhumation teams. Although the mandate is different, the overall philosophy of the ICMP to promote adherence to the highest possible standards is in line with other international organizations. From the perspective of cultural relativism, this is equivalent to the promotion of “Western” standards.

“Western” forensic science, as practiced in the U.S., is increasingly scrutinized within the context of the 1993 U.S. Supreme Court ruling on *Daubert v. Merrell Dow Pharmaceuticals, Inc.* Even among laypersons (and experts) who have never heard of *Daubert*, there appears to be an ever-increasing recognition that expert opinion presented in courtroom testimony should be based on objective science that passes validity and reliability tests.

The introduction of so-called “Western science” into a tradition-bound Eastern European region has been accelerated by the remarkable surge in DNA-led identifications in this region in the year 2002. The success of the ICMP DNA Program has led to a complete rethinking of how to approach the personal identification process in the former Yugoslavia. To the extent that the DNA-led approach to the identification process is assimilated culturally and legally in the region, it can be stated that *Daubert* has *de facto* gained a toehold in the Balkans.

However, this successful introduction was not accomplished at the expense of traditional forensic sciences; rather, it required the integration of multiple lines of evidence, to include forensic/archaeological context analysis, biological (skeletal) profiling by anthropologists, and evidence review by police investigators and forensic pathologists. This has quickly led to the refinement of standard operating procedures for “routine” cases, and therefore has not (at least at the time of this writing) required the intervention of local courts to resolve disputes pitting “old” against “new” techniques.

Several exceptional cases have been presented to ICMP that cannot necessarily be resolved by DNA matching or traditional approaches alone. During the course of recovery operations, skeletal remains that could predate the 1990s conflict are commonly encountered. Occasionally, intense public debate is generated over cases where former warring parties disagree over whether a set of remains does or does not date to the war period. Samples from some of these cases have been submitted for both DNA testing at ICMP labs and physiochemical testing for postmortem interval, dietary history, and geographic origins testing at the Division of Forensic Pathology, University of Leicester. Results of these tests are expected during the late summer of 2002, and these results, along with results of traditional analysis of evidence, will be presented to the appropriate local commissions and courts for review. This paper will provide an account of the impact of the *Daubert*-influenced “integrated approach” (i.e., traditional approaches combined with new-but-accepted and experimental-but-verifiable-and-reliable approaches) on local commission and court rulings.

Forensic Sciences, Human Identification, *Daubert*