



E25 The “Last Responders”: Working to Uncover Wrongful Convictions in Death Cases: Some Forensic Science Problems, Considerations, and Applications in a Capital Post-Conviction Fact Investigation

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Attendees will be provided with an overview of systematic procedures for conducting an investigation in a capital post-conviction case by the defense. This presentation will demonstrate a systematic approach to collecting, evaluating and forensic testing of physical evidence in a capital post-conviction investigation improves the likelihood of exoneration and increases the chances of a fair resolution of the case based on the evidence.

In recent years, forensic evidence developed by the defense has contributed greatly to the release of dozens of wrongfully convicted men – many of them on death row. It is widely believed that the exonerations so far are only the tip of the iceberg and that America is faced with a crisis situation. With the Innocence Project in the lead, defense attorneys, investigators, and the forensic experts working with them, are reviewing the cases of hundreds of prisoners facing the death sentence.

In a post-conviction case the investigator must find and review physical evidence collected pre-trial, much of which may not have been used at trial; testing done by any forensic experts; and expert testimony at trial. The investigator must consider if new developments in forensic science require a fresh look at the evidence and whether additional testing is necessary.

Experience in capital post-conviction exonerations demonstrates that the orderly and creative investigation of these cases can produce probative forensic evidence of innocence, even many years after conviction. Since an orderly, organized approach is the best way to respond to any emergency, the purpose of this brief presentation is to suggest methods of proceeding to attorneys and investigators undertaking this type of post-conviction case for the first time. This requires a systematic approach to finding all (still-existing) physical evidence collected during the original police investigation, and the records underlying any forensic testing done at that time; a protocol for the examination and preliminary (investigative) assessment of that evidence, to help decide what forensic testing and evaluation should be done post-conviction; and attention to some narrow, potentially productive, lines of forensic investigation which should not be overlooked.

Some of these less common lines of investigation include: DNA testing of less-commonly tested items of collected evidence which may have been touched by the perpetrator (e.g., beer cans, cigarette butts, etc.), some of which may or may not have been tested by law enforcement; hairs possibly left by the perpetrator not DNA tested by law enforcement; the possible significance of DNA partial profiles for exclusion; obtaining DNA samples from a person considered to possibly be the true killer; CODIS for the defense; latent prints not identified by law enforcement; partials not considered by law enforcement to be “prints of value” for exclusion; AFIS for the defense.

In addition, the investigator should consider re-examining the firearms evidence presented at trial in light of changes such as “bullet batching” developments; IBIS for the defense; and any hairs and fibers in light of new identification developments.

Other practical suggestions for the investigative management of these cases will also be discussed.

This presentation will provide investigators undertaking their first capital post-conviction case with a preliminary checklist and some potentially productive areas of forensic inquiry, which, in a case of suspected wrongful conviction, will enhance the possibility of exoneration.

Death Penalty, Investigations, Exonerations