



Jurisprudence Section – 2008

E5 Checking All the Cabinets: Dealing With Neglected and Overlooked Evidence

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After attending this presentation, attendee will be familiar with two recent situations involving neglected or overlooked evidence. The presentation will address the impact of the neglected or overlooked evidence on laboratory resources and the criminal justice system.

The presentation will impact the forensic community by demonstrating the need to take remedial action in order to prevent a failure to process evidence samples. Strategies for preventing the neglect or omission of evidence samples include regular audits, independent inspections and increased involvement of oversight agencies.

Evidence samples from thousands of crime scenes across Massachusetts – some dating as far back as 1989 - were ignored at the State Police crime lab. Although backlogs in casework are common at crime labs across the country, the situation in Massachusetts appears to be the product of neglect and inadequate performance oversight within the laboratory system. State officials are now dealing with the lab's failure to process potentially crucial DNA evidence from as many as 16,000 cases.

In 2001, Virginia discovered additional evidentiary samples in an unexpected place – taped within case files from the 1970's and 1980's - held in state's long-term storage facilities. The inadvertent discovery of the evidence enabled Marvin Anderson to prove his innocence and obtain a gubernatorial pardon for his 1982 rape conviction. The evidence also permitted the state to convict the true rapist 20 years after the crime. Other inmates also requested testing and four more men were exonerated when DNA testing proved their innocence. The Governor of Virginia then took the extraordinary step of ordering the review of all case files (almost 500,000) to catalog evidence and the analysis of all samples that might exonerate the wrongfully convicted and implicate the true perpetrator. State officials expect hundreds of cases to be submitted to a private laboratory for DNA testing to determine whether the individuals convicted of the crimes can be exonerated. Additional unsolved cases are expected to be analyzed in the second phase of testing.

Neglected, overlooked, or inadvertently discovered evidence presents ethical and legal considerations that must be addressed by laboratories and the criminal justice system. The stakes in testing evidence samples that have been forgotten or overlooked for a long period of time are often higher than in current casework. Testing previously ignored evidence can solve decades- old crimes, but uncomfortable questions often arise about the responsibility for the failure to test – especially when additional crimes have been committed by a perpetrator or someone has been languishing in prison for a crime they did not commit while the evidence samples were neglected. Additional ethical and legal concerns arise when statutes of limitations lapse in cases involving neglected evidence.

Neglected evidence can also have a very high financial cost. The testing often requires hiring private firms to handle the testing because state crime labs are already operating at capacity – or over capacity – handling current casework. Massachusetts anticipates spending as much as \$6 million to analyze samples; Virginia has already allocated \$1.4 million to catalog the evidence and submit it to a private laboratory for analysis. Compensation to the wrongfully convicted also adds to the state costs. Virginia has paid millions of dollars in wrongful-conviction compensation and recently implemented a statutory scheme to compensate the wrongfully convicted and provide educational and career training.

The highest cost, however, may be to the system itself. The failure to process or track evidence samples can lead to a crisis in public confidence in the laboratory and the criminal justice system.

To avoid all of these costs – monetary and non-monetary – remedial steps need to be taken at all laboratories, including audits, external monitoring, independent inspections, and increased involvement of oversight agencies. Increased training of prosecutors and defense counsel to inquire into the existence and analysis of data would provide another opportunity to avoid error.

Not knowing what is in your refrigerator can cost you dearly.

DNA, Samples, Neglect