



Jurisprudence Section - 2016

F36 The Shifted Paradigm: The Unprecedented Year in Bitemark Analysis and Hair Microscopy Litigation

Maxwell Christopher Fabricant, JD*, *The Innocence Project*, 40 Worth Street, Ste 701, New York, NY 10013; and Dana Delger, JD*, *The Innocence Project*, 40 Worth Street, Ste 701, New York, NY 10013

The goal of this presentation is to discuss the Innocent Project's (IP's) highly publicized litigation concerning bitemark evidence and hair microscopy over the past year. More specifically, this presentation will discuss in detail two post-conviction cases, one resting entirely on bitemark comparison evidence and another on hair microscopy evidence provided by a Federal Bureau of Investigation (FBI) hair analyst. This presentation will also discuss the IP's request for an audit of all bitemark convictions and the ongoing audit of hair comparison cases, including recent state-based initiatives.

This presentation will impact the forensic science community by elucidating novel litigation strategies around newly discredited forensic techniques that have been used to secure convictions for decades. The IP is litigating cases involving such evidence on behalf of clients in California, Mississippi, Texas, Massachusetts, and North Carolina. Each jurisdiction presents different challenges and opportunities. In Texas and California, for example, there are new statutory schemes that provide avenues for *habeas corpus* relief in cases in which the forensic evidence used to convict the defendant has been discredited. This presentation will discuss how and why bitemark analysis and hair microscopy have been totally discredited and how the audits of these cases are playing out in individual cases around the country.

Over the past year, there has been a sea change in the way courts and the forensic science community must consider the admissibility and probative value of bitemark and other pattern and impression forensic disciplines. The impetus for this change has its roots in the 2009 National Academy of Sciences (NAS) Report, *Strengthening Forensic Science in the United States: A Path Forward*, but has accelerated in light of continued DNA exonerations, the reexamination of thousands of convictions based on hair comparison evidence, and the IP's continued litigation against the admissibility of bitemark comparison evidence and IP's efforts to bring justice to individuals who have been wrongfully convicted through the use of these techniques.¹

The IP anticipates significant decisions in many, if not all, of the cases noted above by the end of 2015. How these cases are decided will have an impact nationally on how courts across the country handle litigation related to audits of prior convictions resting on what is known today to be unreliable evidence. This presentation will be an opportunity to learn and discuss how this new area of post-conviction litigation will impact the forensic community.

Reference(s):

1. National Research Council, Committee on Identifying the Needs of the Forensic Sciences Community, *Strengthening Forensic Science in the United States: A Path Forward*, (2009).

Forensic Odontology/Bitemark, Hair Microscopy, Litigation