PRESIDENT’S MESSAGE

On August 8th and 9th, the Executive Committee and the Board of Directors met in Dallas. What a great venue that city will be for the 2004 Annual Meeting! We met at the Adam’s Mark Hotel, the headquarters hotel for next year’s meeting. For five hours on Friday night, the Executive Committee met. We approved the minutes of previous meetings, developed and approved a budget for this fiscal year, reviewed the development and implementation of Academy initiatives, and set the course for the Academy affairs for the rest of this year.

On Saturday, the entire Board of Directors met for eight hours. Many things were accomplished. The office staff was directed by the Board to engage in negotiations with the convention center and nearby hotels in San Antonio for the 2007 annual meeting. In addition, the Board asked the staff to prepare a proposal to select one or more cities as meeting sites on a rotational basis. In other words, the site of the annual meetings would rotate between two to four permanent locations. The benefit of this plan would be cost savings to the Academy and to the membership as well as the convenience of familiarity with the sites. At the February 2004 Board of Directors meeting, we will consider specific proposals.

Historically, the Academy has recognized forensic certifications by including such designations after members’ names in the directory. In 1996, the decision was made not to recognize additional forensic certification boards that were not accredited by a credible accrediting organization. In the meantime, the Forensic Specialties Accreditation Board (FSAB) was established and soon it will be reviewing certification organizations for accreditation purposes. The Academy’s Board of Directors agreed at the August meeting to recognize the American Board of Psychiatry and Neurology (ABPN) and those members who are certified in the specialty of forensic psychiatry. This recognition was afforded ABPN because the American Board of Medical Specialties has accredited it.

In several ways, I think the August meeting of the Board was a benchmark meeting for the Academy. One historic achievement was to adopt the policies and procedures manual and accreditation standards for FEPAC, the Forensic Science Education Programs Accreditation Commission. The Commission, under the leadership of Jose Almirall, developed these detailed documents in support of its mission to maintain and enhance the quality of forensic science education through a formal evaluation and accreditation system for college-level academic programs that lead to a baccalaureate or graduate degree. The Board of Directors also passed a resolution to propose to the members of the Academy a bylaws change that would make FEPAC a standing committee of the AAFS. Giving FEPAC that status will fulfill federal requirements and establish FEPAC as the recognized accrediting agency for forensic science educational institutions. Together, FEPAC and FSAB significantly strengthen the Academy’s reputation as the pre-eminent organization in the forensic sciences.

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On July 31, 2003, several Consortium representatives traveled to Washington, DC, to meet with congressional staff and to attend the Senate Committee on the Judiciary, Subcommittee on Administrative Oversight and the Courts regarding the Department of Justice Oversight: Funding Forensic Sciences - DNA and Beyond. Susan Johns testified on behalf of the Consortium of Forensic Science Organizations. Several others testified including Sarah Hart, Director of the U.S. Department of Justice, National Institute of Justice, Michael Baden, and Peter Neufeld, Director of the Innocence Project at Benjamin N. Cardozo School of Law, Yeshiva University, plus two prosecutors and a crime victim. Director Hart praised the President's forensic DNA initiative while the others questioned the wisdom to spend $1B over five years only on forensic DNA-related programs and not fund others.

Although, I did not testify, I submitted the following statement which is abstracted below:

Mr. Chairman and Members of the Subcommittee:

Thank you for this opportunity to brief you on the state of forensic science in the United States and to speak on the future funding for crime laboratories and medical examiner offices. I am Director of the Los Angeles County Sheriff’s Department Crime Lab and represent the American Academy of Forensic Sciences, a scientific society of over 5000 practicing forensic scientists, many employed in crime labs and medical examiner offices. The Academy is a member organization of the Consortium of Forensic Science Organizations whose task has been to advocate for the needs of forensic science in Washington.

The forensic science delivery system in our country is in trouble. Simply stated, crime labs and medical examiner offices are under funded to meet the demands of a 21st century criminal justice system. Crime labs and medical examiner offices often cannot provide timely services. The result is some investigations are inadequate and adversely affect the quality of justice. The ability to appropriately use science and technology to solve crimes, to help bring the guilty to justice, and to help exonerate the innocent is seriously compromised because of insufficient resources for crime labs and medical examiner offices.

Unlike the television portrayal of crime labs where crimes are solved in under an hour, many labs are unable to get the job done. Unfortunately, I am unable to provide you with quantitative data to demonstrate this point, but I can describe the problem facing forensic science labs today. The problem presents itself in different ways. In some regions, DNA backlogs are the problem and rape cases are not examined in a timely fashion. Other jurisdictions face problems with drug cases, fingerprints, firearms cases, or toxicology cases. There are insufficient resources to allow labs to complete casework in a timely manner. This is sometimes due to a lack of adequate work space, enough trained personnel, or proper equipment.

While I do not have numbers to prove my point, there are scores of newspaper and television reports to demonstrate that there is a problem:

Feb 3, 2003, Pittsburgh, PA (KDKA-TV)--Eight months ago, a KDKA investigation uncovered a backlog at the Allegheny County Crime Lab that was forcing police to wait weeks, months, and even years for evidence analysis they needed to crack cases.

As a result, bags of evidence from hundreds of cases have been sitting on shelves in the county crime lab collecting dust instead of catching criminals.

Mar 6, 2003, Chattanooga, TN (WDEF-TV)—Methamphetamine use is on the rise in Southeast Tennessee, but now the Meth Task force wonders if it can keep up. The Chattanooga Crime Lab is closing, and all the evidence from more than 20 counties will have to go to Knoxville.

"It affects every police department. The City of Chattanooga will have to have a transport person..." Hamilton County Sheriff John O’pp says his force will dedicate one person to take evidence to Knoxville at least once a week. "They say, ‘Oh, you can mail these, and send them by different ways.’ When it comes to drugs and chain of custody and a large case, I’m not going to put it in the mail or anything else."

The ingredients to make meth are so dangerous; officers need special training to handle them. "Inhalation of hazardous airborne chemicals has been a problem over the years. A lot of officers have suffered from respiratory problems," explains Roger Chesshire of the Network Environmental Service. Not only is the Chattanooga Lab closing, but the Jackson Lab is, too, meaning the Knoxville Lab could face a heavier workload.

Feb 21, 2003, Augusta ME (Blethen Maine Newspapers) — Proposed budget cuts for the state Department of Public Safety will mean fewer troopers to answer emergency calls and fewer forensic specialists to help solve crimes, according to state police officials. The cuts, part of Gov. John Baldacci’s effort to eliminate the state’s projected $1.1 billion budget deficit without raising taxes, would eliminate as many as 49 positions in the department. The proposed cuts include 14 trooper, one detective and 20 civilian positions, the reduction in forensic specialists at the State Police Crime Lab will have a significant impact. "We have backlogs now. We are just going to have to prioritize these backlogs, …"

Evidence from some property crimes may not be processed at all at the crime laboratories and material from violent crimes may wait longer for attention.

Feb 14, 2003, Waterbury, VT (Channel 3 – TV News) — Budget cuts are slowing lab tests of potentially key evidence in a… murder investigation, according to authorities. Police gathered the evidence a month ago ... But there have been
no arrests and police now say they are still awaiting lab analysis of the murder scene evidence, including DNA material.

Eric Buel, Director of the Vermont Crime Lab, says a large backlog of cases, and a shortage of space and personnel delayed lab testing.

Jan 21, 2003, Wisconsin Leader-Telegram— A state crime laboratory in Wausau may have to close because of budget cuts facing the state’s Department of Justice. Attorney General Peg Lautenschlager talked about the possible closing last week during an address at the Wisconsin District Attorneys Association Conference in Appleton.

The state also has crime lab offices in Madison and Milwaukee.

Lautenschlager said the impending cuts would be significant, particularly for a Justice Department that already has been operating on a “bare-bones budget.”

She said closing the Wausau crime lab is among the cuts she is contemplating.

Feb 4, 2003, Alabama, WTVM Channel 9 News— The new director of Alabama’s state crime lab says he’ll do the best he can with the limited resources the state has... For instance, the crime lab has 9,000 drug cases still unresolved, as well as 500 firearms cases. State leaders didn’t help, as this year’s budget is $2.5 million smaller than last year’s.

July 24, 2003, Corpus Christi, TX, KRIS-TV— A new state law tells local authorities to either upgrade their crime labs or don’t bother bringing their evidence to court, and at this point, the outlook for Corpus Christi Police doesn’t look too good. As a result of serious DNA irregularities at the police crime lab in Houston, lawmakers recently voted to require that all similar labs be accredited by 2005. The problem is that to upgrade Corpus Christi’s lab will require more personnel, more equipment, and most of all, more money, and right now, that money just isn’t being spent.

May 14, 2003, San Mateo County, CA, Mercury News— The San Mateo County crime lab has just moved into a brand-new, multimillion-dollar building, but inadequate staffing and poor management are causing serious delays in evidence analysis, according to a grand jury report released Tuesday.

The 57-page report found that the lab is chronically late in processing evidence, sometimes delaying trials and keeping defendants in jail when the evidence could possibly exonerate them. ... [The] lab director ... acknowledged that there is a major backlog of unprocessed evidence, but said most of the lab’s delays are due to one thing beyond his control: low staffing.

July 8, 2003, Mayfield, KY, Channel 3 TV— A Graves County circuit judge wants to know what the holdup is in testing for drugs and other evidence at the Kentucky State Police crime lab in Madisonville. Circuit Judge John Daughday issued an order ... for lab officials to appear in his court Aug. 12 to explain the delay.

Graves and other counties in western Kentucky have seen a sharp rise in methamphetamine cases in recent years. But delays in getting back lab results have left some defendants sitting in jail. But a police official said the Madisonville lab is understaffed, resulting in a backlog.

These are a few of the news stories I have been collecting. They tell a story that there are problems all around the country within forensic science labs.

The Consortium of Forensic Science Organizations believes that funding forensic DNA is important. But other forensic science areas, such as drug testing, toxicology, firearms identification, fingerprint identification, and forensic pathology are also important. These disciplines help to solve crimes. They must be appropriately funded as well.

The U.S. Congress passed the Paul Coverdell National Forensic Science Improvement Act. Sadly, the amount of funding appropriated for the act is exceedingly small. We urge that the monies proposed in the Administration’s Budget be placed into the Coverdell Act to allow jurisdictions to use the funds in ways they feel are necessary.

Thank you, Mr. Chairman, for giving me the opportunity to convey these remarks.
The Schedule of Events for the October 17-19, 2003, Forensic Science Educational Conference at The University of Texas at Arlington is now in its final draft. Applications from more than 100 middle- and high school science teachers from all over the country have already been received and approved. President-Elect Ron Singer, Patricia Biddles, Dana Austin, and the FSEC/UTA Steering Committee are assisting AAFS specialists as they prepare lectures and hands-on workshops for the three-day event. The FSEC/UTA is co-sponsored by the AAFS, The University of Texas at Arlington, and Court TV.

As has been the case with the two previous conferences at Saint Louis University and Pace University, each partner in the project provides funding and/or in-kind contributions. Neal J. Smatresk, Dean of the College of Science at UTA, and Cathy Boyles, Director of the College’s Science Education & Career Center, are providing excellent facilities (lecture halls, classrooms, and labs) and are assigning on-site personnel to facilitate conference activities. Court TV’s Senior Vice-President of Marketing, Evan Shapiro, Vice-President of Marketing, Linda Finney, and Marketing Coordinator, John Domesick, continue to promote the FSECs in the network’s outreach programs and on the Court TV website (www.courttv.com/forensics_curriculum) as well as through cash contributions for scholarships and lectures at the conferences which deal with the various lessons of Forensics In The Classroom. The FSEC/UTA Schedule of Events may be found on page 6 of this issue of the Academy News.

The AAFS Board of Directors has authorized collaboration with Smart Media Group, Ltd. (www.e-smg.com), a London-based company, to offer to Academy members a “one-stop shop” for essential industry information. Users will have access to interactive supplier profiles, product innovations, industry news, abstracts, case studies, a message board, and an extensive events calendar. The website (www.forensic-technology.com), which will have a prominent link to the AAFS website, will be launched at the EAFS triennial meeting in Istanbul this month. Val-Pierre Genton, Smart Media Group’s Managing Director, believes that forensic-technology.com “will save forensic and forensic-related professionals considerable amounts of time by cutting out the tedious, time-consuming, and often frustrating research process.” The website will also allow the global forensic community to share knowledge via its message board. A high-profile editorial panel consisting of leading scientific and non-scientific forensic professionals has been assembled to ensure the integrity and credibility of the website’s contents. For promotional activities on the website, please contact Claudette Williams, Business Development Executive, Canada & USA at +44 20 7936 9050, or, e-mail her at c.williams@e-smg.com. Academy members interested in submitting abstracts to forensic-technology.com may contact me (jhurley@aafs.org) for further details.

PRESIDENT’S MESSAGE CONT.

In another important development, the Board also decided to send comprehensive bylaws revisions to the membership for consideration. These proposed changes would have the effect of modernizing the Academy’s structure, further defining membership categories and expanding the classes of individuals who can affiliate with the Academy. All of these proposed bylaws changes will be circulated to the membership in January, along with a concise rationale for each of the proposed changes. I ask that each of you carefully review the proposals and rationales when you receive them so that you will be prepared to vote at the annual business meeting. If you have any questions about these proposed changes before the annual meeting, feel free to call your representative on the Board of Directors or any Academy officer.

Change in any organization is sometimes difficult, but often times necessary to keep it moving forward. Over the last several years, the Academy has made several important changes and we are indeed moving forward. The work of the Board of Directors at the August meeting shows it has a vision for the future. As your representatives, the AARS directors and officers are making the Academy responsive to your needs and the changing landscape of the forensic sciences.
## Schedule of Events

### Day 1 Friday, October 17
- **7:00 - 8:00** Breakfast, Registration
- **8:00 - 8:30** Introductions and Announcements
- **8:30 - 9:30** Lecture 1 - An Overview of the Crime Laboratory
- **9:30 - 9:50** Break
- **9:50 - 10:50** Lecture 2 - Forensic Pathology
- **11:00 - 11:50** Lab 1 - Fingerprinting, Lab 2 - Impression Evidence, Lab 3 - Forensic Anthropology, Lab 4 - Forensic Odontology
- **12:00 - 1:00** Lunch
- **1:00 - 1:45** Roundtable Discussion - Morning Speakers and Labs
- **2:00 - 2:50** Lab 2 - Impression Evidence, Lab 3 - Forensic Anthropology, Lab 4 - Forensic Odontology, Lab 1 - Fingerprinting
- **3:00 - 3:50** Lab 3 - Forensic Anthropology, Lab 4 - Forensic Odontology, Lab 1 - Fingerprinting, Lab 2 - Impression Evidence
- **4:00 - 4:50** Lab 4 - Forensic Odontology, Lab 1 - Fingerprinting, Lab 2 - Impression Evidence, Lab 3 - Forensic Anthropology

### Day 2 Saturday, October 18
- **7:00 - 8:00** Breakfast
- **8:00 - 8:30** Discussion of Day 1, Announcements
- **8:30 - 9:30** Lecture 3 - Legal Aspects of Forensic Science
- **9:30 - 9:50** Break
- **9:50 - 10:50** Lecture 4 - Current DNA Capabilities
- **11:00 - 11:50** Lab 5 - Bloodspatter, Lab 6 - Court TV in the Classroom, Lab 7 - Forensic Entomology, Lab 8 - Color Tests in the Crime Lab
- **12:00 - 1:00** Lunch - Speaker: The Future of DNA
- **1:00 - 1:45** Roundtable Discussion
- **2:00 - 2:50** Lab 6 - Court TV in the Classroom, Lab 7 - Forensic Entomology, Lab 8 - Color Tests in the Crime Lab, Lab 5 - Bloodspatter
- **3:00 - 3:50** Lab 7 - Forensic Entomology, Lab 8 - Color Tests in the Crime Lab, Lab 5 - Bloodspatter, Lab 6 - Court TV in the Classroom
- **4:00 - 4:50** Lab 8 - Color Tests in the Crime Lab, Lab 5 - Bloodspatter, Lab 6 - Court TV in the Classroom, Lab 7 - Forensic Entomology

### Day 3 Sunday, October 19th
- **7:00 - 8:00** Breakfast
- **8:00 - 8:15** Discussion of Day 2, Announcements
- **8:15 - 10:00** Basic Crime Scene Investigation
- **10:00 - 10:20** Break
- **10:20 - 12:00** "Hands On" Crime Scene Processing
  - Red Team: Crime Scene
  - Blue Team: Crime Scene
  - Green Team: Crime Scene
  - Purple Team: Crime Scene
- **12:00 - 1:00** Lunch - Speaker: Court TV
- **1:00 - 1:45** Roundtable Discussion - Crime Scene; The Conference from the Teacher's Point of View
- **2:00 - 4:30** Teacher Presentations: "How I Use Forensics in the High School Classroom" and "How I Use Forensics in the Middle School Classroom"
- **4:30 - 5:00** Summation and Final Remarks
A WORD FROM YOUR 2004 PROGRAM CO-CHAIRMAN

Joseph P. Bono, MA

The Academy staff has received all abstracts for the proposed presentations at the February 2004 meeting. The task at hand is to organize these abstracts and to develop a program which will attract an audience not only from the United States, but also from abroad. The submissions for podium and poster presentations, workshops, breakfast seminars, luncheons, and workshops will all undergo a rigorous review process by the individual Section Program Committee Chairmen to ensure the highest quality presentations possible. To those who have submitted abstracts, you will be notified of the status of your submissions approximately the first week of November. Program Co-Chairs Carol Henderson and Joe Bono will work to develop a program that will ensure a fulfilling week in Dallas. Everyone who attends will find many opportunities for professional enhancement, as well as the likelihood of meeting old friends and establishing new friendships.

To those who have never attended an American Academy of Forensic Sciences meeting in the past, the 2004 Program promises to address the topical issues of the day. The theme of the meeting will be “Truth and Justice in the Balance: Forensic Scientists as the Counterpoise.” This will be your opportunity to look ahead with colleagues from around the world at the developing role forensic science will have in the future. As professionals, those of us engaged in the profession must ensure that forensic scientists remain the “counterpoise” of our justice system. More than at anytime in recent memory, everything we do is in the public eye. What affects one of us, affects all of us. The more people who become active participants in the evolution of the profession, the better able we will all be at serving justice. For many, attending the Academy meeting, February 16-21, 2004, is the first step.

PROGRAM 2004 - DALLAS

NEED TO SHARE A ROOM IN DALLAS?

If you would like to have more spending money to take in the “must see” sights while in Dallas during the AAFS 2004 Annual Meeting, then share a room!

The AAFS office is maintaining a list of meeting attendees who would like to share a room with a colleague at the Adam’s Mark Hotel. For more information, please contact the AAFS office at (719) 636-1100.

GUIDELINES FOR THE RICHARD ROSNER AWARD FOR THE BEST PAPER

The Psychiatry & Behavioral Science Section of the American Academy of Forensic Sciences announces its annual award, “The Richard Rosner Award for the Best Paper by a Fellow in Forensic Psychiatry or Forensic Psychology.” To qualify: 1) the paper should have been completed as part of the work of the forensic fellowship year, OR within one year of the completion of the forensic fellowship year based upon work or research that took place during that year, 2) the paper must have not been previously published, and 3) submission constitutes permission for publication in the Journal of Forensic Sciences.

To apply for the award: 1) send the original paper, plus six copies, 2) send an original letter, plus six copies, from the director of the forensic fellowship program affirming that the author was a forensic fellow and the year of the author’s forensic fellowship, and 3) send seven copies of the author’s curriculum vitae. All submissions should be sent to: Kimberly Wrasse, AAFS, PO Box 669, Colorado Springs, CO 80901-0669. Submissions must be received by December 31, 2003.

The award consists of:
- Free membership for one year in the Psychiatry & Behavioral Science Section of the AAFS, if the author meets the requirements and completes the application process
- Free registration for the AAFS Annual Scientific Program
- Acceptance of the paper for presentation at the Psychiatry & Behavioral Science Section of the AAFS Annual Meeting
- Free subscription for one year to the Journal of Forensic Sciences, the official publication of the AAFS
- Recommendation of publication to the Editorial Board of the Journal of Forensic Sciences
- A cash grant of $350.00 to the author
CRIMINALISTICS

Source: Susan M. Ballou, MS, Section Secretary

Watching the stock market lately has been a real challenge in controlling reflexes. With each stock drop, there is the automatic reflex to move stock to something more stable. Then of course, you don’t want to pull the stock too soon, since an incredible upswing occurred in that stock that could make you an instant millionaire. The goal, of course, keep as much of that 401K, retirement account, IRAs in your back pocket as possible. Although these concerns affect each of us at a personal level, the spread of gloom and gloom from the federal deficit has enroached into the workplace as well. Many have felt the pinch of the economy in the workplace, spending levels have been cut or eliminated, hiring freezes or RIFs are rampant, and the thought of requesting approval for training is being extracted from our brains. However, on the flip side, there are documents addressing the forensic scientist to complete “continuing professional development” in order to maintain professional status. Part of this “continuing professional development” is training. So what is a forensic scientist to do when a document says you must have it and management says there is no money? One option is to apply for federal grants that support training as part of that grant. The National Institute of Justice (NIJ) hosts a website (http://www.ojp.usdoj.gov/ojj/funding.htm) where there is a posting of solicitations or grants available. Forensic Laboratory Directors, who have applied for these funds to support, supplement, or expand laboratory needs, did not include training as part of this request, obviously not realizing that they could do so. Attending meetings, such as the AARS Annual Meeting, falls under this umbrella of training and should not be overlooked. In addition, regional forensic associations have offered members the chance of obtaining funding to support “educational” opportunities and all that the association requires is a paper request from the interested association member. Although the paper process for grants from NIJ may be extensive, it is an opportunity to obtain training for the forensic scientist when none exists in-house. It would behoove each of us to keep up to date on what is available to make the best use of funding options and not rely solely on management, who may be overwhelmed with daily issues, to find these funding sources.

An incentive to start looking for these meeting monies is the abstracts, posters, and workshops coming together that will comprise the Criminalistics Section’s 2004 Scientific Meeting and program in Dallas. Remember, it is still not too late to notify Awards Committee Chairman Vernon Hinman, and the Nominating Committee are also highlighting “membership” at the top toolbar and select the appropriate offering from the drop down menu.

ENGINEERING SCIENCES

Source: Carol A. Erikson, MS, Section Program Chairman

As of this writing, abstracts are starting to come in for the 2004 Annual Meeting in Dallas and things are looking good! Two full days are anticipated of concurrent sessions filled with interesting and informative presentations by individuals with a wealth of experience in the fields of environmental forensics, electrical accidents, biomedical engineering, automotive systems, accident reconstruction, and roadway/ pedestrian safety, among others. Don’t be left out – plan on being there!

A joint session with the Criminalistics and Jurisprudence Sections will provide a forum for exchange of ideas about dealing with litigation cases from both the prosecution and defense sides of the issues.

A variety of workshops will also be available to choose from; more information to come as those plans become finalized.

Make your plans now to be in Dallas for the 2004 meeting, February 16-20. The Engineering Sciences Section technical sessions will be held on Thursday and Friday. Workshop schedules will be announced as soon as they become available. Everyone is encouraged to attend the section’s business meeting/luncheon on Wednesday, where awards will be presented and new members and promotions will be announced. And, don’t forget to pencil in the Engineering Sciences Section’s reception on Wednesday evening. Meet new people, learn new things, and help make this the best meeting ever!

Looking forward to seeing you all in Dallas in February!

GENERAL

Source: John E. Gems, MRS, Section Secretary

Applications for membership and promotion are already under review by Section Chairman Jim Adcock and Section Secretary John Gems. The deadline for applying for membership and promotion is October 1. The Luncheon Committee and Program Chairman Dayle Hinman, and the Nominating Committee are also beginning their active work. All are expecting a successful meeting and program in Dallas. Remember, it is still not too late to notify Awards Committee Chairman Vernon McCarty of individuals within the General Section whom you feel should be nominated for the General Section awards for 2004.
The General Section offices of Chairman and Secretary are open for elections this year. The nominating committee will identify one candidate for each of these positions. In addition to these candidates, any Fellow in the section may be placed on the ballot for one or the other of these positions by petition. For a petition to be valid, it must be supported in writing by a minimum of three Members or Fellows of the General Section. To be put on the ballot, petitions must be received no later than October 15. Candidates nominated by the committee or to be placed on the ballot by petition will be asked to provide the committee with a one-page resume no later than December 15 that will be mailed to the section membership before the annual meeting in February. The committee will publish a list of the candidates for General Section Offices in the January Academy News. Candidates for the offices of General Section Chairman and Secretary may also be nominated from the floor during the election process at the annual General Section business meeting in February. The General Section Nominating Committee for this year consists of Mary Fran Ernst (Chair), Bob Keppel, and Paul Kish.

**JURISPRUDENCE**

Source: Betty Layne DesPortes, JD, Section Secretary

The Jurisprudence Section is anticipating an informative and evocative program for the Dallas 2004 annual meeting. One topic expected to be addressed in-depth is the forced medication of non-violent defendants for restoration of competency to stand trial. Justice Department information shows that every year, in federal cases alone, hundreds of defendants are medicated to restore competency to stand trial. Although the majority of defendants willingly submit to medication, a sizable number of the defendants are forcibly medicated. A joint Jurisprudence/Psychiatry & Behavioral Science panel will address the analytical framework delineated by the United States Supreme Court’s recent decision in *Sell v. United States*, 123 S.Ct. 2174 (2003), and the practical considerations of forced-medication cases.

In 1997, Dr. Thomas Sell was accused of Medicaid fraud and money laundering. Sell had a history of mental illness, and psychiatrists who examined him after arrest noted the occurrence of psychotic episodes. A lower court found Sell incompetent to stand trial, and he was ordered to take anti-psychotic medication. Sell appealed, and the case worked its way through the legal system for five years. In June, 2003, the United States Supreme Court held that anti-psychotic drugs can be used to restore competency only in “limited circumstances.” The 6-3 majority decision outlined the analytical framework under which the government may forcibly administer anti-psychotic drugs to a non-dangerous criminal defendant to render him competent to stand trial without violating the defendant’s Fifth Amendment right to refuse medical treatment. The conditions involve the medical appropriateness of the proposed drug treatment, influence of any anticipated side effects on the fairness of the trial, and the necessity of medication to further the government’s interest in prosecution. The Court’s decision will likely continue the debate among mental health professionals concerning the necessity of involuntary medication. See [1], citing Brief for American Psychological Association as Amicus Curiae 10-14 (non-drug therapies may be effective in restoring psychotic defendants to competence); and Brief for American Psychiatric Association et al. as Amici Curiae 13-22 (alternative treatments for psychosis commonly not as effective as medication).

Anyone interested in participating in the Dallas program should contact the Jurisprudence Program Co-Chairs Linda Kenney (kenneybaden@msn.com) and Chad Dold (cdold@speakeasy.net).

**ODONTOLOGY**

Source: Bryan Chrz, DDS, Section Chairman

Hopefully everyone has had a great summer and all is well with family and friends. The section was represented well at the Academy of General Dentistry in Nashville this July. Section members Mike Tabor, Richard Weems, Mike Cisneros, Jim McGivney, David Senn, and Bryan Chrz presented an all day course on Mass Disaster Response and the use of WinID3. The limited class was full and all attendees seemed impressed with the presentations and hands-on exercises. Section member Bill Morlang presented a Mass Disaster Course for the American Dental Association in Chicago. DMRT Region Six held a training session in Austin, TX, to kick off August. A four-hour class for the dental crew was given by Richard Weems, David Senn, and Bryan Chrz on radiology, charting, and WinID3. Looks like everyone has been busy this summer getting out the message on standardization of procedures in mass disaster response. Section Program Chairman Tom David reports all is on line for an informative and interesting meeting in February. Texas is a great place to have a gathering like this with easy travel and excellent accommodations. Have fun, be safe, and see you all in Dallas.

**PATHOLOGY/BIOLOGY**

Source: John C. Hunsaker III, MD, JD, Section Secretary

Program Chairman Victor Weedn is actively preparing the agenda for the upcoming 2004 annual meeting in Dallas. The deadline for submission of abstracts has passed. The process of comprehensive review is ongoing. Dr. Weedn and the members of the Program Committee think all who have submitted high quality abstracts as well as proposals for other special events. They have high
hopes for a stimulating program with emphasis on the general theme, which underscores the indispensable contribution of forensic science to American jurisprudence. Specific information on the program will appear in the November issue of the Academy News.

Membership and promotion applications are due in the AAFS office by October 1, 2003. Those members eligible for promotion are urged to submit applications soon. Training program directors and members are especially requested to encourage trainees and young affiliates to join the Academy. Requirements and forms are viewable at the website (www.aafs.org/promorequirements1.htm#Pathology).

The deadline for grant applications to the Pathology/Biology Research Committee was September 1, 2003. Contact Research Committee Chairman Gregory G. Davis (Alabama Greg) for additional information (205/930-3603 or gdavis@path.uab.edu.) Many outstanding recommendations from Pathology/Biology Section members for "seminal papers" to appear in the 2005 commemorative issue of the JFS have been received. Senior members in particular are requested to nominate articles published in the earlier decades.

PHYSICAL ANTHROPOLOGY

Source: Marilyn R. London, MA, Section Secretary

The 2003 Mountain Swamp and Beach Meeting took place August 29-31, in Chattanooga, TN. Tom Bodkin of the Office of the Hamilton County Medical Examiner hosted the event.

John Williams has moved to the Department of Anthropology and Sociology at Western Carolina University. He has been hired to assemble an M.A. program with an emphasis in forensic anthropology and to establish a presence in western North Carolina. One of his first tasks will be to hire another forensic anthropologist. His new email address is jwilliams@wcu.edu.

PSYCHIATRY & BEHAVIORAL SCIENCE

Source: Gregory B. Leong, MD, Section Secretary

Not all the relevant section news comes from the Section Officers. Any member having news items to share should feel free to submit them to gleong@pol.net. Section members, especially those who are not affiliated with the American Academy of Psychiatry and the Law (AAPL), are invited to attend its annual meeting, October 16-19, 2003, in San Antonio, TX. Program information is available by calling the Central Office at 800-331-1389 or visiting the AAPL’s website (http://aapl.org). There will be a panel presentation on Multiple Murder by AAFS members from several sections, including Alan Reithaus, Robert Weinstock, Ronald Singer, J. Reid Meloy, Robert Reissler, and Andre Moenssens. Also of note is section member James Wolfson, who is participating in a panel of the recently decided Sell v. U.S. case. Dr. Wolfson was one of the psychiatrists involved in the case of Dr. Sell.

Richard Rosner is attempting to organize an AAFS Psychiatry & Behavioral Science Section Task Force on Addictions. The purposes of the Task Force are: (1) to identify members of the Section with interest in, experience in, expertise and/or certification in addiction psychiatry and/or addiction medicine; (2) to organize a presentation at the next AAFS meeting in February 2004 on addiction; and (3) to encourage further study of addiction. Persons interested in participating in the Task Force and/or in identifying themselves as interested in, experienced in, or expert in addiction should contact Dr. Rosner at forensicpsych@psynet.net.

QUESTIONS DOCUMENTS

Source: John L. Sang, MS, Section Secretary

Program Chairman Dale Stobaugh is busy preparing for the 2004 meeting. He reports that Mashe Kam of the Data Fusion Laboratory at Drexel University and many time presenter at the Academy Questioned Documents Section scientific sessions would like to conduct some of his research projects at the meeting. He is currently researching handwriting of individuals whose mother tongue is not English (remember “Fugi”): the effect of peer review: the ability to work with limited quantities of texts (e.g., Anthrax envelop style texts); and validation of opinion scales. He also has a set of new results on profiency of FDEs in various document examination tasks which should be of interest to all. Dale is still accepting program ideas for the upcoming meeting. Please contact him at Dale.Stobaugh@txdps.state.tx.us or 512/424-2105.

Jerry McMenamin of the Department of Linguistics, California State University, Fresno, and noted author of Forensic Linguistics Advances in Forensic Stylistics will also be making a presentation.

If any of your colleagues are not members of AAFS, now is the time to invite them to join and take advantage of this opportunity for professional development, enhancement of their knowledge in the field, and to share ideas with academy colleagues. Members are encouraged at this time of year to apply for promotions. Applications are available online at www.aafs.org, or from Kim Wrasse (kwrasse@aafs.org).
The National Conference on Science and the Law is an annual conference sponsored by the West Virginia University Forensic Science Initiative. The conference is co-sponsored by the Investigative and Forensic Sciences Division of the Office of Science and Technology, NIJ, the American Academy of Forensic Sciences, the American Bar Association - Criminal Justice Section, the American Association for the Advancement of Science, the National Center for State Courts, and is held in collaboration with the Federal Judicial Center and the National Academies. The conference was developed to address the issues that arise when scientific evidence is introduced in the court system and to improve understanding between scientists, attorneys, and judges. The conference will focus on a series of panel discussions between distinguished members of the scientific and legal communities, on varied topics such as a discussion of the impact of the Daubert decision on expert evidence admissibility; the current status of DNA testing; forensic science, law and human rights; the effect of the popular media on the public’s perception of what can and cannot be achieved in the crime laboratory; an examination of confessions; a discussion of recent publicized problems in several crime laboratories and possible systematic solutions; a day-long discussion of the 1970 Jeffrey MacDonald Green Beret army doctor murder case; and student poster presentations.

The objective of the conference is to provide a mechanism for improving the understanding between scientists, attorneys, and judges, to foster a better understanding between the scientific and legal communities, and to develop a future research agenda on issues involving science and law that are currently problematic. The conference also provides the forensic science, expert witness, and criminal justice communities a forum for discussion of the current problems involved with the presentation of scientific and other expert testimony in court, and promotes the education and training of scientists, attorneys, and judges on those areas where the intersection of science and the law is less than perfect. The conference is intended to aid the criminal justice community by encouraging discussion and soliciting ideas about needed validation and research for the continued successful use of forensic and other expert evidence in the courtroom.

The conference is designed for all criminal justice professionals, including prosecutors, defense attorneys, judges, investigators, law enforcement officials, forensic scientists, and members from the academic community and the expert witness community who are interested in learning more about the current impact of science on the law.
The Forensic Sciences Foundation, Inc., gratefully acknowledges the generous contributions made to the Foundation. Please accept our apologies if your name has been inadvertently omitted and contact the AAFS office as soon as possible with the correction. This listing reflects contributions received from 08/01/02 through 08/01/03.

The percentages shown indicate the number of members within each section who have contributed to the Endowment Fund.

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JFS BACK ISSUES NEEDED

The Academy office is missing the following issues of the Journal of Forensic Sciences for its library.

- January 1990 (vol. 29, no. 4)
- September 1993 (vol. 35, no. 5)
- May 1995 (vol. 40, no. 3)

If anyone has a copy of any of the mentioned issues and wishes to donate it to the AAFS library, please contact Kimberly Wrasse (kwrasse@aafs.org). Your contribution would be greatly appreciated.
NOT SO PRIME NUMBERS:
IRRESPONSIBLE OR FRAUDULENT LAWYERING

I. Irresponsible Lawyering: Catnapping in the Courtroom and Bypassing a Procedural Strategy

A. A Texas Lawyer Caught Slumbering

In some circumstances it may well be prudent to follow the heavy injunction to let sleeping dogs lie or as Geoffrey Chaucer put it, "It is nought goode sleepe hound to wake." But when it comes to lawyers caught sleeping during their lawyering in the courtroom it would be best to prod them out of their slumber, else constitutional claims lie in wait as they did on the 1984 trial of Calvin Burdine.

In January 1984, Calvin Burdine was tried for the particularly reprehensible murder of his former homosexual lover, W.T. "Dub" Wise. Burdine was represented at his trial by a court-appointed lawyer, Joe Cannon. The trial lasted over six days, encompassing some 12 hours and 1 minute of total time before the jury. During the course of the prosecution’s presenting its case against Burdine lawyer Cannon was observed on numerous occasions to be either in or slipping off into slumberland. Possibly Cannon felt that the case was a conceded loser for the facts marshaled against Burdine were as close to overwhelming evidence of his guilt as you are likely to find in any criminal case.

Not only had he confessed to his commission of the killing but he was apprehended in possession of multiple items of goods stolen from the victim, Wise, or from his trailer where he was found trussed up and knifed to death. Burdine had testified at his trial that he was present as a non-participant in the killing of Burdine which was the handiwork of his new homosexual lover.

After many years, more than fifteen in fact, of challenges to his conviction and sentence to death, Burdine finally hit upon the conceded fact that his lawyer was sleeping during crucial parts of the presentation of the case against him and that that should stay the "hangman's noose" or, indeed, provide a basis for granting him a new trial. The Texas reviewing courts unanimously rejected Burdine’s claim of his being denied his Sixth Amendment right to counsel when his attorney was in the arms of Morpheus during his trial. But a Federal appeals court disagreed in an opinion in 2003 stating what to the lay public seemed to be altogether obvious, viz. that when "defense counsel repeatedly slept as evidence was being introduced against (his client) that defendant has been denied counsel at a critical state of his trial" necessitating the award of a new trial.

As an aside, it is deserving of note that judges also fall prey to the solemn influences of a ponderous trial, sometimes with a risible outcome. As the tale of one such instance is told, a young barrister appearing before the County Court in Ireland was taken aback by the trial judge’s falling off to sleep, even to the annoyance of guttural snoring, while the attorney was examining his witnesses. Not knowing how he could bring the judge back to the business at hand, the barrister tried the shock approach. As he ended his examination of his client he asked in a quiet and even voice, “And I believe it right to mention that you have one previous conviction and that was for murder occurring many years ago. Is that not so? As the startled witness said yes, the slumbering judge sat bolt upright and exclaimed, “Good God. Were you hanged then?”

The disagreement between the federal and Texas courts on the matter of sleeping attorneys lacks the shock value of a hanging offense for it centers on the constitutionally required proof that a sleeping attorney’s representation was in violation of the Sixth Amendment’s right to counsel. The Texas courts were of a mind that the linchpin was whether in fact Burdine had been prejudiced by being convicted of a crime he did not commit whereas the Federal courts, on habeas corpus, viewed the matter of potential prejudice to Burdine not as a matter of proof but as a matter of an irrefutable presumption of prejudice. The genesis for this distinction lay in the US Supreme Court’s opinion in Strickland v. Washington, decided in 1984. To comprehend Strickland it becomes essential to detour to a brief discussion of the issue of competent representation of the defense in criminal prosecutions.

It is axiomatic that defense attorneys representing those accused of crime, whether indigent or not, must perform effectively in order assure that the defendant is not convicted whereas the Federal courts, on habeas corpus, viewed the matter of potential prejudice to Burdine not as a matter of proof but as a matter of an irrefutable presumption of prejudice. The genesis for this distinction lay in the US Supreme Court’s opinion in Strickland v. Washington, decided in 1984. To comprehend Strickland it becomes essential to detour to a brief discussion of the issue of competent representation of the defense in criminal prosecutions.

Assuming a challenge then is made to an attorney’s effectiveness in defense of his accused client’s interests, the question which is next in line is what is the standard of effectiveness to which the attorney must do more than aspire but must also satisfy? Under the mandate of the United States constitution, as interpreted by the United States Supreme Court, a defense attorney falls below the minimal degree of effectiveness when his conduct is deficient in two regards.

continued on page 20
The test is two-pronged. There are the performance and the prejudice prongs of the matter. As Justice O'Connor put it for the majority of the United States Supreme Court in Strickland v. Washington (104 S.Ct. 2052, 1984) the performance standard “remains simply reasonableness under prevailing professional norms.” And in interpreting whether such performance has been provided, the “judicial scrutiny of counsel’s performance must be highly deferential.”

The prejudice prong is the sticky wicket for not only does it require proof “that counsel’s errors were so serious as to deprive the defendant of a fair trial,” but it necessitates a well-grounded speculation that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” This criterion imposes on the defendant the duty to make a strong demonstration of innocence, an innocence that went unproved due to his attorney’s unprofessional behavior.

However, there are exceptions, scant though they may be, to the requirement of direct and convincing proof of prejudice to establish a case for a denial of the Sixth Amendment right to counsel. The Federal court in the Burdine case said that the proof that a defense lawyer was asleep during critical moments of his client’s trial was one of that exceptional character where prejudice would be presumed without the ingredients of evidentiary proof. In short, a lawyer who sleeps during a critical phase of the trial of his client is, so to say, absent without leave. And an attorney who is sleeping during the trial is not present and is therefore conclusively presumed to be ineffective without more. Therefore, Burdine was entitled to a new trial, a new trial which the US Supreme Court on the Texas prosecutor’s appeal from the Federal Fifth Circuit’s decision is not moved to overturn. But in the absence of such a presumption of prejudice, the defense is hamstrung in proving ineffective assistance of counsel. But a recent Michigan case diverges rather dramatically from that view, at least in this one case.

B. Ineffective Lawyering in Michigan on Fingerprints

Michigan, like most states, undeviatingly adheres to the Federal constitutional criteria for the effectiveness of defense counsel as enunciated in Strickland v. Washington. And that standard is normally applied so rigidly throughout the state courts that it is a rarity when ineffectiveness is declared as a basis for the reversal of a conviction. But such an unusual situation, like finding a trout in the milk, does infrequently occur. The appeal of the armed robbery conviction of Shawn Kevin Ballard to the Court of Appeals of Michigan, decided on February 28, 2003, presented a most unlikely and highly improbable factual setting for a declaration of the ineffectiveness of trial counsel. But it happened even though it must not be credited too highly for it was a split opinion of the three judge reviewing court and it was announced in an unpublished opinion which was subject to the possibility of the state’s appeal to the Michigan Supreme Court for a more favorable decision.

Ballard was charged and convicted for the street-side robbery of the manager of a McDonald’s restaurant who was about to deposit the day’s proceeds. The armed robber was cagey enough to conceal his face behind a bandanna but the victim could still state with assurance that his assailant was “a black male with a stocky build, wearing black clothes.” However the robber’s getaway was far less than perfect for he entered the passenger side of a Neon car with an obscured license plate (admittedly it is mighty difficult to put a bandanna around a license plate). The victim was savvy and calm enough to take note of the Neon’s license plate number which turned out to be a stolen car which was found abandoned some two weeks later.

The Neon was impounded and searched with the discovery of a latent print on the passenger side of the rearview mirror which was identified by an evidence technician as belonging to Ballard with a “ninety-nine percent” degree of certainty.

Ballard was arrested and claimed to have an alibi for the time of the robbery. When told that the victim had identified him as the robber, Ballard blurted out “how could they identify me, I had a mask on.” Now that was not a smart response for Ballard was immediately told that the interviewing police officer had not said anything about the robber’s being masked. Ballard then sought to pick up the pieces his inculminating statement had left strewn about by claiming another police officer at a previous time must have told him of the presence of the mask.

From all appearances the evidence cooked Ballard’s goose. His fingerprint was found on the getaway car. The victim positively identified him. And he all but confessed his guilt by his “I had a mask on” declaration. The jury returned a verdict finding him to be guilty.

Ballard’s appellate counsel was non-plussed by the strength of the evidence against his client at the trial. He argued that Ballard had been denied the effective assistance of counsel. He pointed to the fact that the state’s fingerprint expert had given an insupportable non-scientific basis for her matching the latent from the car to Ballard. As he put it, under the Frye-Davis test for the admissibility of scientific evidence in Michigan the proponent of novel scientific evidence must show it is generally accepted in the scientific community to which it belongs.

Trial counsel had not challenged the admissibility of the fingerprint expert’s probabilistic conclusion even though he did vigorously cross-examine her on it as well as her personal requirement of seven points of similarity to declare a positive identification. As it happens, so the expert said, there were only six points of similarity. On that matter trial counsel did address the fact that the expert had not even satisfied her own standard for declaring a match. Moreover counsel was equally thoroughgoing in conducting a follow-up re-cross.
Notwithstanding the acrobatic trial counsel’s advocacy on cross-examination, the two judge majority of the Michigan Court of Appeals reversed Ballard’s robbery conviction holding that trial counsel was ineffective in failing to address the issue of the admissibility of the fingerprint expert’s methodology and conclusion. The court found the evidence of Ballard’s guilt to be “subject to reasonable doubt,” to which the dissenting judge took pointed objection. To the dissenting judge the trial attorney’s cross-examination of the expert was a sufficient attack on her credibility, on the weight to be accorded to her testimony, regardless of his failure to challenge the admissibility of her testimony. Furthermore “the error,” if any, was harmless at best and “defendant has not shown the requisite prejudice” to warrant a reversal of his conviction for the ineffectiveness of his trial attorney. In short, according to the dissent, “(t)he evidence against defendant was strong in this case.”

It remains to be seen whether this appellate opinion will withstand the test of a further appellate challenge. In any event it is surely a wake-up call to defense attorneys to be wary of foregoing an admissibility objection to evidence, even evidence as well-established as fingerprint identifications, for fear of a later claim that in doing so the attorney may be called to book for giving ineffective representation. It is also a reminder to prosecutors that as the proponent of scientific evidence they bear the brunt of proving its admissibility in the first instance and the failure of the defense to address the issue will not immunize the guilty verdict from later scrutiny and possible reversal. See People v. Ballard, 2003 Mich. App. LEXIS 547.

Addendum/Errata: Subsequent to having written the above summary and evaluation of the Ballard decision, it has been learned, not surprisingly, that the case was appealed, as foreseen, to the Michigan Supreme Court and dutifully and summarily reversed, without an opinion, and apparently without oral argument, after the reviewing court adopted the dissent’s viewpoint in the lower court. The matter has been returned to the Court of Appeals to give consideration to another unspecified issue raised on the appeal. My comments in the last paragraph of my above review are still relevant and a prop to my opinion, even though the outcome and the reasoning of the two appellate judges has been unshod. See People v. Ballard, 2003 Mich. LEXIS 1207.

II. Fraudulent Lawyering: A Texas Product Liability Nightmare

It was a horrific automobile accident, leading to a horrific Texas law suit for damages, resulting in a horrific penalty assessed against the plaintiff and her lawyers, followed by equally horrific proceedings against the misconduct lawyers.

Bridgett Fabila (Bridgett) purchased a Dodge Neon from a Dodge dealership. On June 16, 1996, the Neon, while being driven by Bridgett’s husband Juan in Mexico, left the road, rolled over a number of times, ejecting Juan’s two sisters and Bridgett’s infant son, John, all of whom died at the scene. Juan survived the crash while Bridgett was injured as was her daughter, Myriam, who suffered severe head injuries. Myriam and her mother, Bridgett, were taken by ambulance to Texas where Myriam was further transported by helicopter to San Antonio where she died a couple of days later.

All in all four members of the same family died in the automobile crash which was truly a horrific and catastrophic one to the Fabila family.

The Mexican police who investigated the accident issued a citation to Juan Fabila for speeding citing his “immoderate speed” as the only cause of the accident. Bridgett was no help to her husband in avoiding the citation for she confessed to having observed him to be “falling asleep” whereupon she “jolted the wheel” to avoid an oncoming vehicle. It was then that they went off the road with her husband, Juan, now fully awake trying unsuccessfully to right the car.

In further confirmation of Bridgett’s description of the prelude to the accident, the ambulance driver who drove her and Myriam to the hospital in Texas declared that Bridgett had made a similar statement to him during their travels in explanation of the accident. Furthermore he asserted that Bridgett appeared to be calm and unruffled when she gave him that explanation, not at all overcome or hysterical due to the severe nature of her daughter’s injuries.

The lawsuit started mundanely enough, nothing horrific about its preliminaries. Bridgett and other Fabila family members retained the San Antonio law firm of Kugle, Byrne & Alworth sometime between June 16, 1996, the date of the accident, and June 24, 1996, when an attorney for the law firm sent a letter to Allstate Insurance Company, the insurer of the Dodge Neon, seeking to ascertain whether Allstate would acknowledge coverage for the consequences of the accident, it having occurred out of the country, in Mexico. In due course Allstate declined coverage.

The legal plot thickened upon DaimlerChrysler’s issuing a recall notice for the Dodge Neon due to its having a safety defect in the steering column. The Kugle law firm, upon receiving information about the recall, “filed their original petition” on May 22, 1998, for damages on behalf of Bridgett and other Fabila family members against DaimlerChrysler, the Neon’s manufacturer, and the auto dealership which sold the car to Bridgett.

Some two months later, in July of 1998, attorneys Kugle, Wilson and Toscano, all then associated in the Kugle law firm, went to a salvage yard in Mexico to examine the Dodge Neon. They were accompanied by Stephen Garza, an investigator with the Kugle law firm, and Tim Persing, an expert retained by the law firm to examine the car and particularly the steering column to assess whether a manufacturer’s defect might have played a role in contributing to the accident.

Although there was some disagreement among the five persons who went to the salvage yard about the
happenings there, Persing was quite clear that he took photographs of the steering column of the vehicle showing that the steering decoupler was not separated or decoupled and that sometime later in July he sent those pictures to the Kugle law firm. Persing also recalled that not only Kugle but other members of the Kugle firm were on notice of his findings which were quite detrimental to the pending litigation.

Notwithstanding Persing’s report and pictures, the Kugle law firm, in September 1998, hired a “new expert to examine the car.” (the new expert is not named by the Texas appellate court which twice reviewed this matter.) And, miraculously, and lo and behold, the new expert “reported that the steering decoupler was decoupled or separated and concluded that the mechanical failure of the steering system had caused the accident.” With that new information, contradicting the findings of their previous expert, Tom Persing, the Kugle firm amended its damage claim to assert “the decoupler’s failure as a cause of the accident.”

Now it was DaimlerChrysler’s turn to investigate the accident. Its representatives went to Mexico in May of 1999 and interviewed and deposed the Mexican police officers who had cited Juan Fabila for speeding. Those reports made the fur fly for one said that the Fabila family members had sought to have the location of the accident changed and another said that an investigator for the Kugle law firm had offered the officers a bribe to forget the fact that Bridgett had given them a statement implicating her in the tragedy.

It was not until January of 2000, however, that the dam of confidentiality shoring up the Kugle firm’s lawsuit, which had begun to leak perilously, suddenly burst with the crush of new information. DaimlerChrysler’s attorney received an anonymous report propounding that the Kugle firm’s inspection of the Neon in July of 1998, had found no evidence of a steering column defect and no other mechanical flaw that might precipitated the accident. It is taken as a given by the Texas appeals court that this was the first notice that DaimlerChrysler had received of the likelihood of their having been tampering and the fabrication of evidence vis-à-vis the steering column in the Neon.

Now the third phase of this horrific tale commenced. Based on all these disclosures DaimlerChrysler filed a motion in March of 2000, seeking to penalize the Kugle law firm and Bridgett Fabila for witness tampering, evidence tampering, and perjury. Two months later the Texas trial court, after an evidentiary hearing, granted the DaimlerChrysler motion to the tune of dismissing the lawsuit with prejudice and levying a monetary sanction of $865,000 (presumptively the legal fees paid by DaimlerChrysler in contesting the Fabila law suit) against the three lawyers in the Kugle firm who had been involved in the pernicious dealings.

In April of 2002, a three judge panel of the Texas Court of Appeals affirmed that part of the trial court’s judgment which had ordered the payment of the monetary fine against the Kugle firm members but which set aside (with one judge dissenting) the dismissal of the Fabila’s legal action. In August of 2002, the en banc Texas Court of Appeals on rehearing the matter at the request of the Kugle law firm affirmed the decision of the trial court in all respects. This opinion was written by the dissenter from the three judge court’s previous decision, which the judge who wrote the April 2002 opinion now became the lone dissenter in August 2002’s revised opinion.

The August 2002 opinion minced no words in condemning the goings-on at the trial court level. “This case is an egregious (they could just as well have said horrific) example of the worst kind of abuse of the judicial system.” Nothing was said, however, about the misbehavior of the second expert for the Kugle law firm whose conduct had given them the voice they needed to move ahead with their damage claim.

The final nail in this horrific coffin of a legal action has not yet been put in place. Yes, the Kugle law firm of San Antonio is now defunct with Robert Kugle having been disciplined by a one year’s suspension from the practice of law. But DaimlerChrysler has not called quits in its attempt to right the imbalance created by the frauds which were packaged against them. In 2003 they filed their own countersuit against the former Kugle firm members asking for damages for the conspiracy which they contend was compounded against them. This “scandal set of facts revealing attorney misconduct,” as Texas Justice Catherine Stone pointedly called it, is not yet ended. Kugle v. DaimlerChrysler, 88 S.W. 3d 355 (Tex. Ct. App. 4th Dist 2002); Kugle v. DaimlerChrysler, 2002 Tex. App. LEXIS 2667.

APPLICATION DEADLINE

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October 1, 2003
In 1953...

... the first recorded reference to the need for a “permanent Academy headquarters” was contained in the AAFS Secretary-Treasurer’s Annual Report. That report also recommended that the Academy become incorporated. Moving swiftly on these recommendations, the Academy incorporated in the State of Illinois in 1964 and opened its first permanent office 20 years later (1973) in Washington, DC.

In 1963...

... the October issue of the newsletter announced the formation of The International Association of Forensic Toxicology in London, England, during the Third International Meeting in Forensic Immunology, Medicine, Pathology & Toxicology. At that same meeting, the Questioned Documents profession held its first international meeting. Ordway Hilton served as chairman.

In 1973...

... the Academy celebrated its Silver Anniversary at its annual meeting at the Las Vegas Hilton Hotel. Doug Lucas was the President. Also at that gala meeting, the Forensic Sciences Foundation was accepted by the Academy membership as an affiliate organization and was directed to concentrate on forensic science research and educational needs. Shortly thereafter, the Academy and the Foundation hired a joint Executive Director and approved the consolidation of its offices in Washington, DC. That entailed moving the Academy from its office in Salt Lake City and the Foundation from its office in Tucson, AZ. The total inventory of office equipment moved to Washington consisted of three file cabinets, two broken down desks and chairs, and two typewriters. Margaret Hibbard came from Salt Lake City to serve as the Academy Membership Administrator and Ken Field moved from Tucson.

In 1983...

... the membership classification title “Corresponding Member” was officially discontinued. The original intent in establishing this classification was to accommodate regular members while temporarily residing outside the United States and Canada. The classification became too difficult to manage and proved to be very expensive, as members of this classification paid no dues.

IN MEMORIAM

William F. Berry, MS, Former Fellow of the General Section, June 2003

Kenneth H. Habben, BS, Full Member of the Toxicology Section, Date Unknown

Francis A. Landrigan, BS, Provisional Member of the General Section, July 2003

Alison S. Ochiae, BA, Fellow of the Criminalistics Section, August 2003

F. Nicholas Powers, Jr., DDS, Full Member of the Odontology Section, March 2003

Erling S. Weidling, MD, Retired Member of the Pathology/Biology Section, February 1995