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Forensic Laboratories and Scandal

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Criminal Justice

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Forensic Laboratories and Scandal

Introduction

The San Francisco Police Department Crime Lab is in the news as of this writing. Hundreds of cases are being dismissed and thousands more are being brought into question. A criminalist, who was a long time employee of the lab, has engaged in what is alleged to be criminal behavior.

This news story, interesting in itself, also raises questions of policy that have plagued the criminal justice system for some time. Similar problems arose in West Virginia and Texas as well as elsewhere around the country. This month's *Criminal Justice* column will look at the San Francisco crime lab scandal in the context of other such events and in light of the recommendations of the NAS forensic sciences report issued last year.

The San Francisco Police Department Crime Lab

Deborah Madden was employed by the San Francisco Police Department as a criminalist. Much like the CSI television shows, the SFPD crime lab was a part of the local law enforcement agency. They were responsible for processing evidence in

cases where there were investigations and sometimes arrests being made by officers employed by the same department.

Ms. Madden is accused of stealing drugs from evidence submitted to the lab and using it for her own purposes. She is also facing unrelated cocaine possession charges filed in San Mateo County. She has not been formally charged with the theft of drugs from the San Francisco lab.

As a result of her activities, the San Francisco Police Department has closed the drug lab as of March 9, 2010. They also had an independent audit conducted which found the lab's quality was sacrificed for quantity in testing drugs. As of this writing, there are approximately 2700 pages of materials that are being withheld from defense attorneys and the public which apparently chronicle Ms. Madden's misdeeds and, possibly, other shortcomings of the lab.

As with so many criminalists in state and local crime labs, the criminalists are often jacks of all trades and will become involved in just about all facets of so called lab work. The same criminalist might be brought to court as a serology expert in one case, a trace evidence expert, in another and then an expert on driving under the influence in a third. Evidently, Ms. Madden also was involved in multiple areas of "expertise." She had been responsible for testing and retesting suspected drugs, among other things, but she was also in charge of calibrating and testing the blood alcohol machines used by the San Francisco Police Department for drunk driving cases.

The crime lab results have been challenged in drug cases as a result of Madden's involvement in the analysis of substances in those cases. The actual chain of custody is being challenged since she manipulated drugs in the possession of the lab and she has compromised the integrity of the packaging, repackaging and handling of that evidence. There is a possibility that her behavior may also bring into question other cases, including at least one federal murder case that was dependant on the integrity of evidence passing through her hands.

More recently, ordinary driving under the influence prosecutions have been called into question. The person in charge of the testing equipment, Ms. Madden herself, is now a potential felon and, the question is asked, can she be trusted to have properly calibrated and maintained this equipment? In cases where convictions were obtained, there is the question of whether or not the trier of fact might have been influenced by the prospect that the person swearing to tell the truth about these technical matters had been lying to her superiors and to other members of the San Francisco Police Department. Would they have regarded her evidence as reliable if they knew that she manipulated evidence for her own advantage? Would they have thought it significant that she may have been under the influence of controlled substances while she claimed to be engaged in scientific, or at least, technical, analyses?

Currently, she has been subpoenaed to court to testify about what she really did and whether or not she was under the influence or whether her activities caused her to cut corners or even lie about important matters. The defense lawyers are seeking to determine if their own clients, who stand accused or who have been convicted based on her alleged impartial scientific work, are really being railroaded by a dishonest employee of the Police Department. Quite correctly, her lawyer has said she will refuse to testify pursuant to her rights under the fifth Amendment to the United States Constitution.

Other Lab Scandals

There have been other lab scandals in recent history. Notable among them are were the scandals in the West Virginia State Crime Lab and the Houston, Texas, Police Department Crime Lab. Both involved the re-evaluation of thousands of cases and some actual wrongful convictions where innocent people went to prison and the true perpetrators remained free.

In West Virginia in the 1980's Fred Zain worked as a star criminalist for the State Police Crime lab. His serological analyses "helped" to put hundreds of people behind bars. He was a hero of law enforcement officers within the State Police and elsewhere because he had an uncanny ability to confirm their theories and prove that the people they had focused on were guilty. Unfortunately for everyone, Zain simply created his results to comport to what he believed the officers wanted to have confirmed.

Having not done enough damage in West Virginia, when his deception began to be detected, Zain simply changed jobs and obtained a similar position doing serology in Bexar, Texas. His house of cards fell shortly thereafter but not before he had completed a number of cases there.

There was also a lab at the Houston Police Department that was brought under scrutiny, at first by a local television news team. It was eventually found that the standards for scientific analysis were almost entirely lacking. There was sloppiness, cross-contamination of samples and a lack of fundamental scientific training. There was even a large leak in the roof over one of the areas where evidence was collected and analyzed. The problems were so pervasive that the lab was closed and all DNA tests were called into question.

We all want to believe that criminalists will be professional and resemble their counter parts on the television show CSI, even if not equipped with magic computer screen that match fingerprints, bullets and the like. But the reality is that most criminalists are not scientists, they do not follow the scientific method, they lack significant formal education beyond a BA or BS degree and they are expected to jump into a case for law enforcement and render opinions on a myriad of topics which cross

scientific disciplines. It is not to say, of course, that there are not good people who try to do a good job. But there is also the fact, proven time and again, that unreliable conclusions can be and sometimes are issued by these law enforcement labs.

The NAS Report Recommendations

The National Academy of Sciences in its report last year raised concerns about the compromise of the integrity of crime labs, The NAS stated: "... oversight and enforcement of operating standards, certification, accreditation, and ethics are lacking in most local and state jurisdictions." This concern was exacerbated by the fact that most of the labs were either a part of a law enforcement agency or closely associated with one.

In California, most crime labs and criminalists used by law enforcement to gain convictions are directly related to law enforcement. Many are a part of the police or sheriff's departments themselves. The state crime labs are run by the California Department of Justice and headed by the chief law enforcement officer in the State, the Attorney General. The DOJ criminalists work for the Division of Law Enforcement within the DOJ itself. This is not an impartial scientific environment and, according to the NAS, the failure to separate labs and criminalist from law enforcement compromises the integrity of their purported role as independent forensic sources of scientific truth.

But, being separated from law enforcement does not, of course, assure reliability. Private labs have come under attack as well. For instance on December 18, 2009, the San Diego District Attorney's Office issued a letter conveying *Brady* material indicating that a private lab they had been contracting with had been repeatedly unreliable. They indicated that they were terminating their use of the lab and that defense counsel might want to reopen closed cases.

Rules of Discovery and Evidence

Ultimately, the value of evidence will almost always be dependent on the actions of human beings. We rely on witnesses to tell juries what they saw. Sometimes they are mistaken, sometimes lying, sometimes both accurate and truthful. We rely on people in crime labs to be accurate and truthful as well - sometimes they are and sometimes they are not. The most critical thing to do is for the courts to enforce the thorough disclosure of all information, including bench notes and all underlying testing data, to enforce the right to have access to evidence for retests and examination, to allow and encourage thorough cross-examination of purported experts and to limit the testimony of experts to truly scientific conclusions and not allow them to be advocates for one side or the other.

Currently, the United States Supreme Court has acknowledged the right of confrontation under the Sixth Amendment to the United States Constitution requires that the criminalist who did the work testify before the trier of fact and be available for cross-examination. In *Melendez-Diaz v. Massachusetts*, 129 S.Ct. 2527 (2009), the Supreme Court found it a violation of the Confrontation Clause to allow drug test results to be admitted without calling to the stand the criminalist who did the laboratory work. The government's complaint was that this would slow the prosecution of cases and cause a great burden on the prosecution and their labs. They sought a sort of presumption of regularity upon the submission of a government lab report.

The Supreme Court rejected this kind of expediency and insisted that the fundamental principle of confrontation be followed. In light of the San Francisco Police Department Crime Lab experience, as well as the cases of West Virginia and Houston, Texas, this fundamental rule seems more than prudent. We do not process people into criminal convictions with a presumption of government regularity, the government has to prove guilt beyond a reasonable doubt with competent evidence subject to confrontation and cross-examination. The standard should be no less.

Conclusion

Hopefully, for all concerned in criminal and civil cases alike, the trend away from sloppy and over reaching "science" will continue. For the sake of the truth, we all need to insist on the highest standards when dealing with purported scientific conclusions. Ultimately, we will find that even the best of plans can be compromised by the wilfully dishonest lab employee.