



## Jeff Deskovic

# DNA Testing: Only As Good As The Laboratory Part 2

The following information was taken from the **Associated Press**:

"AP reported this month that FBI lab technician Jacquelyn Blake recently resigned while under investigation for failing to follow required scientific procedures while analyzing 103 DNA samples over the past couple of years, and a second lab employee was indicted for false testimony. Government officials, speaking on condition of anonymity, said Inspector General Glenn Fine expanded the Blake inquiry to examine the FBI lab's broader practices in DNA cases.

The FBI has been cooperating, officials said. FBI officials also are facing questions about how to protect the bureau's national DNA database from a growing number of problems at local police crime labs. The police lab in Houston is under grand jury investigation for its DNA work. A police lab in Fort Worth, Texas, is facing a criminal inquiry after revelations that a senior forensic analyst ignored proper DNA procedures. Florida is grappling with a state crime lab worker in Orlando who falsified DNA data.

FBI officials have pulled DNA samples from the Houston lab from its national database and said they will examine the allegations involving Fort Worth and Orlando to determine if any action is required to protect the national DNA registry.

"The inspector general has been trying to push the FBI lab for regular audits of state and local labs that put DNA evidence into the national registry. An audit in 2001 disclosed half the local labs examined were not in compliance with FBI DNA standards.

"No such audits of the DNA profiles in **CODIS** (the Combined DNA Index System) were being conducted

at any level," the inspector general warned the FBI.

"The FBI needs to improve its oversight ... to ensure the laboratories are in compliance with the act, the FBI's quality assurance standards and the FBI requirements for laboratories participating in the national index," investigators warned."

### Two Illustrations Of Justice Gone Awry

The facts of this case are taken from **The Innocence Project's** website:

"In 2004, Josiah Sutton was exonerated after serving four and a half years of a 25 year sentence for a rape he did not commit. Sutton's conviction was the result of a mistaken identification and faulty scientific testing performed by the Houston police laboratory.

In 1998, the victim was abducted at gunpoint, raped by two men, and dumped into a nearby field. Five days after the attack, she identified Sutton and his friend as her possible attackers as she was driving in her neighborhood. The two teenage boys consented to requests by the police for blood and saliva samples to compare with evidence collected from the victim and her car. The testing concluded that Sutton may have been an attacker, but his friend was excluded. Despite the victim identifying both boys, only Sutton was brought to trial.

The DNA evidence became the primary testimony against Sutton. The laboratory claimed that the semen sample from the backseat of the car contained two profiles - Sutton's and that of another, unidentified man. Moreover, a crime lab employee testified at trial that the DNA found on the victim was an exact match with Sutton, meaning that only about 1 person

in 694,000 could have deposited the material whereas in reality, 1 in 16 black men share this profile. Sutton, asserting his innocence throughout the investigation and his incarceration, sought independent DNA testing during the trial. In his appeal, he claimed that his attorney was ineffective for not obtaining independent testing that would have been exculpatory.

The state asserted that the attorney was not ineffective because he told Sutton he did not have enough money for the testing. The flaws in Sutton's conviction were numerous and not limited to DNA testing defects. After the rape, police were looking for a 5' 7" man who was approximately 135 pounds. Sutton was picked up despite being 6' and 200 pounds at the time.

While incarcerated, he studied DNA testing and filed a hand-written request for retesting. He was denied and it was not until an independent investigation of the police crime laboratory that he got his chance to prove his innocence. Two local reporters were investigating the police crime laboratory and sent transcripts and reports from numerous cases to a group of experts. One of these experts, University of California criminology professor William Thompson, described the reports as the worst he had ever seen and said they were not as scientifically sound as a decent junior high school science project.

When the reporters broadcasted their story, Sutton's mother was tuning in. She quickly contacted the reporters who agreed to investigate her son's case. Thompson said of the report in the Sutton case that the mistakes practically jumped off the page. After examining the original DNA test strips, he

concluded that the lab was completely wrong in their report. His finding led to retesting, that produced conclusive, exculpatory evidence. The semen source came from a single man, not two, and it did not come from Sutton.

The Houston Police Department Crime Laboratory has since been subjected to an investigation that has shown a great number of problems, ranging from untrained staff to contamination of evidence, and the laboratory was shut down. Sutton's case has shed light on many other cases where potentially innocent inmates are incarcerated as a result of faulty science."

George Rodriguez served 17 years in prison in Texas for aggravated Sexual Assault of a child and aggravated kidnapping before being proven innocent by DNA. The facts of his case are taken from **The Innocence Project's** website:

"In February 1987, in Houston, Texas, a fourteen-year-old girl was forced into a car by two Latino men. She was taken to a house where both men raped her. After the sexual assault, she was placed in the car again and left on a roadside. In her initial statements to police, the victim characterized her assailants as the skinny one and the fat one. She also provided details about the house and the route the assailants took to get there. One of the assailants had called the other by the name of George, but the victim indicated that she thought this was a fake name, as the assailants had discussed not using their names.

Based on this information, police went to the house belonging to Manuel and Uvaldo Beltran, brothers who were acquainted with George Rodriguez. Because the name George was



used in the attack, Rodriguez became a suspect because one of the investigating officers knew of the Beltrams and knew that Rodriguez was an associate of Manuel.

When questioned, Rodriguez claimed that he was at work at the time of the crime, a claim confirmed by his work records. Uvaldo Beltran told police that he had been at home watching television when his brother and Isidro Yanez walked through with the victim and went to a bedroom. Manuel Beltran admitted to the crime, telling police that he and Yanez had brought the victim to the house and raped her in the bedroom while his brother was in the living room watching television. Yanez had previously been named in a similar crime in the area. Police also confirmed that Yanez's car was used in the abduction.

Before the police spoke to Uvaldo Beltran, they had already shown the victim a photo array that included George Rodriguez's photograph. She identified him from this array. Despite the evidence pointing to Yanez as Manuel Beltran's partner in crime, police continued to consider Rodriguez a suspect. Proclaiming his innocence, Rodriguez agreed to take part in a show-up procedure, where the victim identified him, partly by the way he stood, as the fat perpetrator.

She later testified that she had only been able to view his face for 3-4 seconds during the attack.

It was not until two months after the attack that the victim was shown a picture of Yanez. His picture was included with that of Rodriguez in a photo book. The victim picked out both pictures, noting their similarities, but eventually identified Rodriguez again as her assailant. Rodriguez became the main suspect after false evidence was returned from the Houston Police Department Crime Laboratory, then under the direction of Jim Bolding.

The laboratory tested the victim's rape kit and clothing. A hair found in the victim's underwear was said to be microscopically similar to the hair standard from George Rodriguez. Semen found on the victim's clothing and rape kit samples was said to include Manuel Beltran. Bolding testified that Rodriguez could not be excluded from these samples but that Yanez definitely could not have contributed to the samples.

At the trial, this testimony represented the only physical link between Rodriguez and the crime. This testimony was later proven false by the State's own testing. Bolding's testimony at trial had falsely excluded Yanez. In October 1987, despite the statements of the Beltran brothers and the

acknowledged similarities in features between Rodriguez and Yanez, George Rodriguez was convicted and sentenced to 60 years in prison. Rodriguez lost all of his appeals.

In 2002, the Innocence Project began working on Rodriguez's case. Most of the probative biological evidence had been destroyed in 1995. The hair that was microscopically matched to Rodri-

guez, however, was located. This was the same evidence that, coupled with the false serological conclusions, convinced the police to focus on Rodriguez and turn away from Yanez.

Rodriguez successfully petitioned for post-conviction DNA testing of the hair in 2003. Results of mitochondrial testing obtained in 2004 indicated that Rodriguez could not have been the man who left the pubic hair found in the victim's underwear. Importantly, Yanez could not be excluded as a source of the hair. Additionally, further serological testing by the prosecution revealed that Yanez was mistyped at the time of trial and should never have been excluded as a potential contributor of the semen from the rape kit and the victim's clothing.

Based on these scientific results, Rodriguez's conviction was vacated. At the end of August 2005, the Texas Court of Criminal Appeals formally vacated the conviction. At the end of September 2005, the District Attorney moved to dismiss all charges. After 17 years in prison and one year on bail waiting for the court's decision, George Rodriguez's conviction was vacated, confirming the results of post conviction DNA testing."

A principle that I firmly stand upon is that these examples I will get into should not be looked at in isolation, as in "that's horrible what happened there", without a further thought as to whether issues discovered in one place are not going on in another. Rather, inquiries should be made just to be sure. Lessons that can be learned by examples of what happened in other states should be applied across the country to prevent it from happening elsewhere. Why wait until we are affected?

Here are a few suggestions: It is important that the qualifications of all lab experts across the country be double-checked so that there is no repeat of what went on in the Houston Crime lab. Such review should be done by independent examiners. It is important that labs have oversight from independent agencies, who

show up at unannounced times.

When a lab has been shown to have problems requiring a review of past cases which may have been affected, that review should be done by a special master, as Bromwich advocated for in Houston. It most certainly should not be left up to a police department or a district attorney's office, or any other agency that previously has been involved in a prosecution, because of the danger that the review will not be done by people who are unbiased.

Accordingly, the attitude of District Attorney Rosenthal of Houston, who stated, "We have special masters, they are called judges" is ridiculous. Given that 'tunnel vision' has at times plagued many a police department and prosecutors office in cases in which a defendant has ultimately been proven innocent, it is not hard to imagine that additional covering up could go on, nor that subconscious bias could sway opinions, and play a role.

Once protocols are established in one state to prevent future mistakes that are based on sound science, other agencies across the country should take notice, and possibly adopt them, where applicable.

Failure to follow correct protocols can, and has, lead to wrongful convictions, which simultaneously leaves perpetrators free to strike again. It can also stop perpetrators from being arrested even when nobody has been wrongfully convicted, as happened in Boston when the lab administrator didn't report the results of the DNA tests until after the statute of limitations had ran out

That is unconscious to me, because it means that people who have been raped will never see their rapists punished. The issue regarding the reliability of the DNA that states contribute to the national DNA Database, which links to the FBI Database, is one that should cause alarm in everybody. Clearly, those states that have been found not to have lived up to standards should have their samples removed from the database. ■

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