



## Jeff Deskovic

# Creation Of A National Institute Of Forensic Sciences Is Critical

On September 3, 2009, a story appeared in the *Daily News* regarding Dwight Gomas, who had spent 17 months in Rikers Island in New York for robbery before it came to light that the fingerprints which formed the basis for his arrest did not, in fact, match him.

According to the *News*, "He was in fact 880 miles away, living in Atlanta, when armed thugs robbed Theresa's Gold Lynch jewelry store in Howard Beach in October 2003. A year later, Gomas was arrested for the robbery by United States marshals.

Detective Eileen Barrett had matched a partial index finger print from the crime scene to Gomas, whose prints were on file after an arrest for driving with a suspended license in Brooklyn. It was the only arrest on his record other than a juvenile bust. A second NYPD detective, Charles Schenkel, confirmed Barrett's identification, according to court papers.

Gomas maintained his innocence before the grand jury, but was indicted and couldn't make the \$30,000 bail. His Legal Aid lawyer advised him to accept a plea offer of five years in prison, but he refused. Gomas was headed to trial for a Queens jewelry store stickup when a veteran detective routinely checked his identification. "When I looked at it, I said, 'You know what? This is a screw up; this is not his fingerprints,'" said Detective Daniel Perruzza, according to a court transcript. "It looks similar, but 'similar' doesn't cut it in prints. It has to be an exact match," Perruzza said. During his 523 days in jail, he lost his spot in a cooking school and his girlfriend and their child moved in with another man."

As I have long maintained, the idea that people could be arrested and wrongfully convicted for crimes

that they are innocent of is quite scary. But the idea that one could be wrongfully arrested for a crime that happens in another state nearly 1000 miles away is even scarier. Yet it is a reality.

According to *The Innocence Project's* website, "A report from the National Academy of Sciences released this year found that fingerprint analysis was among the forensic disciplines that has not 'been rigorously shown to have the capacity to consistently, and with a high degree of certainty, demonstrate a connection between evidence and a specific individual or source.' According to *The Innocence Project*, "Stephan Cowans spent more than five years in Massachusetts prisons after a false fingerprint match led to his conviction for a crime he didn't commit."

But this problem goes way beyond merely cases in which fingerprint evidence is a factor. According to the *Just Science* website, which is a broad-based group committed to having scientific standards in place regarding forensic science so that only scientifically based, sound procedures are the foundation of any forensic evidence and testimony in criminal cases: "Many forensic disciplines have evolved primarily through their use in individual cases and have not been scientifically validated or standardized. Forensic analysts sometimes testify in cases without a proper scientific basis for their findings. Testimony about more dubious forensic disciplines, such as efforts to match a defendant's teeth to marks on a victim or attempts to compare a defendant's voice to a voicemail recording, are cloaked in science but lack even the most basic scientific standards.

Even within forensic disciplines that are more firmly grounded in science, evidence is often made to sound more precise than it should. For ex-

ample, analysts will testify that hairs from a crime scene 'match' or 'are consistent with' defendants' hair – but because scientific research on validity and reliability of hair analysis is lacking, they have no way of knowing how rare these similarities are, so there is no way to know how meaningful this evidence is.

In approximately 50% of DNA exonerations, unvalidated or improper forensic science contributed to the wrongful conviction. But, while DNA exonerations are a window into the effect of unvalidated or improper forensic science contributing to wrongful convictions, DNA does not solve the problem. Experts estimate that only 5-10% of all criminal cases involve biological evidence that could be subjected to DNA testing. In the other 90-95% of crimes, DNA testing is not an option – so the criminal justice system relies on other kinds of evidence, including forensic disciplines that may not be scientifically sound or properly conducted."

With that background, the need for a National Institute of Forensic Science created by Congress is obvious. Roy Brown spent 15 years in prison in New York for a murder he was innocent of. *Innocence Project* Co-Founder Peter Neufeld testified at a Congressional Hearing that, "The forensic dentist [at Roy Brown's trial] used what was then the prevailing method of comparing bite marks found on a body with the dentures of a suspect," said Neufeld. "He examined them and decided that he had a match with Roy's bite. He so testified in court, and Roy was convicted."

At the moment, Congress is holding hearings and considering creating just such an entity. Fueling the inquiry is a report that was recently released. According to the *Just Science* website, "In 2006, Congress appropriated funds to the Na-

tional Academy of Sciences (NAS) to thoroughly study the fundamental underpinnings of forensic science and its applications in our criminal justice system. A blue-ribbon NAS panel was formed – including scientists, academics, a retired federal judge, and other notable experts. Over an eighteen-month period, the group held several public hearings and gathered comprehensive research on forensic disciplines.

This Committee on Identifying the Needs of the Forensic Sciences Community released its final report, *Strengthening Forensic Science in the United States: A Path Forward*, in February 2009. In releasing their report, the co-chairs of the committee emphasized that there was a consistent theme throughout their deliberations."

The report says: "The forensic science system, encompassing both research and practice, has serious problems that can only be addressed by a national commitment to overhaul the current structure that supports the forensic science community in this country. This can only be done with effective leadership at the highest levels of both federal and state governments, pursuant to national standards, and with a significant infusion of federal funds."

The report's key findings include:

- "With the exception of nuclear DNA analysis, however, no forensic method has been rigorously shown to have the capacity to consistently, and with a high degree of certainty, demonstrate a connection between evidence and a specific individual or source." (NAS Report, page S-5)

- "...What is needed to support and oversee the forensic science community is a new, strong and independent entity that could take on the tasks that would be assigned to it in a



manner that is as objective and free of bias as possible – one with no ties to the past and with the authority and resources to implement a fresh agenda...” (NAS Report p S-13)

- “There are great disparities among existing forensic science operations in federal, state and local law enforcement jurisdictions and agencies...It is clear, however, that any approach to overhauling the existing system needs to address and help minimize the community’s current fragmentation and inconsistent practices.” (NAS Report, page S-4)

- “Although research has been done in some disciplines, there is a notable dearth of peer-reviewed, published studies establishing the scientific bases and validity of many forensic methods.” (NAS Report, page S-6)

- “A body of research is [also] required to establish the limits and measures of performance and to address the impact of sources of variability and potential bias.” (NAS Report, page S-6)

- “...The adversarial process relating to the admission and exclusion of scientific evidence is not suited to the task of finding ‘scientific truth’...Judicial review, by itself, will not cure the infirmities of the forensic science community.” (NAS Report, page S-20)”

According to that report, here is what reform would look like:

“Assessment of validity and reliability:

- The federal government should establish a science-based federal entity or agency, the National Institute for Forensic Sciences (NIFS), to review both existing and new techniques, devices and assays to determine the extent to which they are scientifically valid and reliable for use in the criminal justice system.

- NIFS should establish standards for reliable application of forensic science disciplines in criminal cases (e.g. match criteria) to ensure the use of forensics within prescribed parameters.

- NIFS should have compliance authority to ensure the discontinuation of invalid or unreliable methods.

#### Research:

- NIFS should fund both basic and applied research to test the validity and reliability of extant forensic methods, devices and assays; and to

support the development of new technologies to solve crime.

#### Quality assurance, accreditation and certification:

- NIFS should set enforceable standards for public and private laboratories, as well as for individual professionals, that conduct forensic tests and examinations intended for use in courts.

- Quality controls and quality assurance programs should be established to secure the integrity of the ultimate forensic product in laboratories and in courts. This should include (but not be limited to) validation of devices for particular labs; written protocols and procedures; minimum qualifications, staff training and proficiency testing for personnel; and parameters for data interpretation, report writing and testimony.

#### Training:

- NIFS should support comprehensive training and professional development in the forensic science field in order to build the capacity for research and quality assurance, and to bring current and new forensic science personnel into compliance with established qualifications and standards.

#### Oversight

- The Director of NIFS, in consultation with science-based federal government agencies, should appoint a Forensic Science National Commission composed of science professionals to set broad research priorities and to promulgate forensic science standards.

- The Director of NIFS, in consultation with science and criminal justice-based federal government agencies, should also appoint an Advisory Committee to provide input to the Commission and NIFS with regard to its various responsibilities.”

There are many junk sciences that lead to wrongful convictions. There is bullet lead analysis, which falsely purports to be able to trace the bullet fired from a gun used in a crime all the way back to the box from which it originated.

According to *The Innocence Project’s* website: “Hair microscopy, bite mark comparisons, firearm testing or tool mark analysis – have never been subjected to rigorous scientific evaluation. Other methods – such as

serology (commonly known as blood typing) – have been properly validated but are sometimes improperly conducted or inaccurately conveyed in trial testimony. In some cases, forensic analysts have fabricated results or engaged in other misconduct.”

With each new revelation of a junk science, it becomes apparent that perhaps thousands more have been wrongfully convicted. Considering that we are talking about people’s lives, it is high time that we have a National Institute for Forensic Science. After all, in other disciplines oversight agencies and standards are in place. Electrical devices are scrutinized and tested by the Underwriters Laboratory. The Food and Drug Administration provides a similar function with respect to medicine and food.

A thought that has been absent, so far as I am aware, in the recent discussion about this topic is that while it is important for these steps to be taken, what has gone on previously? Surely the ‘experts’ who were testifying about various ‘sciences’ in court in the furtherance of trying to convict a defendant had to be aware that there was no scientific underpinning to them; that there existed no replicable protocols, or statistics, that it was not hard science and in fact often was junk science.

While I could envision a few people doing so out of ignorance, it strains credulity to say that is the case with everybody. As people with advance degrees, they are familiar with general scientific methods. How could others who omit information regarding the statistical significance of a match or those who embellish, or even outright lie about it do so?

Is there no conscience involved? In my view, someone would have to be quite evil to give false or even simply inaccurate testimony against somebody, knowing that they were on trial often for serious crimes.

Also unmentioned is the need to identify each and every “expert” who has engaged in any of these types of fraud, and the need to vigorously prosecute them to

the fullest extent of the law. Supervisors under whose watch fraud has occurred should, wherever it can be shown that they either looked the other way or even simply were negligent in their oversight, be fired and publicly disgraced, and permanently barred from ever working for the government again.

Their actions have, in my view, undermined, for quite a long time to come, the ability of the public who is aware of these issues, to feel safe as they go about their daily lives, much as violent criminals who are concentrated in a particular geographical area do so.

In fact, I think that the level of fear could be higher. The odds of me, as an exoneree and therefore a high public profile, along with extremely competent lawyers working on my lawsuits, ever being wrongfully convicted again, are extremely low. However, even with these differences between myself and the general public without those resources I, too, am once again afraid.

Imagine that even being 880 miles away from a crime is not enough of an assurance of not being wrongfully arrested for it. As Dwight Gomas stated as reported in *The Daily News* “It is just a nightmare knowing that someone that’s innocent can be picked up off the street and held. That scares me now. It’s like I’m walking on eggshells. I try to cover my tracks for everywhere I go.”

Think, too, about sitting as a defendant at the defense table and listening to expert testimony that you don’t fully understand that is offered as evidence against you. Imagine being equipped with a court-appointed, overworked, under funded, and quite possibly incompetent, lawyer to represent you. Do you have confidence in what the outcome of such a trial would be, despite your innocence? ■

<b>GFN</b>	
<b>GALLO, FEINSTEIN &amp; NAISHTUT, LLP</b>	
ATTORNEYS AT LAW	
<b>TONY CASTRO</b>	
OF COUNSEL	
tcastro@gfnlaw.com	
T 914.939.0002 211 S. RIDGE ST. RYE BROOK, NY 10573	T 203.629.5074 28 SOUND VIEW DRIVE, BOX 4845 GREENWICH, CT 06830