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PEOPLE DO FORENSICS

Conflicts about oversight neglect a fundamental issue

By Julius (Jay) Wachtel. In 2009 the National Academies published "[Strengthening Forensic Science in the U.S. – a Path Forward](#)," a meticulously documented critique of forensic practices in the U.S. In "Better Late Than Never" [Part I](#) and [Part II](#) we discussed NIJ's belated response to the slap-down. It took two forms. In 2013, "to enhance the practice and improve the reliability of forensic science," NIJ and the National Institute of Standards and Technology (NIST) created the [National Commission on Forensic Science \(NCFS\)](#). Three years later DOJ [released draft rules](#) that, once published in final form, would govern the testimony of Federal forensic experts in a variety of disciplines. Although [our initial impression](#) was that the proposed regulations seemed excessively permissive, it was, after all, a start.

Full stop. On April 10, 2017 the new Administration slammed on the brakes, withdrawing the revamp and consigning it to "[archives](#)." Alas, the text of the would-be rules is inaccessible. (Go ahead, click on the links under the "uniform language" heading. No, they don't work.) Meanwhile, in [a carefully worded statement](#), Attorney General Jeff Sessions conceded that the NCFS charter had "expired." Meaning, in plain English, that he wasn't renewing it. DOJ's new boss nonetheless promised that his agency would labor to "increase the capacity of forensic science providers, improve the reliability of forensic analysis, and permit reporting of forensic results with greater specificity." To his credit, [he did invite input](#). But the new AG said nothing about the rules proposed prior to his arrival, nor of the comments the stillborn effort likely inspired.

The NCFS got a final word. On the very next day, April 11, it published a retrospective, "[Reflecting Back - Looking Toward the Future](#)" that lists past recommendations and actions taken and provides detailed bios of former staff members, whom one assumes are looking for their next gig. Read closely and you'll also find a few wistful yet deferential hints about what might have been. (As of this writing the report hasn't been "archived." But just in case DOJ ultimately deems it offensive, we placed a copy on our server. Click [here](#).)

Sessions, a former Assistant U.S. Attorney, is now the nation's top cop. His moves – or in the case of NCFS, his failure to act – have been criticized as a transparent effort by law enforcement to control forensic science. Some who felt they were being elbowed out from the decision-making process [offered stinging criticism](#):

- “It is unrealistic to expect that truly objective, scientifically sound standards for the use of forensic science...can be arrived at by entities centered solely within the Department of Justice.” (Federal judge Jed S. Rakoff, a former NCFS member)
- “...the department has literally decided to suspend the search for the truth...as a consequence innocent people will languish in prison or, God forbid, could be executed....” (Peter S. Neufeld, cofounder of the *Innocence Project*.)

On the other hand, many members of the establishment were pleased. Cops and prosecutors, who rely on forensics to provide actionable leads and validate their work, mostly applauded the AG. Of course, physical evidence has a mixed reputation, so the gloating was more or less tastefully restrained. Consider, for example, this extract from [a press release](#) by the National District Attorneys Association:

The National District Attorneys Association (NDAA) supports the announcement this morning by United States Attorney General Jeff Sessions that he will not renew the charter for the National Commission on Forensic Science...The Commission lacked adequate representation from the state and local practitioner community, was dominated by the defense community, and failed to produce work products of significance for the forensic science community....

One day after the NCFS shut its doors the National Academy of Sciences (remember, they're the nitpickers who rebuked forensics in 2009) released “[Fostering Integrity in Research](#).” To no one's surprise this meticulously documented report concluded that scientific researchers lie and cheat for mostly the same reasons as everyone else: to secure and retain desirable positions, achieve prominence and gain material rewards.

“Fostering Integrity” wasn't directed at forensics. But selfish motives also pervade that discipline, where the harm is direct, and the victims often plentiful:

- An early post, “[CSI They're Not](#),” reported that NYPD analysts “took shortcuts when analyzing large seizures, falsely certifying that every container of suspected drugs was tested.” Thousands of drug tests were botched while managers who realized what was going on stood by as though everything was fine.
- In “[More Labs Under the Gun](#)” we discussed the appalling case of a New York crime lab examiner who falsified reports, making up data to convey the impression that he performed analyses when he had not, *for fifteen years*. (He committed suicide when the authorities caught on.)

- Two years ago, in [an unprecedented mea culpa](#), DOJ and the FBI acknowledged that “nearly every examiner in an elite FBI forensic unit gave flawed testimony in almost all trials in which they offered evidence against criminal defendants over more than a two-decade period before 2000.” Thirty-two of the accused had been sentenced to deaths; fourteen were executed or “died in prison.”
- But the trophy goes to... “superwoman”! That’s what they called [Massachusetts state crime lab chemist Annie Dookhan](#). Hired in 2004, the self-described “overachiever” (her output was triple that of her colleagues) eventually admitted to a seven-year long string of falsification, “forging her co-workers’ initials and mixing drug samples so that her shoddy analysis matched the results she gave prosecutors.” Dookhan was suspended in 2011 and pled guilty in 2014. A few days ago the courts officially dismissed a stunning 21,587 criminal cases that had used her work product. According to the ACLU that’s an all-time record. We won’t quibble.

Anyone who’s even halfheartedly paid attention can’t help but be appalled by the numerous miscarriages of justice, up to and including wrongful execution, that have been attributed to flawed forensics. So the AG’s transparent attempt to evade outside scrutiny rings a decidedly sour note. Still, as experience suggests, it’s not enough to have a watchdog on the prowl for junk science. One must be alert to junk scientists as well. After all, people do forensics. So if we’re really serious about improving things, overseeing them far more closely must be job #1.