

***THE IMPORTANCE OF TRUST AND COLLABORATION IN
TACKLING FORENSIC PROBLEMS***



**INTERNATIONAL SYMPOSIUM ON
FORENSIC SCIENCE ERROR MANAGEMENT
JULY 24, 2015**

- * Introduction to the Commission
- * Where we started (yikes!)
- * How organizational values impact success
- * Parting thoughts for those engaged in (or trying to launch) similar reform efforts

* **ROADMAP**

TEXAS FORENSIC SCIENCE COMMISSION: THE ESSENTIALS

- 9 Commissioners appointed by Governor – 7 scientists & 2 lawyers & 3 full-time staff.
- We are the Coverdell entity for Texas. Main job is to investigate allegations of negligence and misconduct against *accredited* crime laboratories as well as self-disclosures by those laboratories.
- Accredited disciplines include: drug testing; toxicology; forensic biology; firearms/tool marks; questioned documents; trace evidence, including fire debris, explosives, hair, fiber, GSR, glass, paint, filaments.

TEXAS FORENSIC SCIENCE COMMISSION: THE ESSENTIALS

- For all other disciplines NOT SUBJECT to accreditation, Commission may review cases but may not make determinations regarding negligence or misconduct.
- Reports for unaccredited disciplines are limited to: observations regarding the integrity and reliability of the forensic analysis; best practices; other recommendations by the Commission. Why?
- Not an enforcement agency in traditional sense – no power to levy fines, penalties or subpoena parties. So we MUST be creative and thoughtful.
- Commission does not weigh in on guilt or innocence, and our reports are NOT admissible in civil or criminal actions. (This is good & bad.)

NEW RESPONSIBILITIES STARTING SEPTEMBER 1, 2015

- Manage the Texas Crime Laboratory Accreditation Program.
- License 1,400 forensic examiners by January 1, 2019.
- Develop a process for collecting DNA and “other forensic evidence” from unidentified bodies located within 120 miles of the Rio Grande. (Apparently, this is not as easy as it sounds.)
- Resources: a \$500,000 annual budget combined with *priceless contributions of time, energy and goodwill* from our scientists, lawyers, judges, and other members of the criminal justice system.

WHERE WE STARTED



We were “doomed”:

[The author’s] framework is helpful in illustrating what a forensic science oversight body *should* do, juxtaposed against the realistic limitations of the mission and the lessons learned from other doomed attempts, such as the Texas Forensic Science Commission (TFSC).

– Texas Law Review, See Also, Vol. 90, p. 19, 2011

WHAT WE HAVE LEARNED

The progress we make is *directly impacted by our value system.*

➤ **Friends of Progress:**

- Spirit of collaboration
- Intellectual curiosity and openness
- Mutual trust and respect for each other
- Faith in the process

➤ **Challenges:**

- Adversarial system
- Rigidity
- Fear
- Shame

SPIRIT OF COLLABORATION: HM BACKGROUND

- Winter 2013: Panel with Norm Reimer in Charlotte. Spring 2013: Commission learns from Norm about FBI/NACDL/IP review of hair microscopy cases.
- FBI concerned about the way the results of microscopic hair comparisons were described to the trier of fact.
- July 2013: Texas Commission initiates conversation about how to approach statewide review.
- January 2014 lab directors: “we have an ethical and professional obligation as scientists, to take appropriate action if there has been a miscarriage of justice.”

SPIRIT OF COLLABORATION: HAIR MICROSCOPY

- First, we had to assess the scene with help from the labs. (*e.g.*, How many CASES are out there? (20 labs) What resources do we need?)
- Meet with the labs to request their buy-in for process. Labs requested a seat at the table for this *and any future reviews*. We want forensic scientists to embrace their roles as agents of change with the *ability to self-reflect and change course where necessary, even when uncomfortable*.
- Identify practical approach to case identification that respects the time/resource demands on labs. (sampling)

SPIRIT OF COLLABORATION: HAIR MICROSCOPY

- Then, we assembled a diverse review team; include as many stakeholder representatives as possible. Consult with those you may not traditionally (statisticians, etc.)
- Develop review flow chart process, discuss openly and *listen to each other*. Identify review criteria (similar but not exactly same as the criteria for the federal review).
- Analyze transcripts closely; share concerns openly; be curious about our own assumptions (ask questions, make phone calls to other states, push the FBI a little!)
- Assume the best of and from each other.

INTELLECTUAL CURIOSITY: ARSON

- Before our current State Fire Marshal, there was huge resistance at local level to truly putting science first in fire investigations.
- NFPA 921? “We don’t need no stinking science.”
- Our State Fire Marshal made science his first priority, assembling a Science Advisory Workgroup to review cases despite tremendous resistance and accusations of “empire building.”
- Implemented 100% increase in scientific training of investigators.
- He did all this despite the fact that he is not a scientist and has traditional firefighting background. Do NOT judge book by cover!

INTELLECTUAL CURIOSITY: HAIR

- Why do scientists express associations the way they do? How has it changed over time and why?
- What did the FBI actually teach people? Where did things go wrong? (Trickier cases, going beyond “Slim left town.”)
- What are the statisticians’ concerns regarding expressions of uniqueness? How do they translate into error criteria?
- What do *words mean* to a jury?

BE A TRUSTWORTHY PARTNER: DNA MIXTURE INTERPRETATION CHALLENGES

- Recent high profile media reports identify concerns at the DC crime lab involving DNA mixture interpretation.
- It *simply cannot be* that no labs in Texas have faced similar issues with their own mixture interpretation protocols.
- So what do we do about it?
- Bring people together to discuss what happened. Offer safe harbor to labs that self-identify concerns & want to do more.
- When labs are proactive, they should be able to trust us.

FAITH IN THE PROCESS



CHALLENGES: ADVERSARIAL PROCESS

- It may be the best system there is (and it sure is the only one we've got). But it is not always friendly to science or scientists. (*See* Itiel Dror – pilots v. doctors v. forensics.)
- We learned in the NAS Report that judges don't always make the best gatekeepers. (classic TX example: dog scent lineups.)
- Review of old transcripts is illuminating.
- Great example: “reasonable degree of scientific certainty.” (*See* Jules Epstein – where did this term originate?)
- Judges/lawyers misstate evidence. Don't know or EGO??

CHALLENGES: RIGIDITY IN THINKING

- One of Commission's jobs is to investigate lab self-disclosures.
- Often see rigidity in thinking due to management perception that "things are the way they are." (e.g., drug case)
- Bureaucracy overwhelms people's ability to make changes and be flexible in their decision-making.
- Same thing happens with lawyers; we stake out positions and make assumptions about the other side based on limited data.
- BUT THE TRUTH IS *"In some ways we are different...but in so many ways, we are the same."* --Daniel Tiger (Mister Rogers)

CHALLENGES: FEAR (THIS IS A BIG ONE!)

- Forensic Video Analysis (our 6-inch height gap case).
- Huge questions about forensic methodologies employed to reach height determinations, with a man sitting in jail.
- Intense fear from all parties about what the Commission may find and how it may (or may not) impact the conviction.
- Fear can sometimes lead to bullying; surround yourself with people who stand up to bullying.

CHALLENGES: SHAME

- Definition of shame: “a painful feeling of humiliation or distress caused by the consciousness of wrong behavior.”
- Drug chemist case example: one of our laboratories self-disclosed that an analyst had used the data from one alprazolam case to support the positive results in another alprazolam case he was struggling with.
- He “just couldn’t afford” to have another error or ask for more help.
- Unofficial root causes: shame, fear, and rigidity in thinking all played a role. But the most poignant factors were fear and shame. (See Rangers)
- Reflection in hindsight: Rehabilitation is great but sometimes people should not be in the job they are in. They don’t have the cognitive chops.

REDUCING FEAR, SHAME, RIGIDITY

- Current firearms/tool marks case example involving an erroneous identification, but no wrongful conviction.
- Good opportunity for learning. (Not an intentionally created error as Dr. Dror suggests, but close as you are going to get.)
- Give the examiners opportunities to have a dialogue with those who have been asked to review their work.
- Find ways to implement new protocols to tackle “bias danger zones.”
- We don’t have to be afraid. The sky will not fall if we admit errors.
- Coverdell entities can be helpful; they don’t have to be Darth Vader.

PARTING THOUGHTS AS YOU HEAD HOME

Be fearless in pursuing commonalities.

People may resist, but stay the course.

And always remember, you must believe.

“It’s when we start working together that the real healing takes place...it’s when we start spilling our sweat, and not our blood.” -David Hume

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