

Ten Years After the National Academy of Sciences' Landmark Report on
Strengthening Forensic Science in the United States: A Path Forward –
Where are We?

Remarks by

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at the

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I had the privilege, along with Dr. Constantine Gatsonis, of co-chairing the Committee on Identifying the Needs of the Forensic Science Community. Our 15 colleagues on the Committee included smart and dedicated scientists, lawyers, doctors, and several individuals with extensive experience in forensic practice. We spent 26 months studying the forensic science community, and then published a unanimous report on February 18, 2009. Our key finding was that, *“[w]ith the exception of nuclear DNA analysis, . . . 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.”* The Committee found that, too often, practitioners offered evidence based on forensic methods that had not been shown to be scientifically valid or reliable. And we concluded that many forensic practitioners *did not know what they did not know*, causing them to exaggerate their testimony and falsely claim that their methods were “infallible.” Our conclusions were disheartening, to say the least.

One of the most telling moments for me during the Committee’s hearings occurred when I listened to a forensic expert testify about microscopic hair analysis. The flaws in the forensic method seemed obvious to me. So, I asked the expert, “If your daughter was falsely accused of a felony and the only evidence against her was a microscopic hair sample, how would you feel?” He said something like, “I would be very concerned,” essentially conceding that his daughter might be wrongfully convicted if the forensic evidence was admitted.

Wrongful convictions result in unspeakably horrible personal tragedies, and they reflect horrendous failures in our system of justice. The exonerees who are here today can attest to this. I recently read a statement by Keith Harward, who was wrongfully convicted of rape and murder based on faulty bitemark evidence. He served 33 years in prison before being exonerated by DNA testing. When he testified before the National Commission on Forensic Science, Mr. Harward talked about the faulty bitemark evidence that had been introduced against him during his criminal trial. He expressed unsurprising anger with the forensic odontologists who testified at his trial, saying: “They were willing to have me murdered by the state of Virginia behind what they said, which in all actuality has no basis in truth.” And Mr. Harward astutely pointed out that “[w]hen you present an

expert to a jury of people, of course, whatever they say is true because the judge allows it, the prosecutor presents it. It has to be true.”

Not too long ago, I saw a letter written by the National District Attorneys Association claiming that, under Supreme Court case law, forensic evidence need not be scientifically valid so long as it can be characterized as “technical or specialized evidence.” Even if this reflects a plausible interpretation of federal law, why should our aspirations be so low? We should all ask, “Why would any prosecutor be comfortable in relying on forensic evidence that has not been shown to be valid and reliable?”

I have heard some naysayers argue that forensic practices should not be disturbed because they have been in existence for many years. This is a ridiculous argument. Merely because a practice has existed for a long time does not make it right. Likewise, I have heard it said that so long as crime labs are accredited and adhere to uniform standards, this should relieve any concerns over the validity and reliability of forensic evidence. This, too, is a specious argument. Standards that guide the work of forensic technicians tell us nothing about whether a forensic method is valid and reliable. Indeed, standards cannot be meaningfully developed until after a forensic method has been shown to be valid and reliable.

We are still struggling with the inability of courts to assess the efficacy of forensic evidence. When a forensic expert testifies about a method that has not been found to be valid and reliable, *the expert does not know what he does not know and cannot explain the limits of the evidence*. This is unacceptable. Judges and juries must understand the levels of uncertainty that are associated with forensic evidence so that they can determine whether the prosecution has met its burden of proving that the defendant is guilty beyond a reasonable doubt.

Sadly, as a number of thoughtful commentators have pointed out, we are still facing serious problems in the forensic science community. The good news, however, is that since the publication of the Committee’s Report, many scholars and journalists have taken notice and pressed for reforms. The National Institute of Science and Technology is supporting more serious scientific research. Efforts have been made to improve standards in crime labs. Some judges have barred forensic experts from testifying in exaggerated terms about the reliability of their methods or the strength of their evidence. And, overall, popular opinion has gradually shifted toward a more nuanced view of forensic evidence. There is still considerable work to be done, however. We still need a national, independent agency to oversee forensic research and practices. This was the most important recommendation of our Committee. We also need more top *scientists* engaged in serious research to determine the validity and reliability of forensic methods. And we need these individuals to appear in court to explain the limits of the evidence.

I would like to end my remarks with three brief points. First, to the exonerees who are here today: I am deeply pained by the indignities and personal suffering that you have endured at the hands of injustice. Most of us cannot begin to comprehend the ordeals that you have faced. It is beyond our understanding. Our system of justice failed you, and

you can never get back what you lost. You have my most sincere apologies. Second, I thank everyone associated with the Innocence Project for your extraordinary efforts in helping to bring justice to those who have been wrongfully convicted. And, finally, on behalf of the members of my Committee, I humbly thank you for the recognition that we have been given today. Our Report undoubtedly has given support to those of you who have challenged unreliable forensic evidence. But much of the credit for the progress that has been made goes to all of you who have continued to press for reforms – it has been your sterling advocacy and unflagging commitment to justice that has made our report impactful.

Let me leave you with one final thought. In his 1963 Letter from Birmingham Jail, the Rev. Martin Luther King, Jr., reminded us that “[i]njustice anywhere is a threat to justice everywhere.” Isn’t this the point? We are not talking about good science merely for its own sake. We are talking about the need for good science in order to serve justice. And we are talking about good science that will help us to avoid wrongful convictions like those suffered by the exonerees who are with us today. Goodness, commitment, resources, and intelligent effort can get it done. And when justice is done, our society as a whole is better for it.