

The President's Desk

Board Business

I'm writing this message shortly after a very busy board meeting, so it's going to be all about business. First and foremost, we set the budget for the 2011-2012 fiscal year, which was no easy task. Reflecting the recent debates in Congress, the decisions were all about cutting costs and generating income. The last two seminars lost about \$10,000 combined, and our checking account is getting low enough that we can no longer absorb losses of this magnitude. It is getting more difficult to raise enough money to cover the expenses of two seminars per year, so expect more debate over changing to just one per year. After seminars, our largest expenses involve transporting people to various locations for seminar planning, board meetings, and national policy meetings such as the White House Subcommittee on Forensic Science. We trimmed these budgets and will be instructing members to use alternative methods such as e-mail and conference calls whenever possible. We also had to delay consideration of a funding request from the Historical committee to professionally catalog and archive decades worth of CAC documents and photos. Despite all this, we could not balance the budget. Unlike Congress, we don't have the option of borrowing money, so unfortunately our only option was to raise dues by \$10 for members and \$5 for affiliates. I realize no one likes paying more for anything, but dues have not been raised for many years. This still keeps the dues at a reasonable level for an organization of our size and scope.

Our financial discussions weren't over after setting the budget, as we had to address the state of the A. Reed and Virginia McLaughlin Endowment with our new financial advisors at ING. Their analysis of our investments revealed we were over-invested in stocks and other assets with a higher risk factor than is appropriate for a fund that needs to generate income for yearly disbursements. Our new treasurer has been working to convert our investments to slower growth but better long-term stability. Unfortunately, this was happening in the middle of one of the most wildly fluctuating markets in history, so she had her work cut out for her. There's no telling what the markets will do in the future, but we should now be in a better position to protect and grow the principle of the Endowment while still generating enough interest to fund new research and scholarships.

We then turned our attention to legislative matters. By the time you read this, California bill AB239 should already be signed into law or dead in the water. This bill authorizes the Crime Laboratory Review Task Force to recommend the composition of a statewide oversight body. The board drafted a position paper on this legislation and submitted it to the Senate Public Safety committee (www.cacnews.org/policies/current_policy_issues.shtml). This had little effect, as it passed the committee with none of the changes we recommended. (As I write this, the bill is in the appropriations suspense file, with a committee analysis estimating the cost at over \$100,000. Whether or not this price tag has any effect on the fate of the bill remains to be seen.) Meanwhile, in Washington D.C., the Criminal Justice and Forensic Science Reform Act is still in the Senate Judiciary Committee. Even if neither of these bills pass this year, it seems likely that forensic science legislation will continue to be introduced in the future. Therefore, the board decided to create a CAC Legislative Review Committee to address these matters. This committee will track legislation, receive member input, draft responses to the legislature, and assist CAC members in contacting their legislators about forensic science issues.

Part of the reason behind the introduction of so much forensic science reform legislation is the number of crime laboratory scandals in the news. From systematic problems with entire laboratories to criminal charges against individual analysts, these stories definitely cause public concern. We have been receiving more and more inquiries about potential ethical violations, and our Ethics committee has done an ad-

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Kevin Andera
CAC President

please turn to page 7

FOURTH QUARTER 2011



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The *CACNews*, ISSN 1525-3090, is published quarterly (January, April, July, and October) by the California Association of Criminalists (CAC).

The CAC is a private foundation dedicated to the furtherance of forensic science in both the public and private sectors.

Please direct editorial correspondence and requests for reprints to the editorial secretary.

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Submissions should be made in the form of Windows compatible files on CD or by e-mail. Alternatively, text files may be saved as plain ASCII files without formatting codes, e.g. bold, italic, etc. Graphics, sketches, photographs, etc. may also be placed into articles. Please contact the editorial secretary for details.

The deadlines for submissions are: December 1, March 1, June 1 and August 15.

The CACNews

www.cacnews.org



On the cover...
*We celebrate
twenty years of
the redesigned
CACNews.*

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CACBits



CAC member Greg Laskowski explains how he identified a shoe through a defect in the sole pattern on truTV's *Forensic Files* episode "A Leg Up on Crime." The episode, which originally aired in 2005, follows the case of a deputy sheriff who was suspected of committing two homicides.



LA Daily News mentions our Spring 2010 (Yosemite) seminar banquet entertainer, gunslinger Joey Dillon. www.dailynews.com/ci_18635677

Hat tip, Nancy McCombs



Calico Press

Laurie with John DeHaan at the Huntington Beach seminar in 2002

Laurie Ann Crutchfield 1963—2011

CAC member Laurie Ann "Jankowiak" Crutchfield, 48, of Corona, CA, passed away June 12, 2011 in Corona, CA. She was born February 27, 1963 in Southfield, MI, daughter of Gerald Ronald Jankowiak and Lillian Sylvia Jankowiak.

Laurie worked as a Forensic Scientist for The County of Orange for 25 years, and had her work published and on Television. She enjoyed arts & crafts, making jewelry, photography, cooking, gardening, and the great outdoors.

Surviving is Daughter, Kelci Anne Crutchfield of Corona, CA. Sister, Barbara Gennett of Afton, MI. Brothers, John G Jankowiak of Indian River, MI. and Paul A Jankowiak of Afton, MI. Father, Gerald Ronald Jankowiak of Indian River, MI. Mother, Lillian Sylvia Jankowiak of Indian River, MI. Grandmother, Stella Janik of Mount Clemens, MI. Childhood-Best Friend, Loree Kruse of Novi, MI. Cherished Friend, Tammy king of Corona, CA. And many Nieces & Nephews.

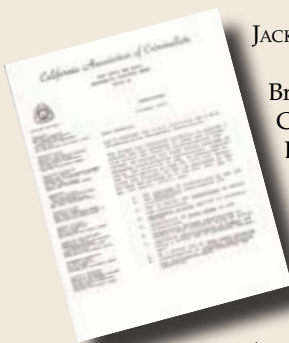
Services to celebrate her Life was held at Thomas Miller Mortuary, June 17, 2011 with Rev. Gwyn Vaughn officiating.

In lieu of flowers please contribute to the; Kelci Anne Crutchfield Memorial College Fund Please make donations by check to the care of: Thomas Miller Mortuary.

Yesterday's News

• 40 YEARS AGO IN THE CACNews...

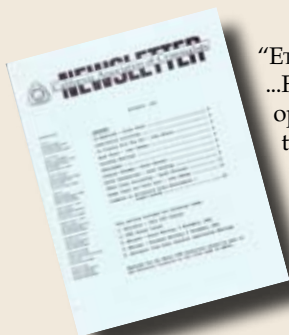
CAC MEMBERS ATTENDING THE SPRING 1971 37TH SEMINAR AT NEWPORT BEACH, HOSTED BY JACK CADMAN.



Barnett, Peter; Bashinski, Jan; Bingle, Richard; Bradford, Lowell; Breen, Martin; Briglia, Ronald; Cadman, Jack; Chisum, Jerry; Cockeran, John; Collier, William; Cooper, Robert; Cravey, Robert; Cranston, Robert; Davidson, J. Robert; Dillon, Duayne; Ekham, Robert; Evans, Frances; Fisher, Barry; Fong, Wilkaan; Franck, Frankie; Gilmore, Allan; Guinn, Vincent; Harding, Don; Hider, Cecil; Horikosh, Shoji; Irvin, Herbert; Kearney, Robert; Klein, Martin; Lee, William; Litterly, Forrest; Longhetti, Anthony; McKeehan, Harry; Mann, Lee Edward; Meuron, Herman; Miller, L. B. (Ed); Miller, Michael D.; Northey, Dorothy; Orantes, Joseph; Parker, Brian; Parker, Kenneth; Patterson, James; Pinker, Raymond; Ragle, John L.; Reed, Dwight; Roche, George; Sager, Robert; Schoonover, Ralph; Shaw, Richard; Siegel, Arnold; Smith, William C.; Stottlemeyer, Don; Thompson, Edward; Turney, Frances; Villaudy, Jack; Whalley, Richard; White, James M.; Wynbrandt, Fred; Young, Arthur.
— Oct, 1971

• 30 YEARS AGO IN THE CACNews...

"ETHICAL DILEMMA"



...From the above facts it is apparent that the law enforcement criminalist had every opportunity to determine the difference in the rifling between the fatal bullet and the suspect's gun.. (Clearly' if this determination were made, but not reported, it would constitute an ethical violation as well as a violation of law.) Is the fact that this difference was not noted during the original examination a violation of the criminalist's responsibility to "use all of the scientific means at his command", or to "make adequate examination of his materials", or to use "experimental controls"?... —Peter Barnett December 1981

• 20 YEARS AGO IN THE CACNews...

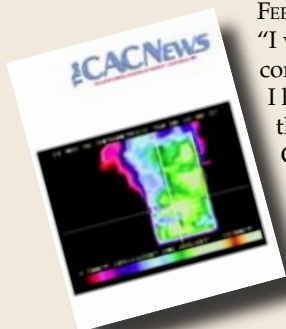
"MOST OUTSTANDING PRESENTATION"



For the second time in as many years, Rebecca Reynolds has been chosen as the recipient of the Most Outstanding Presentation. Her paper entitled, "A PCR-Based System for Determining the Quality of Forensic DNA Samples," was deemed the best presentation at the 78th Semi-Annual Seminar held in Ontario, CA. In addition to the praises of excellent organization and well-rehearsed delivery, the judges all noted that Rebecca's paper presented original research material which rated highly in technical merit. Dr. Reynolds will receive her second Merit Award and a \$100 stipend for her outstanding efforts at the spring Seminar to be hosted by DOJ-Fresno' The panel of judges also wanted to extend an "Honorable Mention" to Luke Haag for his paper' "Some Thoughts, Observations, and Recommendations on Giving Technical Papers at Seminars," Luke's papers are always of high caliber, and his latest is full of hints and tricks to make anyone's presentation more concise, focused and interesting. —Dave Stockwell, Winter 1991

• 10 YEARS AGO IN THE CACNews...

FEEDBACK



"I was just recently contacted by staff from the FBI laboratory regarding their concerns about false positive results from ABA card p30 tests. This is a concern that I had expressed after our evaluation of this card. My conclusion after looking at all this data and discussing this test with staff in several laboratories (FBI, Illinois and California) is that these tests should not be used as confirmatory tests. I think that the reason a lot of these results have not been duplicated is that the cards vary, not only between different lots but also within a lot. If this is true, the specificity of these cards can never be guaranteed." —Terry Spear 2nd Quarter 2001

The Editor's Desk

Taking 'Sides'

One of the duties I have as the president of ASCLD is to sit as an *ex-officio* member of the ASCLD/LAB Board of Directors. By attending their board meetings I have learned a lot about the accreditation process in general and ASCLD/LAB in particular. Just like your CAC Board of Directors, members of the ASCLD/LAB Board are dedicated forensic scientists working toward improving the scientific process in forensic science laboratories.

In late June the ASCLD/LAB Board met at their headquarters in Garner, North Carolina. On the first morning of the 2 ½ day meeting, there were two invited speakers, Marvin Schechter a defense attorney and Bill Fitzpatrick a prosecuting attorney. Both Schechter and Fitzpatrick are members of the New York State Commission on Forensic Science. The Commission has recognized ASCLD/LAB as the authoritative accrediting body for forensic science laboratories. However, in light of the reported problems in some ASCLD/LAB accredited laboratories there is discussion on the Commission to remove ASCLD/LAB as the only recognized accrediting body of forensic science laboratories in the State of New York. The two attorneys were invited to the ASCLD/LAB Board meeting to discuss the issue with Schechter promoting the change and Fitzpatrick supporting ASCLD/LAB.

Having the opportunity to be present during the discussion was valuable for me in a variety of ways. Most important is that we can learn from our critics and Schechter was not bashful about telling us what ASCLD/LAB needs to do to improve its accreditation process. I'm not saying everything he proposed is appropriate or necessary for ASCLD/LAB to implement, but there were several things that require serious thought and additional discussion. I was also reminded that though I write these editorials with the membership of CAC as the primary audience, there are others who read them, including Marvin Schechter. He didn't say he was a fan of my ramblings, but he stated several times he was a regular reader of the articles. Though there were many things Mr. Schechter shared during the meeting that focused on how ASCLD/LAB provides its accreditation services, he made one statement that raised my defenses. While pointing out he regularly read articles written by the ASCLD/LAB Chair, Jay Jarvis, and myself, he stated he liked reading them to have an idea of what the "other side" was thinking. Actually Fitzpatrick also used the term "side" to suggest we are on the same "side" as him.

My immediate response was to take exception to being labeled as belonging to one "side" over another. Being a defense attorney, I can only assume Schechter was putting me on the "side" of the prosecution. In my mind I don't see myself as being on the "side" of the prosecution. Like I have written in this column and share regularly with LAPD laboratory staff, our job is to not take sides but to advocate the evidence. How dare he say he reads my articles because he wants to read things from our "side"? But on reflection I have decided it's a good thing he thinks I am on a "side" so he takes the time to read what I and many other forensic scientists on this "side" thinks.

Let's start by taking an objective look at why he and others think we are on the prosecution "side."

- Most forensic scientists are employed by agencies directly or indirectly associated with law enforcement.
- Most of the requests we receive for analysis come from law enforcement or prosecution.

When examined in this way, it is easy to see why Schechter and many others think they are on one "side" and we are on the other. In support of this thinking one of the NAS report recommendations was to remove forensic science laboratories from under law enforcement.



Greg Matheson
CAC Editorial Secretary

- The results of our examinations go to the requestor, either law enforcement or the prosecution.
- Few forensic science laboratories perform work directly requested by the defense.
- When testifying in court we are usually called by the prosecution because by the time a case gets to court, most, if not all the physical evidence supports the prosecution case to a greater or lesser extent. Exculpatory evidence would hopefully have been used to remove suspicion from a suspect who would then not become a defendant.

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This whole discussion as to which "side" anyone is on ultimately comes down to what one means by "side." It is very clear that most of us are on the "side" of law enforcement because that is who employs us and provides us with the tools and location to do our work along with the evidence we examine. We are on the "side" of prosecution because the majority of the times we are called to testify it is for the prosecution to describe work we performed which supports the prosecution. But, regardless of which "side" employs us, the most important thing that determines which "side" we are on is how we perform our work within the laboratory walls and the words we use to describe that work in a court of law. The only "side" we should be on when it comes to the work we perform is the "side" of science and the evidence.

Unless forensic science laboratories are removed from within law enforcement agencies, the challenge we face is to learn to effectively separate our employer "side" from our science "side" to ensure one does not negatively impact the other. It is not always easy, but by being aware of the subconscious difficulty of a complete separation we take the first step to ensuring the two remain separate.

I truly hope that this is one of the articles that Mr. Schechter reads because it is my firm belief that, with few exceptions, forensic scientists who are on the "side" of law enforcement due to their employment are only on the "side" of science and evidence when it comes to doing their job.



The President's Desk *cont'd*

mirable job dealing with these issues. The current committee Chair, Carolyn Gannett, is taking a proactive stance by publishing hypothetical ethical dilemmas in the *CACNews*. These articles are also posted in the Members Area of the website as a blog, so I would encourage every member to actively participate in these discussions. The committee will be going a step further over the next year by developing a self-guided ethics training module for the website. The board will be updating the policy for promotion to Full Member to include points for completing ethics training. Ethics issues, policies, and train-

FEEDBACK

Once Upon a Time There Was Another

Editor,

I put my mojito down long enough to read the latest issue of *CACNews* [3rdQ2011] (retired life is difficult).

In the introduction to the article "Exploring the Depths...", it was stated that he recent meeting was "The CAC's first-ever shipboard seminar..."

Actually, I believe the CAC had a meeting on the *Queen Mary* in May, 1974. I remember since that is the first CAC meeting I ever attended and delivered a presentation of relevance at the time entitled "MN Antigen Typing."

—Frank Fitzpatrick

That tidbit of info is worth the price of embarrassment for our error. Thanks, Frank!

'Bridge' Generation

Editor,

Congratulations on a fine issue. It was great to read Luke's lecture and I really appreciated your commentary. I consider myself privileged to be among the "bridge generation" who learned our craft from (and were friends with) many of the CAC founders and pioneers of many of the disciplines and now are passing along that education. I have served as chair of the Founder's Lecture committee since its inception in 1987 and I have been lucky in recruiting as many friends as I have to do the lecture. I am running out of friends of that ilk, however, so sometime you might want to insert a request for nominations for future lecturers!

—John DeHaan

We like hearing from you! Send your letters to Editor, CACNews B8927@lapd.lacity.org Letters may be edited for brevity and clarity.

ing are going to continue to be of increasing importance to our Association, so please share your opinions in the newsletter or online.

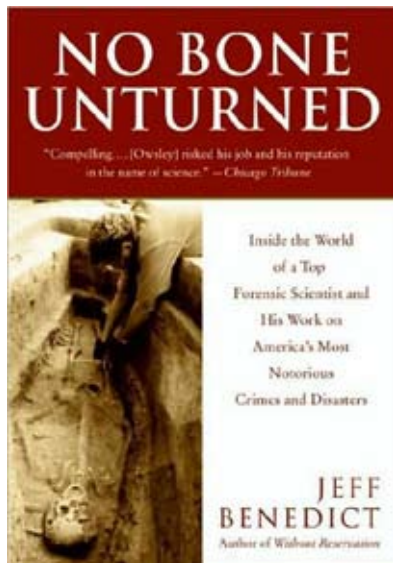
I'd like to thank everyone who has volunteered to serve on a committee, run a study group, or organize a seminar. That is where the real work of the Association is accomplished. The crowded board meeting agendas reflect how active and successful you have all been. Please keep your board members busy!



BOOK REVIEW

NO BONE UNTURNED: THE ADVENTURES OF A TOP SMITHSONIAN FORENSIC SCIENTIST
AND THE LEGAL BATTLE FOR AMERICA'S OLDEST SKELETONS
by Jeff Benedict

I just finished reading this book and I highly recommend it to CAC members, although it will likely raise their blood pressure! You can get the hardcover version new from Amazon for as little as \$5.30 plus ~ \$3.99 shipping, or used for as little as \$0.01 plus ~\$3.99 shipping. You can get the Kindle edition for \$9.99. The paperback edition has a slightly different title but I believe is the same book. It can be had new for \$5.58 or used for \$5.14 both plus ~ \$3.99 shipping. [Harper Collins (2003) ISBN 0-06-019923-7]



The book is non-fiction but reads like a mystery. It's about Doug Owsley, an anthropologist at the Smithsonian, but it is also about a legal battle to determine who has the rights to ancient human remains, scientists who want to study them to learn more about early human history in North America, or Native American tribes who want to bury them and then leave them undisturbed? I do not know nor have ever met Doug Owsley, but after reading this book I not only feel like I know him, I hold him in great admiration. Reading the book, I couldn't help wondering: "Why have I never heard of this book? Why was it not on the New York Times' list of best sellers in the non-fiction category?" The only explanation I can come up with is that liberals considered the subject matter to be politically incorrect!

In reading books I usually just skip things like the prologue. This time I'm glad I didn't. This book isn't even the one that Benedict set out to write! The book was supposed to be about a landmark legal case. But Benedict is not only a gifted writer, he is a meticulous researcher. The more he researched this case the

more he came to realize that Owsley was the central character and that he was far more interesting than the legal issues, attorneys, judges, and political hacks that were involved.

Did I mention that Benedict is a meticulous researcher? He even visited the small town of Lusk, Wyoming where Owsley spent his childhood. He met the adults who had most influenced Owsley as a boy: his high school science teacher, his Sunday school teacher, his Cub Scout den leader, and his boyhood best friend. Quiet and extremely focused, Owsley is not an easy person to get to know. He is the complete opposite of so many well-know forensic scientists today who are masters of self-promotion and are frequently guests on TV shows (or even have their own show), and who call press conferences announcing that their hand-picked team of experts are going to dig up the remains of some historically famous person so they can determine the real cause of death! For Owsley, his work is his passion and he cares more about solving puzzles and gaining knowledge than any attendant notoriety. And yet Owsley is a true leader; he leads by example rather than by bluster and bravado. In a room full of expert anthropologists, because of his great knowledge and skill Owsley is the unspoken leader.

One of the features of the book I really liked is that the chapters are short and each one tells a story that stands by itself. The book is about far more than just the landmark legal case. Some chapters are about relatively recent remains (Croatia, the Waco cluster-coitus, 9-11) while some date back as far as 10,000 years. A chapter about remains discovered at the site of the Jamestown settlement actually changes what historians know. The last few chapters focus on the legal battle mentioned in the title. However, this is not a cowboys and Indians battle or even an anthropologists and Native Americans battle. Hard as it is for me to believe, some lawyers and a judge are the good guys, and (not so hard to believe) the bad guys are higher-ups in the U.S. Army Corps of Engineers, the Department of the Interior, and their GS-whatever legal flacks. But not to worry, in the end the geeky guys and gals in the white lab coats prevail!

—Review by Bob Blackledge

Reading the book, I couldn't help wondering: "Why have I never heard of this book? Why was it not on the New York Times' list of best sellers in the non-fiction category?" The only explanation I can come up with is that liberals considered the subject matter to be politically incorrect!

Remembering George Carmody:

South & North of the Border

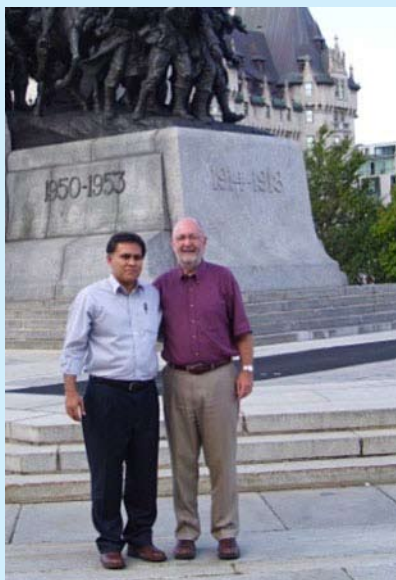
George Carmody (1938 – 2011), a gentleman and unusually gifted teacher of population genetics and its applications to forensic science, also did significant volunteer work as a member of the Alliance of Forensic Scientists for Human Rights and Humanitarian Investigations.

—Cristián Orrego



San Salvador: George Carmody (*left*) in July 2006 with Stefan Schmitt, Director of Physicians for Human Rights' International Forensic Program, at a meeting with a lady magistrate of the Supreme Court of El Salvador regarding the search of the missing children separated from their families during the civil war in El Salvador between 1980 and 1992. The alliance has worked closely with the Asociación Pro Búsqueda de Niñas y Niños Desaparecidos, the association of families of El Salvador looking for their children, in support of Pro Búsqueda's capacity to build up and use a DNA database of family references to confirm kinship of children/young adults found.

In **Valparaíso, Chile**, 2007, with (*below l-r*) Raymond and Birgitta Davis and Lance Gima, after teaching a forensic genetics course sponsored by the Pontificia Universidad Católica de Valparaíso.



Ottawa: August 2010, with Jorge A. Huete-Pérez, director Centro de Biología Molecular Universidad Centroamericana, Managua, Nicaragua. This meeting led to the publication "A genetic study of the Identifiler™ System 15 STR loci in the general population of Nicaragua, Central America" by Raquel Vargas-Díaz, Carlos N. Talavera-López, George Carmody, Jorge A. Huete-Pérez, *Legal Medicine* 13 (2011) 213–214

To Err is Human... (and Inevitable)



In contrast to most of our *Proceedings*, this conversation is taking place in a location where we assiduously avoid the food – an airplane. We are on our way to a conference at the University of Washington on *Forensic Inference and Statistics*, where we anticipate good company, good food, and good wine. But for the moment, we contemplate a plastic cup containing a soft drink as we discuss the latest bit of forensic news, a sample switch reported by the Las Vegas Metropolitan Police Department DNA laboratory (LVMPD). (Mower and McMurdo, 2011)

A sample switch, in a forensic lab or in any other lab, in DNA, or in other disciplines, is hardly a novel event. A number of these instances have been publicized over the years and, no doubt, additional instances have been detected but not revealed; undoubtedly any number of sample switches have simply gone undetected. Nevertheless, when an error such as this comes to light, various responses occur, from denial, to apathy, to brow-beating. In this column, we wish to explore less the origin of error, but rather the categorization of it and reaction to it.

The first detected LVMPD sample “switch” and their reaction to it

This is not the first, or even the first highly-publicized, sample switch for the LVMPD. In 2002, one of us (NR), upon independent review, discovered what was effectively a sample switch (Puit, 2002, Smith, 2002). In that case (*State of NV v. Lazaro Sotolusson*, originally analyzed and reported in 2001), the “switch” was actually a clerical error; at a particular point (that became obvious upon review of the notes) the unique identifier numbers associated with each of the two case-related reference samples were transposed. Thus when these profiles were uploaded to the state felon database and searched, a cold hit led back to the wrong name. This error was potentially detectable both by a reanalysis of the DNA data, and by close scrutiny of the notes. Interestingly, a blind reanalysis of the data was easily the more effective method of detecting the transposition; it was extremely difficult to notice it just from a review of the notes. And in fact, the laboratory technical review had missed it.

At that time, the lab was preparing for its initial accreditation. So the timing was opportune to make changes

that might preempt a future similar mistake. One check that would have caught the error was the collection and analysis of a confirmation reference sample from the felon identified by the database hit. While this has been standard practice in many, if not most, database hit cases throughout the country, because of the way in which the case came into the lab (the men were the accuser and the accused of jail cell rape, so both were already felons), coupled with ambiguity in their then-current protocols for cold hits, this was not done. Requiring a confirmation sample was an easy change to make, and brought the lab in line with standard practice for DNA cold hit cases, but did not necessarily address other kinds of errors that could occur in standard casework.

The *Sotolusson* case was notable (although hardly remarkable) in that two reference samples were processed in the same batch. While this is not in the least unusual, it did provide the opportunity for the clerical transposition. To prevent a similar error in the future, the lab decided that, in any case in which multiple suspect samples were analyzed, they would always reanalyze the reference samples that already existed in the lab. We observe that this change in protocol is a reactive

rather than a proactive solution. While it addresses those specific instances in which a sample switch

(either physical or clerical) occurs in a case with multiple reference samples of the same gender, it is limited in its utility to catch other sorts of analytical errors, in particular involving evidence samples. Reanalysis in every qualifying case also consumes both monetary and human resources; for this reason, (and also likely because it had not revealed any further errors during the time it was in use) the laboratory abandoned this protocol some years later.

In other words, the cost-benefit ratio was deemed too high to justify continuing the practice. This protocol was put in place to solve an immediate and critical problem that had just been observed. It remains a question as to whether it had general utility. An answer to that question would almost certainly have to extend beyond the laboratory and include input from the fields of human factors and cognitive psychology.



Le mieux est l'ennemi du bien.

Cellmark's reaction to an early contamination event

While many reports of various errors have now been documented, compiled and discussed, it is not our intention

in this article to add to that particular compilation. The examples we are choosing to discuss here are merely illustrative, not necessarily more or less egregious than some others. One, in particular, is interesting because of its historical significance. Very early in the development of forensic DNA typing, the CACLD (Calif. Assoc. of Crime Lab Dirs.) administered some proficiency tests to the few DNA labs in existence at that time. Cellmark Diagnostics famously made an error that appeared to result from contamination of one evidence sample with another, the consequence of which was an apparent false positive¹. (Kuo et al., 1998) It was suggested that the error occurred because two samples were pipetted into the same tube at some point in the analytical process in conjunction with a tube labeling error. (Thompson and Ford, 1991) We are less concerned with the veracity of what actually happened, and more interested in the reaction to the error. This particular incident was the genesis of “witnessing,” in our opinion one of the most useless safeguards against analytical errors. Witnessing requires that, during any tube transfers, a second person watches to make sure the primary analyst pipettes each sample into the correct tube. We would suggest that witnessing is of the same ilk as little plastic bags full of 3 ounce toiletries at the airport security – a “feel-good” but totally ineffective solution to the problem they each purport to prevent. The more general comment is that, like those little plastic bags, removing one’s shoes, taking computers out of their bags, and shipping restrictions on toner cartridges, specific reactionary solutions fall somewhere between useless and annoying. Better, both for the TSA and for forensic science, would be to consider the various sources and causes of error (we’ll stick to something we know, forensic science) and institute general preemptive solutions based on directed research rather than reacting to specific incidents after the fact.

The second detected LVMPD sample switch and their reaction to it

The new revelation that prompted this *Proceedings* was, in fact, another human error that occurred at the LVMPD. A few months prior to the Sotolusson case, another case involving two male reference samples was analyzed. Unbeknownst to anyone at the time, a physical sample switch apparently occurred during processing of the two male suspect samples, incorrectly associating Dwayne Jackson with the evidence sample. (LVMPD 2011a) The switch was detected when a search of the evidence profile against the California felon database hit against an individual with a different name, Howard Grissom. Because of the nature of the error, no second read, technical or administrative review could have caught it. Ironically, the reactive solution implemented after the *Sotolusson* error, that of re-analysis in any case with multiple same-gender reference samples, was probably the only way in which this particular type of sample switch would have been detected within the lab.

Arising from the best of intentions, the laboratory “fell on their sword” and went very public with this event, including posting a YouTube video apologizing for the error and explaining its genesis. (LVMPD 2011b) While we applaud the transparency, we are not convinced that some of the actions and reactions of the administration are necessarily helpful or appropriate. For example, the analyst responsible for the initial sample switch was named in the press as the sole source of the error; he was immediately put on paid administrative

¹ The details of how that error originated are complex and multifactorial. They can be found in the CACLD report (Kuo, 1998)

We are less concerned with the veracity of what actually happened, and more interested in the reaction to the error.

leave, even though he had long since transferred to another section and was no longer performing DNA analysis.

Errors are systemic rather than personal

Focusing blame on the individual responsible for the initial error seems to be almost instinctive; it is certainly the path of least resistance. The implication is that if a person is named as the source of a problem then all we have to do to fix the problem is to fix (or transfer or fire) the person. It is much easier, certainly in the short term, to blame a person than it is to blame a system. Administrators can much more readily fire, punish, or somehow admonish an individual; it is much more difficult to accept systemic responsibility and to effect systemic reform. However, error analysis and resolution that focuses on the individual is misplaced. If, as is more commonly the case, the problem is systemic rather than personal, then what needs to be fixed is the system; this may involve consideration of specific personnel but as systemic elements, rather than as individuals.

This reminds us of the historical reactions of the fingerprint community to false matches that were quietly detected and dispatched prior to the high-profile *Brandon Mayfield* case (US DOJ, 2006). Generally, the “bad apple” theory was invoked; in other words, the problem was the examiner, not the method or the system. The solution was (and apparently still is) to decertify any examiner who was deemed to have reported a false match.

“Certification may be suspended or revoked by the IAI Certification Board for any of the following reasons: ... 3. Technical error(s).” (IAI, 2011)

Leaving aside the difficulty that this consequence can only be invoked if the examiner is a member of IAI to start with, the relatively expedient solution of somehow disowning, discrediting, or decertifying the incompetent (or perhaps just momentarily inattentive) analyst is not an effective solution for fingerprints, for DNA, nor for any other discipline. The draconian career-ending consequence of a single error is antithetical to the inherent predictability of human fallibility. Such a policy infers that fingerprint examination can and should be error-free, neither of which are rational ideals for any human endeavor.

Probably the most important reason to avoid focusing on the individual analyst is that, in most cases, it won’t lead to the most effective changes to avoid or detect errors in the future. Except in the case of sole practitioners (who often perform review rather than primary work anyway), the work product of a forensic laboratory, and certainly an accredited laboratory, is systemic, not individual. In some jurisdictions, the system is even larger than the individual laboratory, involving a State-wide laboratory system. While the initial error manifests through a single analyst, it is perpetuated by the

This anti-scientific practice is justified by the reasoning that if the logs don't exist, they can't be obtained in discovery, and hence can't be used to embarrass the analyst on the stand.

system. Interestingly, this holds true for deliberate fraud as well; it requires elements of the system to support its continued existence. The system is where checks and balances occur, and where review of various technical and administrative aspects takes place. To burden an individual analyst with the requirement of perfection is neither realistic nor useful; in fact, it is sure to fail. To slightly mis-translate Voltaire in order to better capture the sentiment, "... Perfection is the enemy of the good"² The consequence of expecting perfection inevitably leads to a cover-up of any mistake, infamously worse than the "crime" of any imperfection.

The first level of any systemic protocol to minimize errors is technical review. While this can't detect all errors (e.g. it would not have caught the Jackson error), a diligent and deliberate review, which includes a blind read of the data, will detect many errors. It is instructive to understand that, in some non-trivial proportion of instances in which an error was committed, a technical review failed. This alone dilutes the responsibility by half, and highlights the inanity of punishing a single individual. In the *Mayfield* case, review failed not only once, but three times, including an independent examiner. (USDOJ, 2006) We know that the independent examiner, Ken Moses, reported his incorrect identification to the IAI and accepted decertification. (Shouldice, 2005) We are unable to find documentation of the fate of the three FBI examiners. Nevertheless, the more important point is that a constructive technical review must exceed a mere rubber-stamping of results. The best hope of catching mistakes detectable by review is for the reviewer to first perform a blind second read of the data. This is the easy part; reviewing the notes and reports for typographical errors is actually much more difficult. This is demonstrated by the response to yet a third recently reported incident at LVMPD, in which an analyst apparently came to the wrong conclusion about a piece of evidence. (Mower, 2011a) Although this incident was not considered as serious, apparently because the error was not critical to the case, it did instigate an audit of 161 cases. The LVMPD reports that, while no other interpretation errors were found, fully 54 of those cases, about a third, contained typographical errors and other minor mistakes. (Mower, 2011a)

This comports with the type and level of errors we see everyday in our independent review work. Nor is it new information. In 2001, NIST published the results of studies intended to test the consistency of inter-laboratory interpretation of multiple-source samples. The following excerpt is taken from the technical report published in JFS. (Duewer *et al.*, 2001)

² The quote from Voltaire in French "*Le mieux est l'ennemi du bien.*" is variously translated as "*The better is the enemy of the good,*" "*The best is the enemy of the good,*" or "*The perfect is the enemy of the good.*" (Wikiquote, 2011)

The number of clerical errors reported in the MSS1 and MSS2 challenge studies is larger than we expect for "routine" information transfers. However, by definition, any clerical error represents a failure (or circumvention) of the laboratory's internal technical review process. Clerical errors in specialized reports prepared for interlaboratory comparisons should be regarded as an early warning sign of a laboratory's need to review its review process (or the need to apply it to all external reports).

Transcription errors can be minimized by direct electronic transfer of single source profiles from instrument through local database to final report. This can be best achieved by insisting that such linkages among information systems be a design goal for all forensic software.

Independent data analysis by two or more analysts followed by rigorous comparison and immediate resolution of differences although time consuming can minimize interpretation as well as transcription errors. [bold our emphasis] *Use of standardized report templates for casework scenarios would minimize the clerical perils intrinsic to the production of "once only" reports. Rigorous internal technical review of all data, interpretation, and final reports as is done routinely for casework will minimize the number of errors.*

Turnabout—Clerical errors by interlaboratory study providers must also be minimized, using the same tools as above. To better approach the desired zero error rate, the NIST analyst-authors recently switched from review of each other's results to completely independent analysis of the raw data. [bold our emphasis]

Whenever information must be manually transcribed, transformed, and/or interpreted before analysis, it is essential that the analysts responsible for the original data have the opportunity to review their modified results.

Another approach to error detection involves redundant analysis of some percentage of samples by another laboratory. (Koppl, 2005) While an argument against this type of procedure is base cost, Koppl, a behavioral economist, argues convincingly that the cost-benefit ratio may well be much lower than the price of the errors such as those reported by the LVMPD. This cost, which typically involves the review of hundreds of cases, and has been performed at LVMPD several times now, uses both monetary and human resources, which are simultaneously diverted from current casework.

If we accept that errors typically propagate systemically, even if they manifest through a single individual, then individual punishment is not an appropriate remedy. In fact, individual castigation is more likely to exacerbate than cure the problem by encouraging analysts to conceal evidence of an error. Ironically, the LVMPD experienced just this consequence recently, which led to the termination of another analyst in the DNA section. (Duran, 2011, Mower, 2011b) This fear of admitting fallibility, even at the expense of good science, also exists at a systemic level. It is not uncommon for forensic DNA labs, for example, to refuse to keep a central log documenting errors, contamination, and other unexpected results.

This anti-scientific practice is justified by the reasoning that if the logs don't exist, they can't be obtained in discovery, and hence can't be used to embarrass the analyst on the stand. Unfortunately, the collateral damage is that the lab denies itself a valuable tool for discovering and trouble-shooting systemic and systematic issues.

The LVMPD administration has also stated its intention to conduct reanalysis in every case in which the primary analyst in the Jackson case had reported a DNA match. (LVMPD, 2011a) The idea that reanalyzing cases from only this particular analyst to ensure that no other DNA errors have occurred makes the assumption that he is the sole source of DNA errors in the LVMPD laboratory. In fact, we know this is an incorrect assertion because the initial Sotolusson error was made by another analyst in the lab. (For those who are keeping track, we have now discussed two separate instances in which different analysts made accidental errors resulting in sample switches, and a third in which yet another analyst covered-up a different sort of error.) Additionally, while we generally support a concern about false positives which can lead to false convictions, false negatives may have equally problematic effects on the ultimate outcome of a case, including significant public safety concerns. Barring information that *this* analyst has been particularly prone to accidental errors in the past, we are not convinced that the reanalysis suggested is a good use of lab resources. If documentation does exist that a particular analyst is error-prone, that is interesting information and might lead to different solutions.

Reform rather than react

The outcome of any investigation of laboratory error should be proactive rather than solely reactive. We understand that in the heat of the moment certain things must happen quickly, both to prevent immediate repetition of the event, and to reassure the tax-paying public or private clients. But thoughtful reform takes time, consideration, and sometimes research; major long-term change is best implemented after the initial emotional tempest has had a chance to dissipate, and the media spotlight has dimmed. Administration should resist the temptation to implement "feel good" solutions that may soothe public perception, but may ultimately carry a cost-benefit ratio (in either financial or human resources) that is too high to sustain. Additionally, solutions should avoid a narrow focus on a fix for the specific problem that just occurred. The larger picture should be carefully considered and more general changes that could perhaps be implemented earlier in the process, or that are designed to prevent or detect a general class of errors, might provide the best long term benefit.

Because humans are the source of the errors we have been discussing (systematic, methodological errors require different types of solutions), the forensic community would do well to consult with human factors and cognitive psychology experts. The issues discussed here are specific to scientific endeavors, but human behavior can be understood in a much broader context; we should not eschew assistance from

these professions because what they offer doesn't feel to us like hard science. The sooner we admit that we are capable of human imperfection, even vice, the sooner we can optimize the laboratory environment to minimize and detect human failings. Of course, no practice, procedure, or set of protocols can or will prevent all error; the risk of error will never be zero. We must accept that the practice of forensic science is a human endeavor and, like all human endeavors, plagued by human fallibility.

It is useful to take a moment to think about how similar situations are handled in other professions. As always, clinical medicine is the most analogous endeavor in that it involves applied biological science, and the test results can affect life, if not liberty. Obviously clinical labs make errors on occasion, and doctors certainly misdiagnose ailments on a regular basis. One outlet available to medicine, that has not been investigated for forensic science, is morbidity and mortality conferences. Acknowledging its non-authoritative nature, Wikipedia nevertheless provide a useful summary of the nature and intent of "M&Ms:

Morbidity and mortality (M&M) conferences
are traditional, recurring conferences held by medical services at academic medical centers, most large private medical and surgical practices, and other medical centers. They are usually peer reviews of mistakes occurring during the care of patients. The objectives of a well-run M&M conference are to learn from complications and errors, to modify behavior and judgment based on previous experiences, and to prevent repetition of errors leading to complications. Conferences are non-punitive and focus on the goal of improved patient care. The proceedings are generally kept confidential by law. M&M conferences occur with regular frequency, often weekly, biweekly or monthly, and highlight recent cases and identify areas of improvement for clinicians involved in the case. They are also important for identifying systems issues (e.g., outdated policies, changes in patient identification procedures, arithmetic errors, etc.) which affect patient care. (Wikipedia, 2011)

Two critical elements of M&Ms are the non-punitive and confidential nature of the review. These are essential to making the process work. Forensic science would do well to explore this sort of model for review of detected errors. Optimally, the review group would extend beyond each individual laboratory to solicit more dispassionate and less personal critiques and reviews. Certainly, we have complicating issues in forensic science such as discovery and sixth amendment confrontation. On the other hand, civil lawsuits, and sometimes even criminal charges, are filed against medical professionals every day, and somehow the issues are managed. So the challenges for forensic science to institute something similar should not be insoluble.

Finally, we offer the concept that taking responsibility for an error is different than being punished for making an error. Taking responsibility allows the individual a measure of control, the first step to taking part in, and directing, her own rehabilitation. Watching the administrative fall-out from an unintentional human error (deliberate fraud resides in a completely different category) is generally demoralizing for the entire organization. This negative vibe, affecting the primary analyst, possibly the reviewer who missed the error, and the system in general, creates a climate that may promote a greater

Finally, we offer the concept that taking responsibility for an error is different than being punished for making an error.

incidence of mistakes, simply due to loss of confidence. Every analyst is thinking that the next time, it could be me. This is a non-optimal environment in which to produce quality casework. The administration must be extremely sensitive to these consequences, and direct any inquiry in as neutral a fashion as possible. Crafting protocols in advance to handle these sorts of circumstances helps remove the emotion from the situation, and relieves the administration from having to make heat-of-the-moment decisions.

Errors and mistakes

As we prepare to delve into another sub-topic relevant to human error, we realize that this piece is already too long and that we need to wrap it up if we don't want to miss another deadline. However, we can't resist a quick teaser about a topic that may become fodder for a future *Proceedings*. In one of the plethora of post-NAS report articles, D. Michael Risinger (a law professor) attempts to parse human error and methodological error. (Risinger, 2011) He relies liberally on Giora Hon (a philosopher of science) who proposes a taxonomy that distinguishes error proper (methodological) from mistake (human) (Hon, 1995), as well as James Reason, who extends that taxonomy to science and scientific error. (Reason, 1990) We promise, or perhaps threaten, to explore these issues, as well as the dreaded error rate, in some future column.

For now, the flight attendant is collecting the empty plastic drink cups, and admonishing us to close our tray tables and return our seats to the upright position for landing.

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Four Score & Counting

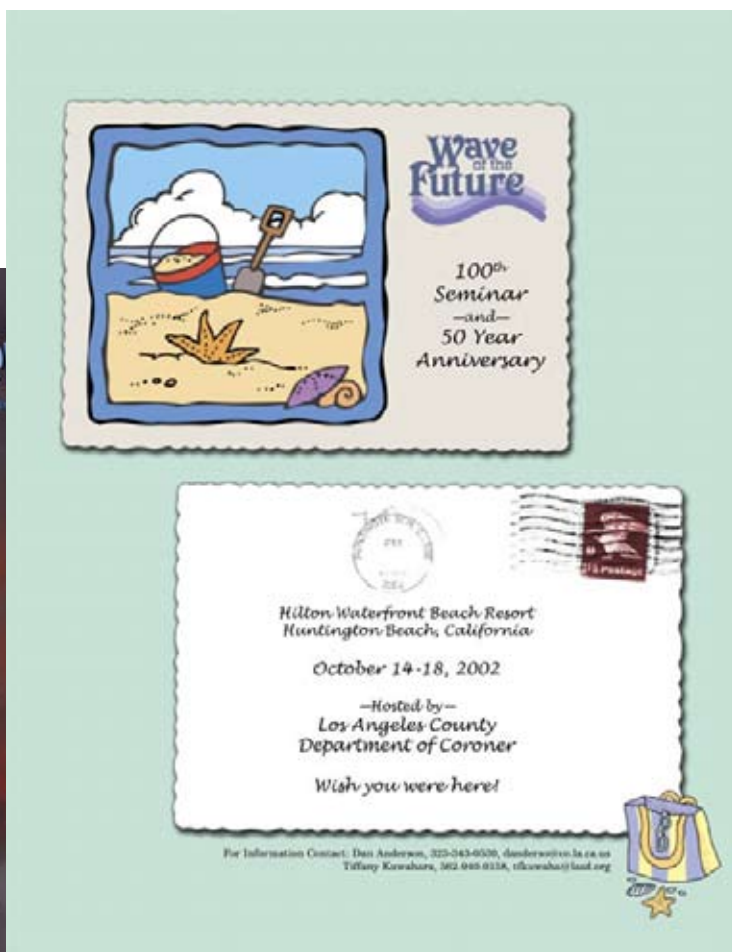
In the fall of 1991, CAC President Carole Sidebotham didn't just want to suggest CAC members get active in their association, she wanted people to make a *commitment*. She began calling members and gently urging them to participate more directly in the various committees available. When she called John Houde, he refused. But that's where the story begins. John recalls, "I still remember getting the call from Carole asking me to volunteer for some committee in the CAC. Nothing really appealed, but I was just learning to use Aldus Pagemaker and finding desktop publishing a lot of fun, so I asked if I could "upgrade" the layout of the newsletter. She happily appointed me to the Publications Committee."

In those dark days of computing, Houde used a 386 IBM clone running an early version of Adobe Photoshop and Pagemaker. Output was sent to a local service bureau called Alphagraphics where high-resolution Linotronic pages were generated. These were FedEx'd to Fleming's print shop in Oakland, where a camera was used to make film negatives of the pages. A zinc printing plate was then etched from the negative and placed on a printing press. Lots of low-tech steps to make our newsletter back then.



The CACNews redesign turns 80

Memorable covers front and back: (l-r) The founders issue, 3rd Q '08, Uniform patches 3rd Q '05, Cubicle fires 2nd Q '00, Back of 3rd Q '02.



The early years

The first “graphical” CACNews was released as the Winter 1991 issue. It was an immediate hit. Despite the crude clip art and fuzzy photos, it was a quantum leap over what had been done before. Houde recalls, “We didn’t even have a scanner in those days. I had to take a photo and shoot it with a halftone screen over Polaroid film. That’s why the photos all appear as

squares in the early issues.”

A scant year later, he was ready to try a full photo on the cover. Lacking a halftone screen that large, Houde used a technique called stochastic rendering to achieve a pseudo black-and-white photo “look.” It worked well enough for an image without people as the subject. He chose a photo from a recent drug bust as a dramatic cover shot. But a flatbed scanner was soon purchased by the Ventura crime lab (where he was working as a criminalist) and quickly pressed into service for the CAC.

By 1993 the improvement in hardware makes a noticeable difference. Now the News has true gray scale images of any size, and Steve Schliebe poses for the first cover to feature a member. In the years following, Houde would experiment with duotones, a technique that allows a second color to be placed into a black and white image. It’s sort of a cheap alternative to full color. The results of this can be seen in the Fall 1995 issue featuring the portrait of Edmond Locard.

For the Spring ‘97 issue, Houde approached the board of directors and asked for an increased budget for one issue to see how a full-color cover would be received. His request was granted and every issue since has been produced that way. “We did a special issue in 2001 where John DeHaan

The first six years...



We begin...



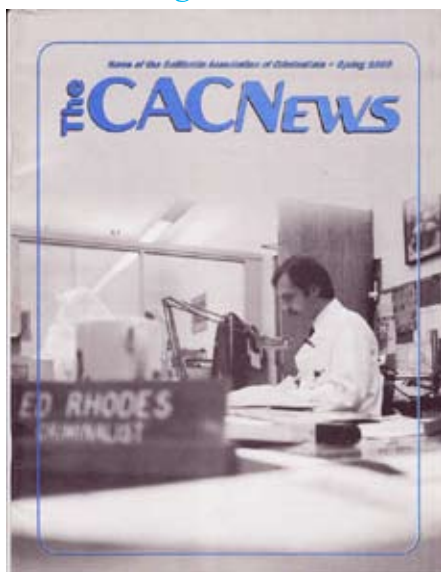
First graphic layout...



First B&W cover...



First color cover...



Spring 1995
featuring Ed
Rhodes' memorial.

had submitted some thermograms with his article. There was no way to render them effectively in black-and-white, so I lobbied for a few color pages. That was the only time we printed color inside." But it did herald something revolutionary: the creation of an "online" version in full color for the CAC website. Unfortunately, this meant producing two versions of each issue, something Houde has done since the 3rd Quarter 2001 issue. The higher resolution version is sent to the printing press and subsequently mailed out to members, while the lower res one is posted on the www.cacnews.org site in PDF format.

Special ones recalled

Each issue is special in its own way. These are his babies, but like any parent Houde has a few favorites. "I really like how some covers came out, especially the crime lab uniform patches (3rd Q 2005), and the cubicle fire (2nd Q 2000). I got more compliments on the Chuck Morton CAC application cover (4th Q 2006), people really seemed to like that one." When members send him an interesting photo, Houde enjoys working it into a memorable cover. "We've featured Wayne Moorehead and Ed Jones' work several times, and it's always excellent." But what about the back covers? Many of those are original designs by Houde, such as the faux "postcard" announcing the Huntington Beach seminar (3rd Q 2002). "I even faked the postmark to reflect Huntington Beach." More recently, he says the quality of the artwork sent in by seminar committees has been getting quite good.

Some covers call for that extra touch. For the CAC Founders cover, Houde went to the local Wal-Mart and bought fifteen small photo frames. "I wanted something special for this one," he says. "I wanted each frame to be unique, reflecting the uniqueness of each man. We hadn't even discovered all the photos of the founders, but I was hopeful." As it turned out, the sixteenth founder's photo wasn't unearthed until after the cover was shot.

It's not only about covers, either. In the "Millennium" issue (1st Q 2000), thirteen prominent members of the international forensic science community were asked to write an essay describing their vision for criminalistics in the 21st century. "It was so exciting receiving all those essays from folks in

the US and UK, and making a collector's item of a magazine. I'm really glad these back-issues are available again online."

A bittersweet part of the newsletter design is when a CAC member passes away. Over the years the covers have featured a handful of members who have touched our lives, including Tony Longhetti, Stuart Kind, Ed Rhodes, Lowell Bradford, Walter McCrone, Jan Bashinski, and most recently, Laurie Crutchfield.

Houde insists that although the newsletter is his passion, it wouldn't exist without the contributions of members. "... I'm like a band director: I can wave my baton all I want and no sound is produced. I need the players to make music. So I say, 'big thank you' to the editors who wrote such embarrassingly nice compliments about their memories of this journey, and to the columnists who write professional quality articles every issue. We are fortunate indeed to print their work, it could easily be published in a national magazine. Together, we've created what's become the envy of every forensic association in the country."

The editors reflect

In those 20 years, the office of editorial secretary has been occupied by six members: Lisa Brewer, Raymond Davis, Nancy McCombs, John Simms, Ron Nichols and Greg Matheson.

Current Editorial Secretary Matheson writes, "...John's willingness to continue in this role for the last 20 years has given the CAC a constantly improving quarterly newsletter of consistent high quality. The CAC has been lucky to have someone with John's dedication, skill and experience to create the visual representation of the CAC. It's been a pleasure working with him these last two years and having known him as a colleague and a friend for many, many years before. I hope he never grows tired of creating the *CACNews* and continues to provide help and guidance to many more editorial secretaries. I looked back over the archives of the *CACNews*, and it was an interesting and enlightening endeavor. Members should follow my footsteps by visiting the *CACNews* archive page at www.cacnews.org/news/news.shtml. The first issue in the archives which John is listed as handling 'layout' of the newsletter is October of 1991. Now, look at Winter 1991, when I can assume, John was given more leeway to express his layout and artistic skills. The Winter 1991 *CACNews* marks the transition from an amateur to a professional publication



"... I'm like a
band director:
I can wave my
baton all I want
and no sound is
produced. I need
the players to
make music."

4th Q 2006
"Chuck Morton Issue"



“We hadn’t even discovered all the photos of the founders, but I was hopeful.”

1st Q 2000
“Millennium Issue”

and it has continued to improve. As you review the advancement of the *CACNews* over the next 20 years you can see that with John as our designer, the newsletter doesn’t only reflect the advancement of the CAC and forensic science, but also the advancement of our digital age. From the regular inclusion of graphics, to a full color cover in the Spring of 1997, to the incorporation of regular and increasing use of color throughout the publication, John has reflected the quality and professionalism of the CAC.

Raymond Davis was editor in the early years and adds, “When I took on this responsibility in 1995, I confess, I felt at a loss what to write about. I still recall John’s sage advice. ‘It’s your bully pulpit; write whatever you think is important to you.’ I have taken that advice to heart giving me the opportunity to speak about matters that were important and believed that others would feel the same. One of those articles dealt with a court martial hearing I testified in aboard an aircraft carrier. There was no corroborating evidence, physical or testimonial to support a finding of dismissal from the Navy. Writing that article provided some catharsis although their decision still upsets me to this day. I want to thank John for his encouragement allowing me to express my disappointment in the newsletter. I received a few calls from colleagues thanking me for the article.”

Says Ron Nichols, editor from 2003-09: “John may wish to declare, ‘Pay no attention to that man behind the curtain,’ but I assure you he is the man responsible for the quality of what appears in your mailboxes every quarter. And it is not done with a machine or magic—it is done with hard work, a love for what he does, and a dedication and passion for an organization that, in my opinion, is second to none.”

Past Editorial Secretary Nancy McCombs remembers, “John took me under his wing and guided me through my editorship, while at the same time encouraged me to be creative. Each issue is a piece of art, a true collector’s item. Although I have many favorites among his 80 unforgettable issues, I was most touched by the one dedicated to our CAC founders (3rd Quarter 2008). Both the creative cover and outstanding literary content are perfect examples of John’s talent. He has brought our newsletter to a whole new level of quality.”

Former Editorial Secretary John Simms says, “When I took over the position of executive editor of the CAC magazine, I had no idea just how much work the position was going to require. Thus began my working relationship with John Houde.

It did not take me very long to realize that he is the biggest key to the success of the CAC magazine. I would never have succeeded without the work he did once I submitted the various articles, etc., for layout. My part, in fact, was the easy part.

“John takes the rough materials and molds them together for the publisher. He is the one who has a vision for each edition, who places each photograph and who inserts each word. He treats each volume as if he were crafting a masterpiece with patience; with care, and with so much love for the work he was doing that I could not imagine the CAC Newsletter without John Houde at the helm.

“There were times when we would go back and forth on some or other issue, but in the end, even though I had the title of executive editor, I learned that it was far better for me to trust John’s instincts, rather than my own, at crunch time. As deadlines loomed, I would inevitably place myself in his hands and the CAC membership would always end up with such a solid product.”

Simms sums up, “The executive editors come and go, for longer or shorter periods of time, but John is the one true constant of the newsletter. With a changing of the guard, he has to break in new editors and train them to do the things they need to do so he can do his job.”

Houde is quick to share the limelight, “With Greg, (webmasters) Eric Halsing and Mark Traughber, (Technical Editor) Jennifer Shen and the many CAC members who contribute original articles, patiently pose for seminar photos and share humor and news, we cook up the best kind of soup—the result is better than any single ingredient.”

This article was compiled from comments by Greg Matheson, Nancy McCombs, Raymond Davis, John Simms, Ron Nichols and John Houde.



CACNews Art Director John Houde happily directing some art in 1998.

Calico Press

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The San Quentin Six Case

A Bad Hair Day in 1971

by Louis A. Maucieri, D-ABC

Prologue

On August 21, 1971, I was a rookie criminalist at the DOJ Sacramento Laboratory of the Bureau of Criminal Identification and Information (CI&I). It was the first and only state lab at the time. I had excellent mentors/trainers: W. Jerry Chisum and others. That Saturday, a maelstrom of murder from a San Quentin Prison escape attempt would cause six deaths and challenge my capabilities.

New to the forensic field, I conducted myself like a fairly capable “worker bee”—allowing for what I did not know. My trainers taught me that our role was to help make justice happen. So I’ve always honored that relationship: student to mentor, analyst to journeyman, then teacher to new student. The test is every day in the forensic business. I am reminded of a quote I saw that is so true: *“For the truly educated, there is never a graduation.”* Thus, I am still the student.

That night 40 years ago, I went out for two pizzas. Upon returning home I had a telephone call from my supervisor. He told me to go to San Quentin and assist in processing a very messy fatal prison riot crime scene. He also assigned another probationary criminalist (Robert L. Baker), and an experienced latent fingerprint examiner (Spiro P. Vasos, now deceased) to work with me. This plum assignment involved a failed prison escape attempt led by George Jackson and other Black Panther inmates. My supervisor advised me of the prison’s “no hostage” policy. Not sure of all the implications, I felt a bit uneasy. I left the pizzas at home, went to the lab and met Baker and Vasos to begin a journey of scene processing, lab work, consultations and testimony that would extend over 15 years.

This 1971 event followed the deadly 1970 fallout resulting from the Marin County Courthouse shoot-out. George Jackson’s 17-year-old brother Jonathan had smuggled guns into a courtroom, released suspected murderers, kidnapped Judge Harold Haley, DDA Gary Thomas, two jurors and a court reporter. The abductors taped a sawed-off shotgun to the judge’s neck. Young Jackson, suspects William Christmas and James McClain died in the attempted escape. Judge Haley died in the discharge of the sawed-off shotgun¹.

Abstract

In 1970-71 Black Panther George Jackson, militant of Marxist and Maoist ideology and a jailhouse author², co-founded the Black Guerrilla Family³. In prison he embraced gang violence—assaulting other inmates and Correctional Officers (COs).



Following a nine-year career as a fuels and propellant chemist, Lou Maucieri was a criminalist at DOJ Sacramento and CA Criminalistics Institute for 30 years. He is currently a part-time instructor in the UC Davis Graduate Forensic Program. A poster session version of this case was given at the 73rd CAC Seminar in Sacramento, May 1989.

This plum assignment involved a failed prison escape attempt led by George Jackson and other Black Panther inmates. My supervisor advised me of the prison’s “no hostage” policy.

“Soledad Brothers” Jackson, Fleeta Drumgo and John Cluchette were accused in the 1970 killing of a Soledad guard. Jackson had joined the Panthers after meeting Huey P. Newton, the group’s cofounder, in jail⁴. Jackson emerged as a “shot-caller” of black and Hispanic prisoner unrest. His bloodbath August 21, 1971 escape attempt at San Quentin left three COs, two nonviolent white inmates, and him dead.

Hundreds of items were brought to the lab by 15 staff from four agencies over a 26 month period. Included were a sheet ladder, 9 mm Luger Astra model 600 pistol, prison rifles, bullets and fragments, ammunition hidden in soap, a wig, clothing, bedding, hairs, zip guns, a toothbrush razor weapon, an escape map, a vial of sulfuric acid and a latent print on the 9 mm. Some evidence items were also later examined by a defense criminalist. The 17 month long trial of six San Quentin suspects occurred in 1975. Three—Willie Tate, Fleeta Drumgo and Luis Talamantez—were acquitted; three were convicted—David Johnson, Johnny Spain and Hugo Pinnell. Jackson’s attorney Stephen Bingham fled to Canada but came forward in 1984 and was acquitted in a 1986 trial. Controversy concerning the second bullet wound fatal to Jackson was solved by criminalistics.

Incident

On that 1971 summer day, attorney Bingham visited Jackson at San Quentin. It was reported he brought a tape recorder some considered a hiding place for the gun and a wig. He also had accordion-type folders with documents in which the pistol and wig might be concealed and passed to Jackson. The folders were not passed through the metal detectors^{5,6}.

After the visit, CO Urbano Rubiaco escorted Jackson back to the euphemistically named solitary confinement Adjustment Center (AC). It was home for the baddest of the bad. There were 17 cells in the north wing, 13 in the south. Once inside, as Rubiaco turned to search Jackson, he saw something shiny, like a pen, at the front of Jackson’s hair. He reached to touch it with his finger when Jackson suddenly removed his wig, producing the slim 9 mm [photo B].

It was concealed under the Afro wig and on top of his Afro hairdo. Jackson then announced, *“Gentlemen, the dragon has come,”*^{7,8} a possible reference to Ho Chi Minh.

Once in control of the Adjustment Center, Jackson released all 24 inmates. In the slaughterhouse bloodbath that followed, a total of five were killed—three were COs. Two died by gunfire: F. DeLeon and J. Graham. P. Krasnes was garroted with earphone wires. The two suspected “snitch” white inmates, John Lynn and Ronald Kane, were also strangled with wires or had their throats cut with fingernail clippers or prison-made razor weapons. COs U. Rubiaco, K. McCray and C. Breckenridge were shot and stabbed, but survived these as-

The San Quentin Six Case



Photo B
9 mm Luger Astra Model 600,
similar to pistol in this case.
Courtesy of Torrey Johnson, CCI)

saults. Jackson was shot while sprinting out of the Adjustment Center, resulting in six deaths that day.

A triple-folded, blood-stained blanket with a bullet hole was found on the bed in Jackson's cell. A floor-level apparent blood back-spatter pattern on the rear wall suggests how one officer died [photo C]. Four victims (J. Graham, F. DeLeon, K. McCray and probably P. Krasnes) were found in Jackson's cell. Other severely wounded COs were also found in various cells.

Jackson's escape dash was terminated by two rifle bullets fired from a guard position above. The first shot entered his lower left leg, hit bone, and fragmented. He then stumbled forward. We found apparent exit holes on the right inner side of his left shoe and sock. The bullet fragment from his left ankle had partial markings consistent with prison .30-30 rifles. Criminalist David Q. Burd tentatively, but not positively, associated one of three rifles with this fragment.



Photo C – Jackson's cell AC-6
(Author)

The second shot was fatal, entering Jackson's back and exiting his head, probably as he fell forward. Later the 9 mm pistol was found under his body. Criminalist Burd examined a completely jacketed .30-30 bullet found in the yard. Cream over gray paint on its surface indicated a ricochet with a wall. The side of the base was flattened with microstriae abraded. Surviving partial class characteristics were the same as the three submitted prison rifles. Following behind Jackson was inmate Johnny Spain. He was confronted in the yard area. Spain held up a vial of colorless fluid and threatened COs,

thinking it was a liquid explosive. Upon surrendering, he relinquished the vial (later shown to contain sulfuric acid). Versions of this San Quentin incident have been published in several accounts.^{9, 10}

Our examination of the Adjustment Center crime scene, from approximately 9:00 p.m. August 21 to about 2:30 a.m. August 22, was complicated by several factors: First, a state deputy attorney general prosecuting Angela Davis, who was suspected of buying the firearms in the 1970 Marin County Courthouse shootout (later acquitted), was at San Quentin inspecting the Adjustment Center scene. Second, investigators from the local sheriff's office had processed the cells and adjoining areas with fingerprint powder before we arrived. A plethora of foot traffic in most areas was readily apparent, and scattered pools of blood and miscellaneous stains/smears on floors and walls indicated the level of violence that had occurred. Further, corridor floors were strewn with miscellaneous items including food, trays, various papers, clothing and debris, and all five victims and Jackson had been removed prior to our arrival.

Crime Scene

As we arrived, the San Quentin chief of security had staff give their accounts of what happened. I used a handheld tape recorder and camera with flash for field notes. The 9 mm pistol was brought in to us. Along with it were two magazines, part of the grip safety and a pin. The grip covers were missing. Staff also submitted a black hair they removed from inside the grip butt; I later determined it was human. They also turned over 24 inmate blood samples to me. Later, an additional 10 blood samples were brought to the lab.

A usable latent fingerprint was found on the back end of the pistol frame, beneath the slide. At the lab, Spiro Vasos manually compared it with 80 inked impressions of suspects, victims and investigators. It could not be matched. He continued comparisons with other potential subjects. Mr. Vasos processed the grip safety, 9 mm Luger rounds in two magazines (eight in a magazine from Jackson's jacket pocket, four in the other). No usable impressions were developed.

Upon walking to the Adjustment Center, we saw 24 naked inmates lying face down on the grass outside [photo D].

All had chains around their waist and wrists. I examined the Adjustment Center corridors and cells, observing



Photo D – Inmates lying on grass outside Adjustment Center
(California Magazine, Paul W. Pollock)

We found a freeway service station
to refuel and wash away
the heavy coating of blood
still on our shoes.

multiple areas of pooled blood and stains. I noted a bullet hole in the windowpane of the Adjustment Center. The cratering indicated the shot came from inside the doorway.

I began photographing and collecting evidence around 12 a.m. Sunday, August 22, 1971. I recovered a small piece of pipe, approximately 3 x 3/8 I.D. inches (slam fire zip gun?) at the entrance of Jackson's cell. Corridors had cartridge cases and flattened bullet fragments from Thompson .45 submachine guns, and M-1 carbines used to regain control of the Adjustment Center. I saw multiple bullet strikes on walls from COs firing down the corridor to force inmates back into cells.

In Spain's cell, COs found five cartridges of 38 Spl. Super Vel., five .410 shotshells, and one .22 magnum with hollowed-out bars of soap. They recovered a piece of 3 x 1/4 in. I.D. pipe with a .22 mag. cartridge hidden in a block of cheese in Jackson's cell (slam fire zip gun). I took an X-ray photo of this item showing the cartridge, with a reference .22 LR round alongside for comparison. I removed a heavily bloodstained blanket from the mattress with a massive thickened bloodstain from inside cell Adjustment Center 12. This bloodied blanket showed numerous cuts indicating someone lying upon it was attacked with a sharp weapon.

Prison staff gave us 10 more boxes of food, magazines, bedding and clothing. These boxes and the items we collected filled the rear of our station wagon. We left San Quentin at 2:17 a.m., Sunday, August 22, 1971. We found a freeway service station to refuel and wash away the heavy coating of blood still on our shoes. We got back to the laboratory approximately 4:30 a.m. and hung the bloodied items out to dry. Others were stored in the refrigerator or locked in the vault.

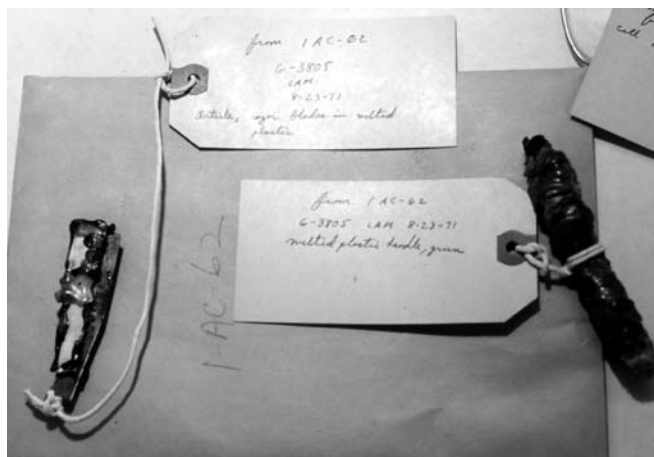
Laboratory Work

The coroner recovered a copper jacket fragment found in Jackson's lower left ankle, described above. Examination of Jackson's clothing revealed a perforation in the lower center back of his shirt and jacket. It appeared to be an entrance hole and had no powder or smoke residue. Burd and I found the hole in the shirt was slightly larger and about two inches above the one in the jacket. Both holes showed fibers bent inward and blue jacket fibers were bent inward into the hole of the shirt. From this we concluded the wound in the back was an entrance wound. However, in a telephone conversation, the pathologist proposed that the fatal bullet entered Jackson's head through the hair and exited the lower back. This theory conflicts with the position of bullet holes in the shirt and jacket and the inward-bent fibers described above. CO J. Graham had a 9 mm Luger bullet removed from his skull. Burd found this bullet was fired in the Astra. The other shooting victim, CO F. DeLeon, had been shot through the head. No bullet was found, but a 9 mm cartridge case was found under his cap in Jackson's cell. Burd tentatively identified this ejected case, and another, as fired in the Astra.

Staff later submitted a prison-made cutting weapon with two razor blade halves imbedded in a melted plastic handle

[photo E]. I found it had human blood stains of ABO type O. Several victims had type O blood. In the same cell they found a melted plastic handle (from toothbrush?) and a half razor blade, possibly another intended weapon. I analyzed these and other burned toothbrushes by pyrolysis infrared¹¹ and found them to be dissimilar. A whole razor blade was found in cell AC-64 (Johnson). A half razor blade was found in AC-10 (Cluchette).

We considered the heavy blowback action of the 9 mm pistol and whether there might be lacerations/marks on Jack-



*Photo E – Razors imbedded into melted plastic
(Author)*

son's hands. I thought this quite likely, as the weapon was submitted without any grip covers. The coroner's deputy saw no marks. I suggested that Jackson's hands be tested by TMDT¹² [Trace Metal Detection Technique] for traces of metal residue from the pistol. However, by this time his hands had been inked for fingerprint identification and his body released to a funeral home.

Staff retrieved a black, crumpled wig from a toilet in cell AC-8 (Pinell), heavily contaminated with debris. I found it was made of synthetic fibers and did not detect gun oil. Two sheets of fiberglass reinforcing material were accompanied by three large 8 x 3/4 in. rubber bands. Could these articles have hidden the smuggled gun and wig? I also examined them for gun oil and metal transfers by TMDT with negative results.

I tested the liquid in the vial recovered from a box in Jackson's property with barium chloride. This produced a white precipitate (BaSO₄), confirming the presence of sulfate ion. The crystal form was compared microscopically and matched the morphology from a test I performed with known sulfate. The fluid in the vial significantly softened the black vinyl tape wrapped around the ground glass stopper. A sample of the fluid was burned, leaving no residue on ignition. I did observe a copious evolution of gray-white choking smoke, characteristic of sulfur trioxide (SO₃). The dirt from the lower football field, where the vial of fluid recovered from inmate Spain was dumped, also contained an excess of sulfate ion. The soil pH was between 1 and 2. I concluded that sulfuric acid (battery acid?) was present in that material also.

Staff found a brown envelope in inmate Spain's cell containing an apparent escape map showing a route away from San Quentin; a partially filled package of pipe cleaners; a sheet of 8 1/2 x 11 lined paper with writing (turned over to

The San Quentin Six Case

Questioned Documents Section); and a package of oily putty-like substance. I concluded it was common putty. The origin or purpose of putty, pipe cleaners and the fiberglass reinforcing material along with the vials of sulfuric acid leads one to speculate about the possible intended use of these materials. Did the provider believe these could be an explosive—or intend they would be considered as such by inmates?

Testimony

The trial of the six defendants occurred in 1975. I testified on all aspects of the case, except firearms, latent print, serial number and questioned documents. It took four days—three for prosecution, one for defense. There were seven defense attorneys. Questioning by one defendant (Spain) was also allowed.

The trial lasted 17 months – the longest trial on record at that time. Security searches and courtroom-controlled access procedures were strictly enforced. The six accused were each accompanied into court, guarded by COs or others in continuous surveillance. They were each manacled with 25 pounds of chains shackled to the floor under their chairs. Courtroom activities were constantly monitored by several CCTV systems. At the ends of the guards' posting tables were large fiber barrels containing shotguns and semiautomatic rifles. I waited in this room prior to my testimony.

Fourteen years after the 1971 San Quentin event, Criminalist Burd testified on bullet identification at an evidence hearing on the murder of CO J. Graham. The trial of attorney Stephen Bingham followed in 1986, requiring two days of my testimony. Tight security measures were again in force. Defendant Bingham was acquitted. His story and fugitive activities were reported in the media.^{10, 13} His image and that of George Jackson were featured on a magazine cover [photo F].

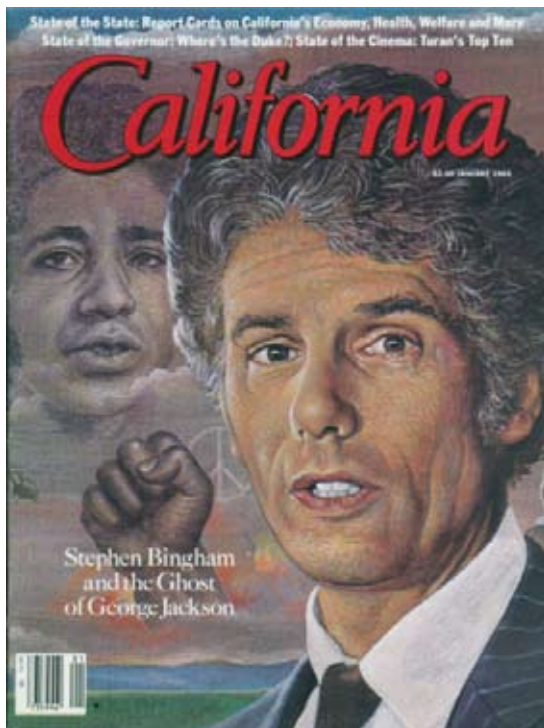


Photo F – California Magazine, January 1985
(California Magazine, Paul W. Pollock)

Epilogue

During investigation of this case and the trials, radical groups made allegations of a state- or FBI-inspired plot to stage the escape and murder inmate Jackson.¹⁴⁻¹⁶ It was claimed that police agents working within then-existing prison gang support groups had a program to provoke confrontations between various factions.

I remember that as I listened to the initial San Quentin staff briefing in 1971 before entering the Adjustment Center crime scene, my supervisor called me. He asked if I felt capable and whether I wanted further help dispatched to San Quentin. Still in my first year of probation, I was foolhardy enough to reassure him of my extensive qualifications for the task. It was only years later, during testimony, when my less-than ASCLD/LAB-quality notes and sketches caused me to reassess the wisdom of my earlier naiveté.

Acknowledgment

I am grateful for the firearms-related work and reconstructions by Criminalist David Q. Burd, general crime scene guidance of Spiro Vasos, assistance by Criminalist Robert Baker, and technical assistance from Tom Lloyd and CCI's Torrey Johnson, Mike Giusto and Waheed Jawadi.

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Ethical Dilemmas

DISCUSSION CORNER WITH CAROLYN GANNETT

DIVINE GUIDANCE

The International Association for Identification (IAI) stated in its recently retired code of ethics, "I humbly accept my responsibility to public trust and seek Divine guidance that I may keep inviolate the profession of forensic identification analysis and investigation."

History

According to a letter from the IAI President to the membership (see www.theiai.org/current_affairs/open_letter_president.pdf) published in the summer of 2010, the IAI Board of Directors had unanimously voted to remove the reference to seeking Divine guidance. Arguments in support of this action included the finding that none of the codes of ethics from nine other major forensic science associations included any reference to Divine guidance. (In my own review of 23 codes of ethics only the IAI was found to have included such a reference.) Another argument was that ASCLD's Code of Ethics specifically prohibits discrimination based on religion. (I would add that the European Network of Forensic Science Institutes' code of ethics has similar content.) The IAI Documents Review Committee felt that the suggested concept of prayer was inappropriate for the purposes of the document; the president added, "we are currently attempting to defend our position that the IAI and its members are practitioners of science." Finally, some non-religious members had expressed disdain over the phrase "Divine guidance," leaving the board concerned over potential liability issues surrounding discrimination.

The letter continues, describing how the amended draft, with no reference to Divine guidance, went to the membership for a vote in July of 2010. Surprisingly, the membership voted to keep "Divine guidance" in their code of ethics. In response, some IAI members reported themselves as having breached ethics by not seeking Divine guidance. The President wrote, "the investigation of wholesale groups of individuals self-reporting violations may cause an economic hardship for the IAI. For this reason, ethics violations reported solely on the basis of 'Divine guidance' will not be certified for investigation, pending the outcome of an investigation of this situation. New members and certificants as well as individuals seeking recertification may opt out the requirement to seek Divine guidance by striking 'seek Divine guidance that I may' from the Code of Ethics."

Share your thoughts and dilemmas at
www.ethicsforum.cacnews.org

The letter concluded with a statement that the IAI leadership still wanted to remove any reference to Divine guidance from the code of ethics, and that the matter would be revisited at the 2011 meeting. That meeting occurred in August, and a new Code of Ethics was adopted that does not reference Divine guidance.

Some Additional Thoughts

Note that in the phrase "seek Divine guidance," "Divine" is capitalized, so a deity is indicated, although some have suggested it could refer to the drag queen Divine. Indication of a deity begs the question, "Which one?" or does this not matter? If it does matter, then which Gods are acceptable and which ones are not? But, this rubs right up against anti-discrimination laws. On the other hand, if it doesn't matter which deity is chosen for guidance, then a Satan-worshipper who seeks Divine guidance from Satan would meet this ethics requirement, while an atheist with a highly-developed sense of morality and well-educated in professional ethics would be in violation of the ethics code as soon as he or she signed off on it.

Professional associations exist for the purpose of supporting that profession. A scientific professional association, in support of the practice of science, would be expected to have guiding documents aligned with the principles of science. Seeking Divine guidance is not found in any aspect of the principles of science. Imposing on the membership the requirement to seek Divine guidance when practicing the profession would alter the principles upon which the profession is built. This undermines the profession as opposed to supporting it, and support is supposed to be the purpose of a professional association.

One final thought regarding the IAI leadership's response to the member vote of 2010. The leaders decided they didn't like what the membership legally decided, so the leaders took it upon themselves to negate it. They issued a decree that any reported violations of the part of the code that they didn't like would not be investigated. Further, the leadership gave those who would be signing the code of ethics the option of striking out the part leaders didn't like. I question the legality of such moves. I also wonder how things got turned upside down: I thought professional association leadership was in place to serve the membership, not the other way around. In their zeal to promote what they thought was ethical, I wonder if the leaders wound up violating their own ethics. Perhaps this is another example of the ends not justifying the means.

CAC SECTION REPORTS

Northern Section Report

The Arson and Trace study groups held a joint meeting on June 16, 2011 at the ATF laboratory in Walnut Creek. There were 13 attendees.

A study group meeting was held June 1, 2011 at the Santa Clara County Crime Laboratory. The QA, Drug, and DNA study groups met at this meeting. Mark Ruefenacht of Heusser Neweigh, LLC spoke during the lunch hour on "An overview of the development and ongoing activities related to the forthcoming ASCLD/LAB measurement traceability and measurement uncertainty policies". There were 39 attendees for the lunch speaker.

The QA study group met before and after the lunch session. Mark Ruenfacht gave a more in-depth workshop on traceability, measurement assurance, and uncertainty. This workshop had 30 attendees.

The Drug study group met after the lunch session. A Santa Clara County Narcotics Officer shared his expertise on the common drugs of abuse from a user's perspective, which included usable amount, effects of the drugs, how drugs are used and their common types of paraphernalia, how much is commonly purchased, street values, drug intelligence reports, and the prevalence of synthetic cannabinoids. There were 14 attendees.

The DNA Study group met after the lunch session. Various speakers presented on the topics of sexual assault evidence kit evaluation, MiniFiler casework, gun swabs, and manufacturer contamination. There were 13 attendees.

The Firearms, Toxicology, and Alcohol study groups did not meet during this period.

—Meghan Mannion Gray
Regional Director North



Southern Section Report

The Orange County Crime Laboratory hosted study group meetings on August 11, 2011. Orange County Senior Homicide Deputy DA Sonia Balleste spoke on *The Bird Street Murder: Westminster Fortune Teller Homicide*. Study groups that met were Quality Assurance, Blood Alcohol, Drugs & Toxicology (joint), and DNA. Study groups which did not meeting are Fire Debris, CSI, and Trace. For further details, visit the CAC website. www.cacnews.org/events/study-group/listmeetings.php

Bob Blackledge was appointed as the new Trace Chair. Below is his contact information.

Robert ("Bob") D. Blackledge
(619) 443-8522 , bigpurple@cox.net

—Mey Tann
Regional Director South



25 State Nicknames You'll Never See
Match the 2-letter abbreviation to the state nickname.
Submitted by Raymond Davis, added to by John Houde.

The 'Hollywood' state	AR
The 'crying' state	ID
The 'physician' state	LA
The 'name' state	NV
The 'sick' state	OR
The 'motherly' state	PA
The 'jealous' state	MA
The 'empty' state	MS
The 'Scarface' state	OK
The 'ego' state	OH
The 'gender title' state	ME
The 'just fine' state	IL
The 'hello' state	WY
The 'ranking' state	WA
The 'enter' state	IN
The 'terminal' state	MT
The 'exclamation' state	HI
The 'equivocal' state	AL
The 'pirate' state	MD
The 'everything' state	AZ
The 'fatherly' state	CO
The 'clues' state	KY
The 'question' state	MI
The 'slippery' state	MO
The 'singing' state	ND



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Fall 2011 Seminar

SEMINAR WORKSHOPS

October 24-25, 2011

Monday Morning, October 24

Hair Examination (4 Hours)

Gas Chromatography (4 Hours)

Monday Afternoon, October 24

Image Analysis & High-speed Video Techniques (4 Hours)

Non-Human Forensic DNA Analysis (4 Hours)

Tuesday, October 25

Forensic Entomology (4 Hours)

DNA Workshop (8 Hours)

Explosives (8 Hours)

TECHNICAL SESSION

October 26-28, 2011

National Academy of Sciences Reports, "Strengthening Forensic Science in the United States: A Path Forward," Robert Shaler, Ph.D., Penn State and "Strengthening the National Institute of Justice," George Sensabaugh, Ph.D., UC Berkeley

Wednesday Evening, October 26

New Member Reception

Wine and Cheese Reception

Thursday Evening, October 27

Banquet

"Wine Flavor: from Grape to Glass" by Guest Speaker: Dr. James Brown

For details, please see:

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