

Innocence activism ‘contaminates’ forensic evidence, study warns

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A comprehensive look at post-conviction litigation practices written by *Crime Lab Report*'s managing editors was recently published in the 2009 Journal of the *Institute for the Advancement of Criminal Justice*. IACJ is a nonprofit research organization based in Sacramento, California.

The new study titled “Contextual Contamination of Forensic Evidence by Post-Conviction Litigators” raises troubling questions about the use of DNA tests to secure the exoneration of convicted offenders.

One of the cases studied by John Collins and Jay Jarvis was the 2003 exoneration of Steven Avery in Wisconsin.

In 1985, Avery was convicted of attacking and raping Penny Ann Beernsten while she jogged along the Lake Michigan shore. She was attacked from behind and pushed into a wooded area. The perpetrator choked her during the rape until she lost consciousness.

Beernsten later identified Avery in a police lineup. He was subsequently convicted of sexual assault and attempted murder and sentenced to 32 years in prison.

The Wisconsin Innocence Project took up Avery's case and successfully fought for DNA testing. Semen deposited during the attack was excluded as having come from Avery. In light of the new forensic evidence, Avery was exonerated.

Just four years after his exoneration, however, Avery was again convicted and sentenced to life in prison for the brutal kidnapping and murder of Teresa Halbach, a 25 year old freelance photographer who frequently photographed vehicles for an auto-trader magazine. She was scheduled to photograph vehicles at a salvage yard owned by Avery on the day she was killed.

But it was the *manner* in which Halbach was attacked that may yield clues about the potential for Avery's actual guilt in the rape for which he was exonerated.



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In the Halbach murder, Avery allegedly “bound and gagged his victim and then invited his young learning-disabled nephew, Brendan Dassey, to sexually assault her,” according to reports studied by Collins and Jarvis.

In the post-conviction proceedings focusing on the rape of Penny Ann Beernsten four years earlier, the absence of Avery’s DNA was construed as proof of innocence. “But what if the DNA was not deposited during the initial attack,” Collins & Jarvis inquired. “After all, Penny Ann Beernsten had been strangled and slipped into unconsciousness. What if Avery was, in fact, the initial attacker but failed to ejaculate? What if he then invited an accomplice to sexually assault Beernsten while she was unconscious – just like he allegedly did in the Teresa Halbach murder?”

These are legitimate questions about reasonable scenarios. They also demand recognition that neither exoneration nor forensic evidence serve to prove innocence.

“Forensic science is incapable of determining guilt or innocence,” Collins and Jarvis explained. “The term DNA exoneration, used so frequently by journalists who report on overturned convictions, is a misnomer. DNA does not exonerate innocent prisoners – people do.”

Unfortunately, the news coverage of a recent exoneration in Florida demonstrates that too many journalists still don’t get it.

Thanks to the work of the Florida Innocence Project, James Bain was released after serving 35 years in prison for the 1974 kidnapping and rape of a 9-year-old boy.

In a December 19th report by the Polk County Democrat, staff writer Tom Staik reported that “modern technology has proved that [Bain] didn’t commit” the rape for which he was convicted.

No it didn’t.

Modern technology simply provided additional information that forced justice officials to answer new questions. Science alone does not exonerate – or convict – people. It never has, and never will.

It is one thing for a journalist to mischaracterize the significance of forensic evidence. It is another thing when officers of the court do it.

“I think it’s fair to say that forensic science as a profession has no particular interest in guilt or innocence,” explains Jay Jarvis. “But we care deeply about how forensic results are interpreted by our justice system. This is a public safety issue at its roots.”

John Collins admits that he and Jarvis did not coin the term *contextual contamination*.

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“It’s actually a term that has been used to describe problems that occur in some psychology experiments,” Collins noted. “Context is critical when you apply forensic results to answer questions of guilt or innocence. When that context becomes distorted, it contaminates the justice system’s search for truth.”

Whether or not contextual contamination played a role in Steven Avery’s exoneration remains an unanswered question. We do know, however, that Avery is not alone in reportedly preying upon innocent victims following exoneration.

Kerry Kotler in New York, for example, was exonerated for multiple counts of rape and burglary in 1992. Five years later, he was again convicted of sexual assault.

Dante Parrish served only ten years of a thirty-year sentence for a brutal 1999 murder. The Maryland Innocence Project secured his release arguing that faulty statements of fact were read into the court record. Parrish was later convicted of gagging, raping, and murdering a fifteen-year-old boy.

“It is possible that strict national standards and better professional oversight are needed to govern post-conviction litigation practices,” argue Collins and Jarvis. “But an even higher priority should be placed on providing specialized training to criminal justice professionals in the investigative interpretation of forensic evidence.”

These issues bear heavily on the forensic sciences mainly because post-conviction activists continue to blame forensic scientists for wrongful convictions despite overwhelming data and peer reviewed research that demonstrate the opposite.

Contextual contamination of forensic evidence can never be tolerated. If post conviction activists want a voice in our criminal justice system, it’s about time they are given some rules to follow.

Enough is enough. ****

Editors’ Note: *Anyone interested in contemporary forensic science issues is encouraged to review the 2009 Journal of the Institute for the Advancement of Criminal Justice. The issue is dedicated entirely to forensic science and contains a wealth of information for forensic scientists and non-forensic professionals alike.*

The Journal is available for public viewing at www.iacj.org/FlippingBook/iacjjournal3/index.html.

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