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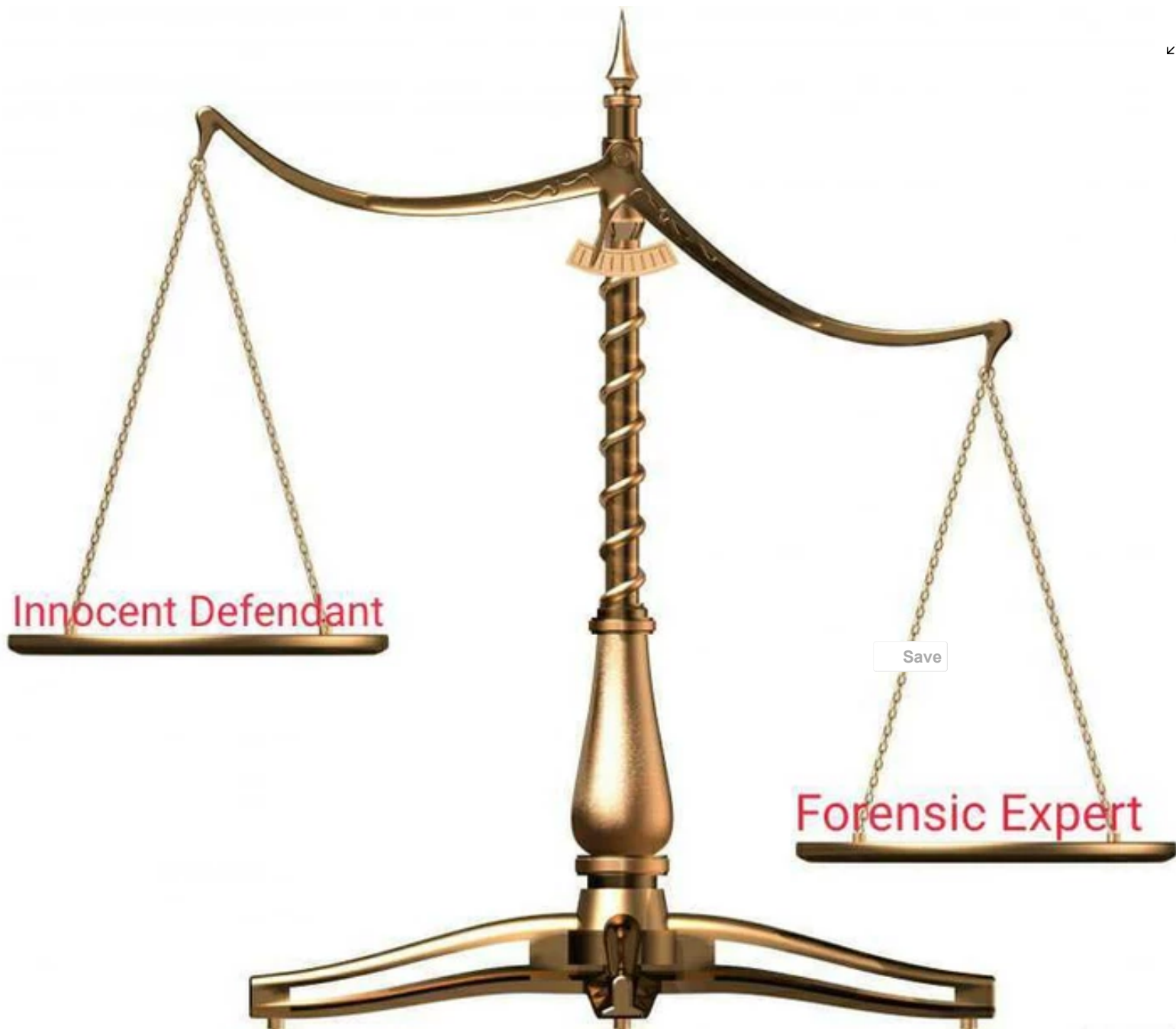
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The Eminence of an Incompetent Forensic Expert Versus the Innocence of the Defendant

Updated: Nov 10, 2021

*By: Eza Bella Zakirova**



Globally, nearly all criminal investigations revolve around one key element—forensic evidence.[1] Technology also aids forensic investigations which help experts reach a verdict directed at the real perpetrator—the defendant or someone else. Forensic investigations are highlighted by the media as something supernatural; forensic investigators get to find out what happened at the crime scene before anyone else.[2] As a result, general society tends to assume expert testimony to be 100% accurate.[3] However, general society may not be aware of the fact that under Federal Rule of Evidence 702, a person may qualify to be an expert witness if he has at least some specialized knowledge that “will help the trier of fact to understand the evidence.”[4] Given the broad scope of the expert’s directive under this rule, anyone with a basic degree in a science-related field can become an expert witness. Therefore, we run the risk of having forensic testimony based on wrong science, but which nonetheless takes over the jury’s verdict.

The reliability of forensic expert testimony has been called into question by the increasing rate of exonerations. [5]Attorneys Peter Neufeld and Barry Scheck founded the Innocence Project, which aids the wrongfully convicted in proving their innocence.[6] The National Registry of Exonerations records includes “information about all known exonerations in the United States”[7] and to date has recorded 2,869 exoneration cases.[8] 24 percent of exonerations had false or misleading forensic evidence that contributed to the wrongful convictions.[9]

Some of these wrongful convictions were achieved with incompetent forensic expert testimony from Dr. Steven Hayne. Hayne’s work has been praised by prosecutors. While a private practice doctor, he participated in nearly 1,800 autopsies per year,[10] despite the national standard being at most 250.[11] In the case of Levon Brooks, Hayne ruled the defendant was guilty based on his botched bitemark analysis.[12] Hayne’s incompetent reports also led to convictions of Kennedy Brewer,[13] Eddie Lee Howard Jr.,[14] and Tyler Edmonds.[15] The broadness of the Federal Rule of Evidence 702 is a loophole for the want-to-be forensic experts whose expertise is only loosely relevant to the forensic evidence; the result is an increase in the rate of wrongful convictions.

In Canada, wrongful convictions since 1993 are reviewed by the Innocence Canada. [16] To date, they have exonerated 24 wrongfully convicted persons.[17] Some of them were a result of the incompetency of testifying forensic experts.[18] In Canada, an individual can become a forensic expert witness by completing a five-day course on the expert witness responsibilities with a 38-day completion of a theoretical component.[19] A handful of cases were contributed to by a pediatric pathologist, Charles Smith, who was well-known in the nation.[20] Smith’s expert testimony has sent many to prison, including the following exonerees: O’Neil Blackett,[21] Richard Brand,[22] and Tammy Marquardt.[23] It has since been uncovered that Smith had a personal vengeance towards people accused of hurting children, and made sure that they would get convicted, ignoring the legal principle: innocent until proven guilty.[24] As a result of Smith’s eminence for being an effective legal expert, no one assessed his work for accuracy nor for ethical considerations until the wrongful conviction cases emerged.

It is rather odd that in Canada and the United States, the forensic experts who contributed to wrongful convictions were both highly educated, and their eminence was assessed by reached convictions. However, the broadness of expert witness qualifications only discourages experts to be proficient and learn about innovations enabling them to achieve accurate results. Besides the fact that these experts’ popularity blinded many, the countries’ lack of more stringent expert witness qualification standard is a current loophole that only increases the number of unqualified experts who the jury mistakenly takes for professionals with expertise worthy of their trust. Based on the above cases, one common feature that the incompetent experts shared was the eminence for reaching convictions. Even if the defense attempted to rebut the expert’s testimony, it simply could not hold against the weight of the eminence of the testifying expert.

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1 U.S. Dep’t of J., *Forensic Science*, <https://www.justice.gov/olp/forensic-science> (last updated Jan. 15, 2021).

2 Aakash Arora, *Future of Forensic and Crime Scene Science Technologies*, in *technology in forensic science: sampling, analysis, data and*

regulations 357, 357-370 (Deepak Rawtani & Chaudhery Mustansar Hussain eds., 2020).

[3] Victoria Z. Lawson, *The Influence of Naïve and Media-informed Beliefs on Juror Evaluations of Forensic Science Evidence* (June 2014) (Ph.D. Dissertation, City University of New York).

[3] *Id.*

[4] Legal Info. Inst., *Rule 702. Testimony by Expert Witnesses*, https://www.law.cornell.edu/rules/fre/rule_702 (last visited Sept. 27, 2021).

[5] Innocence Proj., *Overturning Wrongful Convictions Involving Misapplied Forensics*, <https://innocenceproject.org/overturning-wrongful-convictions-involving-flawed-forensics/> (last visited Sept. 27, 2021).

[6] Innocence Proj., *About*, <https://innocenceproject.org/about/> (last visited Sept. 27, 2021).

[7] Nat'l Registry Exonerations, *Our Mission*, <https://www.law.umich.edu/special/exoneration/Pages/mission.aspx> (last visited Sept. 27, 2021).

[8] Nat'l Registry Exonerations, *Percent of Exonerations by Contributing Factor*, <https://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx> (last visited Sept. 28, 2021).

[9] *Id.*

[10] Radley Balko, *The Fifth Circuit Turns its Back on a Huge Forensics Scandal in Mississippi*, Wash. Post (Feb. 28, 2014), <https://www.washingtonpost.com/news/the-watch/wp/2014/02/28/the-fifth-circuit-turns-its-back-on-a-huge-forensics-scandal-in-mississippi/>.

[11] Jordan Smith, *The Authors Of "The Cadaver King And The Country Dentist" On The Legacy Of Junk Forensics In Mississippi And Beyond*, The Intercept (Apr. 22, 2018), <https://theintercept.com/2018/04/22/junk-forensics-mississippi-cadaver-king-country-dentist-interview/>.

[12] Levon Brooks was charged with murder and rape of a child. Dr. Steven Hayne performed the autopsy of the victim, noticed bite marks on the victim's body, and ruled that Brooks teeth match the bite marks. Brooks was convicted and sentenced to life in prison without parole. Soon Dr. Steven Hayne's reputation was put into question by earlier exoneration cases which led to a review of Brooks' conviction. The Innocence Project investigation team found a real perpetrator who was already convicted of sexually assaulting minors and resided near the victim at the time of the crime. DNA results and the perpetrator's confession established that Brooks was innocent. Alexandra Gross, *Levon Brooks*, Nat'l Registry Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3058> (last visited Sept. 27, 2021).

[13] Innocence Project, *Kennedy Brewer*, Nat'l Registry Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3047> (last visited Sept. 27, 2021).

[14] Maurice Possley, *Eddie Lee Howard Jr.*, Nat'l Registry Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5911> (last visited Sept. 27, 2021).

[15] Michael S. Perry, *Tyler Edmonds*, Nat'l Registry Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3200> (last visited Sept. 27, 2021).

[16] Innocence Can., *Stories of Innocence*, <https://www.innocencecanada.com/stories-of-innocence/> (last visited Sept. 27, 2021).

[17] Innocence Can., *Exonerations*, <https://www.innocencecanada.com/exonerations/> (last visited Sept. 27, 2021).

[18] Exonerees whose wrongful conviction was contributed by a forensic expert are the following: O'Neil Blackett, Richard Brand, Dinesh Kumar, Tammy Marquardt, William Mullins-Johnson, John Salmon, Maria Shepherd, Sherry Sherrett-Robinson. *See id.*

[19] Gov't Can., *Expert Witness, Forensic Identification*, <https://www.cpc-ccp.gc.ca/programs-programmes/forensic-ident-judiciaire/expfor-ctexp-ij-eng.htm>, (last visited Sept. 27, 2021).

[20] Sarah Aymes, *One Doctor's Crusade Resulted in Several Innocent People Serving Years in Prison*, Medium (Feb. 27, 2020), <https://medium.com/age-of-awareness/one-doctors-crusade-resulted-in-several-innocent-people-serving-years-in-prison-de2ad5037b45>.

[21] Innocence Can., *O'Neil Blackett*, <https://www.innocencecanada.com/exonerations/oneil-blackett/> (last visited Sept. 27, 2021).

[22] Innocence Can., *Richard Brant*, <https://www.innocencecanada.com/exonerations/richard-brant/> (last visited Sept. 27, 2021).

[23] Innocence Can., *Tammy Marquardt*, <https://www.innocencecanada.com/exonerations/tammy-marquardt/> (last visited Sept. 27, 2021).

[24] Aymes, *supra* note 21