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Corrections and Criminalistics: Pragmatism, Principles, and Policy

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ABSTRACT: A survey and analysis was conducted regarding the use of forensic science services in a correctional setting. Within the broader context of issues affecting involvement of police and prosecutions in custodial criminality, we have considered (*a*) whether existing forensic science services meet the needs of those who live and work in prisons and (*b*) the likely benefits of making specially tailored and easily accessible forensic services available. Investigative policies were reviewed for three correctional institutions including federal, state, and county jurisdictions. Also examined were types of cases, investigative effort, and relationships with outside investigative bodies. This study found a surprising underutilization of forensic science matters. The potential benefits of such services are considered from the view of the forensic scientist, the prison investigator, and society. In the light of these benefits, policy options are discussed.

KEYWORDS: forensic science, prisons, surveys, jails, policy

Despite the thriving relationship between legal agencies and the various forensic laboratory sciences, there still remain many scientific potentialities that are not applied to the legal process. Sometimes scientific services are not used because of a lack of funds; at other times the field investigator may be unaware of or unaccustomed to call upon various forms of laboratory assistance. Conversely, the laboratory scientist may fail to present in precise terms the types of services available or to elaborate their possible uses. Clearly, there remain considerable problems of mutual education, training, communication, and limited expectations.

This is not to say that for the usual types of investigation of the more serious offenses there is not ready resort to scientific services by police and prosecutorial agencies. In many jurisdictions, efficient and almost reflexive forms of cooperation have been established at the behest of police and prosecutors. But while the needs of major criminal investigations have at least basically been met, the lesser criminal offenses, together with some civil cases and various administrative matters, have been somewhat neglected.

This paper deals with two of the institutions long given low priority in the provision of conventional criminal investigation: jails and prisons. There are numerous reasons for this relegation, some well articulated, others more difficult to discern.

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An obvious factor which may deter police and prosecutors from pursuing legal action is the strength of evidence. Prison is a closed world in more senses than one, and the code of silence, the strong likelihood of retaliation, and the stigma of having been an informant all bear heavily on the willingness of prisoners to come forward as witnesses. Moreover, both the investigator and trial lawyer may consider prisoners to be poor witnesses because of their "blighted" character.

Police and prosecutorial resources, as with any others, must be deployed according to a scale of fiscal, organizational, and political priorities. Among the factors to be considered must be the effect of an investigation or prosecution. In instances in which an offender is already serving a medium to long sentence, the response to all offenses except the gravest may be that no public interest is served by further legal proceedings. It may be considered that the practical effect of a further sentence upon an offender serving, say, a sentence of life imprisonment, is virtually nil. (We take a different view, discussed below). These assessments may be buttressed by a willingness of the jail or prison authorities to take their own, internal, disciplinary action.

We must also note that, since prisoners do not vote, one channel is closed by which members of the public may indirectly influence prosecutorial policy or help to develop a certain prosecutorial climate. We make this observation not in any cynical spirit, but rather in reference to one of the various components that are provided in our system of democracy legitimately to enhance the accountability and responsiveness of certain public officials. It is not without significance that this mechanism does not operate in prisons, many of which have pressing problems of disorder and lawlessness.[3]

A consideration affecting prosecution decisions, irrespective of the practical effect of a conviction, is the impact of an offense upon the morale of the immediate community. Here we are thinking not only of the surrounding civilian population, but also of the prison officers and other staff. An experienced prison litigator told us that virtually all offenses against prison guards are investigated, and that labor unions will exert pressure for prosecutions to be brought not only in cases of great seriousness such as homicide, hostage-taking, and assaults, but also in instances involving comparatively minor offenses.

There is a third view concerning prison crime, perhaps unspoken, but nevertheless influential, which is that offenses committed by prisoners on one another are to be expected; are part of the normal life of the prison; are, perhaps, part of the punishment of imprisonment; are, in any event, of little or no concern to the legal system. Those taking this view are not as callous as first thought might suggest (though some undoubtedly are). Given limited resources, is it not more in the public interest to prosecute offenses against free citizens rather than prisoners? Invidious though it may seem to make the judgment, is it not very much more threatening to the fabric of the law, and outrageous to public sentiment, that a free citizen has been the subject of a criminal attack, than that a prisoner has been attacked by a fellow? As noted, these views and judgments are rarely articulated, yet our observations and conversations convince us that they play a significant part in police and prosecutorial approaches to criminal investigations and prosecutions in prisons.

[3]Some prison administrators have begun to act as substitute publics and to provide inducements to prosecutors to act against criminal offenders in prison. Thus, for example, the Illinois Department of Corrections now has a line budget item to provide reimbursement to local authorities who prosecute prison cases, and has convened a conference to discuss state, federal and local relations concerning prison prosecutions [*1*]. It is, of course, a policy matter which can be argued either way, since for many (especially rural) counties, prisons are a very significant element in the local economy and for this reason alone deserve full support services. On the other hand, the cost for legal services in a locality in which a maximum-security prison is sited may be excessive and onerous. Moreover, the costs may be greater than initial consideration would indicate, as another Illinois example shows. In Livingstone County, local officials are seeking state assistance to provide high-security cells in the courthouse, so that prisoners may safely be housed during prosecutions for prison-related offenses.

In summary, we suggest that four considerations directly affect police and prosecutorial reluctance to become involved in the custodial criminality of prisoners: evidentiary factors related to the reluctance of prisoners to testify against each other and their uncertain credibility in court; the lack of practical effect of a further punishment should a prosecution be successful; the availability within the prison of relatively effective and sufficient punishments, which may be ordained through informal processes while still remaining within constitutional bounds; and, finally, a judgment is made about the prison experience, and the hazards of victimization in jail or prison are weighed lightly in the decisions that must be made about the allocation of police and prosecutorial resources.

With these broader observations and questions in mind, we seek here to address a limited, but important, aspect of law enforcement and legal proceedings in prisons. We have sought to determine (*a*) whether existing forensic laboratory services meet the needs and entitlements of those who live and work in prisons and (*b*) the likely benefits of making available to the prisons a range of specially tailored and easily accessible forensic services.

We first describe the current state of affairs: types of cases arising within the custodial setting, how these cases are investigated and resolved, and the role (if any) of laboratory analyses. We next consider the question of unmet needs, both from the perspective of custodial personnel and on the basis of broader legal and social considerations. Finally, we attempt to assess the potential benefit of a directed forensic laboratory effort in the custodial setting. Apart from the consideration of whether access to traditional types of laboratory services could and should be increased, key issues are the identification of specific needs that might require directed effort or research, and the tentative identification of novel forensic science applications that might be possible within the correctional setting.

Approach

Investigative policies, as set out in various documents, were analyzed with respect to three correctional institutions and administrative and security personnel were interviewed. These institutions were both long and short-term, and included federal, state, and county jurisdictions. The institutions were selected so that a wide range of investigative needs and available forensic science services would be represented.

The types of cases, investigative methods, and laboratory services were explored through structured interviews which included the following questions:

> What types of criminal cases are encountered in your institution? How are these investigated, and what is the role of laboratory analyses in this investigation?
>
> How are the various types of cases resolved and what is the role of laboratory analyses in the trial or hearing process?
>
> Are you satisfied with your current level of forensic laboratory services?
>
> Is the scope and availability of the laboratory response sufficient to meet existing needs?
>
> Do you feel that your forensic laboratory allocates sufficient resources to custodial cases, or do you receive a low priority, compared with crime in the community?
>
> Does limitation of laboratory services affect decisions of whether to pursue investigation of an incident or to proceed with a lesser disciplinary charge?
>
> Is there a need for access to forensic laboratory services for minor incidents that might be of significance only within your institution?

Similar questions were put to a prosecutor with responsibilities for one of the larger jails in the country and also to lawyers and others with defense and advocacy experience. We also sought comment from prison policy pressure and litigation groups. These respondents helped us to arrive at (an admittedly broad) picture of current practices and concerns.

Description of the Current Situation

Types of Cases Encountered

Cases encountered in correctional institutions range from violent crime to infractions of administrative rules. Table 1 lists the major offenses of interest, in the approximate order of seriousness.

There is one major functional distinction among case types: those that will be investigated for possible prosecution in the criminal courts, and those that will be subject solely to internal investigation and resolution.

Outside investigation is usual in cases of homicide and suspicious death, and is common for rapes, assaults, the possession of large quantities of narcotics, and serious attacks on staff, in special instances (for example, those involving gang figures), charges such as extortion, possession of weapons, or possession of a means of escape would be criminally prosecuted and therefore externally investigated. Formal criminal prosecution naturally involves the possibility of additional prison time and thus full due-process rights.

The remaining offenses, including possession of small quantities of drugs, assaults of medium and minor gravity, and any incidents with insufficient evidence for formal prosecution, are investigated internally. Some cases are dropped because not even minimal evidence can be gathered. Others proceed to a resolution through an administrative hearing process. Although additional prison time cannot thus be added, the result can be practically equivalent, due to loss of accumulated "good time," "meritorious good time," eligibility for security downgrading (leading to community corrections), and the curtailment of parole chances. There may also be a loss of privileges, an increase in security and custody classification (with attendant restrictions), the imposition of periods of more punitive incarceration, and perhaps removal to a more remote or otherwise less

TABLE 1—*Principal custodial offenses, in the approximate order of seriousness.*[a]

Homicide
Rape
Assault on staff
Battery
Extortion (including staff and prisoners' relatives)
Gang and other collective criminal activity
Mutiny and riot
Manufacture and possession of contraband
Drugs
Weapons
Means of Escape
Currency
Cell burglary
Order infractions, for example
Insolence to staff
Out of place
Obstructive behavior

[a]Staff versions of and involvement in above are not included, since these are usually dealt with by civilian courts or civil-service tribunals.

favored institution. Rules for administrative hearings do not contain the full due-process safeguards of criminal prosecution, although they are subject to judicial review. There is a different standard of proof for a finding of guilt (preponderance of evidence), and there are different rules of evidence from those found in the criminal courts.

Investigative Effort Generally

The bulk of internal investigative effort within a correctional institution is devoted to the gathering of intelligence. The primary goal of efficient custodial management is to anticipate and prevent escapes, crimes, breaches of rules, and disturbances. Specific offenses are, of course, investigated, but (at least in a well-run institution) there is much general investigation, including monitoring of gang and other group activity, tracking networks for the distribution of contraband, urine screening to detect drug use, monitoring of mail, and the collation of information obtained during routine procedures such as body and cell searching. The application of forensic laboratory sciences to these functions will be considered subsequent to case-related investigations.

Case-Related Investigative Effort

Incidents are handled variously depending on the nature of the incident, the type of facility, and administrative and political factors. A flow chart of this process is given in Fig. 1.

The initial consideration is whether the case will be referred outside for possible criminal prosecution. If criminal prosecution is likely or desirable, then the prison authorities will normally secure the evidence or crime scene location and refer the case to the police having jurisdiction in the area.[4] Police or other investigative agents will then collect physical evidence, conduct an investigation, and refer the case to the prosecutor. Forensic laboratory services are used according to the regular practice of the police agency. The prosecutor will decide if charges are to be proffered, and the case takes its course in the criminal courts or is left to administrative resolution. Administrative proceedings within the institution proceed independently and will usually precede any external criminal adjudication.

In the absence of potential criminal prosecution, case investigations are internally conducted. The investigation is rapid and typically proceeds to a hearing within a few days. Confidential informants figure prominently in the investigations. Physical evidence may be collected, but its analysis is rare, excepting the use of drug identification kits designed for preliminary field identifications. Rape kits may also be used to verify claims regarding sexual assaults.

Relationships with Outside Investigative Bodies

The FBI has a mandate to investigate all crimes that occur in federal prisons,[5] a Special Agent being assigned to each institution for this purpose. All incidents occurring within the institution are dealt with by the agent and referred to the U.S. Attorney for a decision. Prison staff conduct their own investigation under the assumption that the FBI will be involved. In the case of major offenses, a crime scene will be secured by prison inves-

[4]Although an experienced prosecutor, who otherwise expressed satisfaction with the division of labor between forensic science laboratories, prosecutors, and the prison authorities, complained of a failure sometimes by prison staff properly and promptly to secure the scene of an incident and to preserve evidence. A greater emphasis on this duty would be helpful and staff training and supervision would be desirable, the prosecutor contended.

[5]Exceptions are where facilities have shared jurisdiction (rarely) and when the offense is attempted escape, in which case the U.S. Marshall's office has jurisdiction.

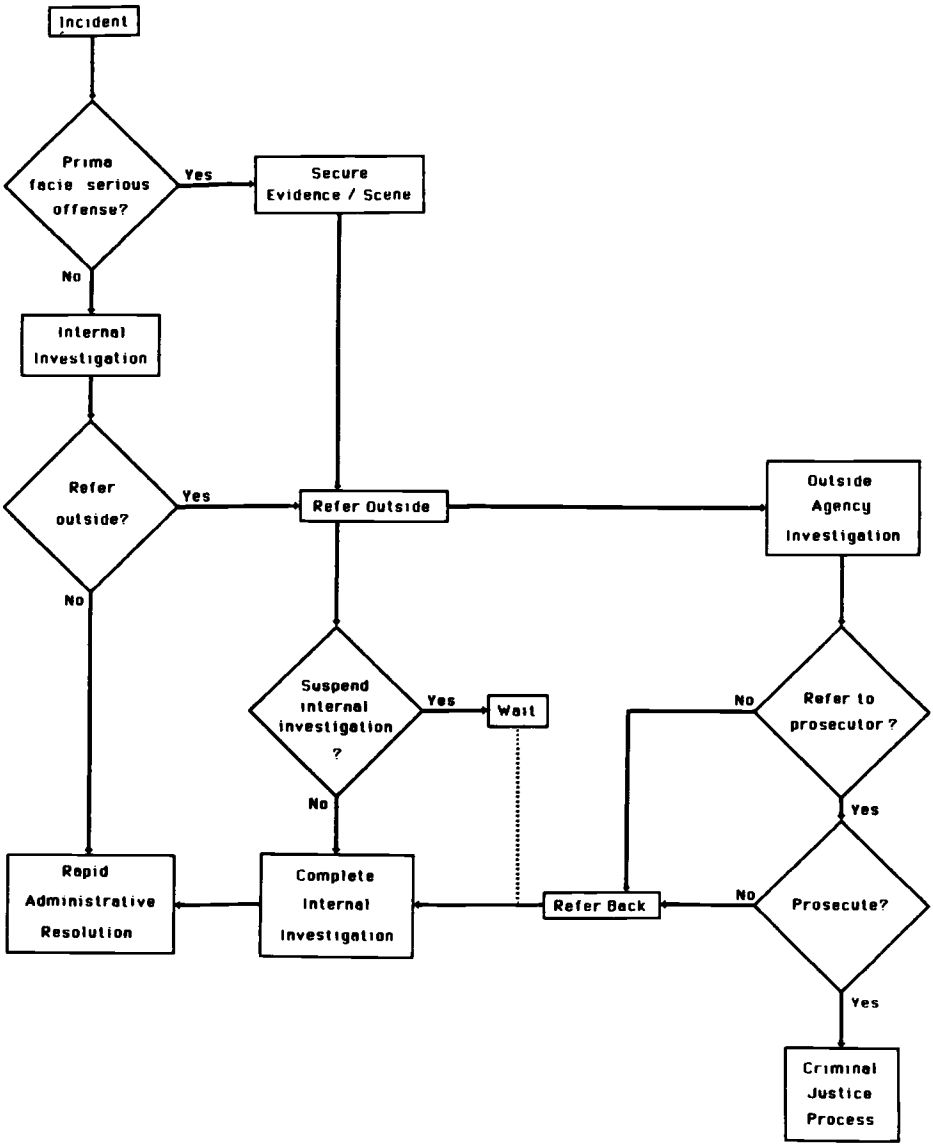

FIG. 1—*Flow chart for the handling of incidents in a custodial setting.*

tigators and the FBI will conduct the full scene examination. At the discretion of the special agent, physical evidence is submitted to the FBI laboratory in Washington, DC. In minor incidents, the internal (institutional) investigative report may well be accepted by the FBI as determinative, and the prosecutor would make a routine or policy-based decision not to prosecute. Thus, in the federal case, all cases are referred, at least procedurally, to the prosecutor for an official (even if routine) decision.

Internal disciplinary hearings proceed independently and are adjudicated by administrative action within 24 to 48 h of the incident. This rapid resolution precludes the introduction of forensic laboratory findings for internal investigations or adjudications.

In the state-level long-term facility that we considered, there is an assigned state police detective who investigates cases involving homicide, kidnap, battery, assault, and escape. The state police laboratory is used in these instances, at the discretion of the police investigator and the state prosecutor. As with the federal facility, there is also an internal administrative action which proceeds rapidly and without the benefit of the analysis of physical evidence. An investigative officer writes a report which is submitted to a screening officer, who refers the case either for a formal board hearing or for disciplinary action within the reporting unit.

In practice, crimes of violence within this long-term facility were almost certainly underreported, since if an adjudication resulted, either by the prison board or by the criminal courts, a victim's complaint would provoke almost certain retaliation. Only in exceptional cases, therefore, would a state police investigation be conducted: victims would simply not report incidents, and would offer excuses and explanations for injuries which could not be concealed.

In the county jail any prima facie felony would be investigated externally by the major crimes unit of the police. Lesser offenses were handled administratively. There was, however, a strong desire among the jail investigators to avoid external police investigations whenever possible. These investigations, it was claimed, often prolonged an inmate's jail stay, since many offenders are otherwise due for transfer to state facilities. Formal prosecution or investigation thus directly contributes to increased inmate population and causes retention of inmates with disciplinary problems. Officials were concerned that inmates committing or reporting offenses might merely be trying to postpone their transfer to the state institution, which is geographically and socially less convenient than the jail.

Internal investigations in the county facility were conducted, completed, and adjudicated by hearing within 72 h of the incident. There was no reliance on forensic laboratory examinations, apart from the field drug-testing kits mentioned above.

Are There Unmet Needs?

The Forensic Scientist's Perspective

Laboratory analysis is surprisingly underutilized by jail and prison investigators. Two types of service might appropriately be developed: (1) routine laboratory support for lesser institutional offenses and to support the collection of intelligence, and (2) novel laboratory applications, based on the restricted population size and the closed set of suspects.

Making Routine Laboratory Services Available—With the exception of field-testing kits for preliminary drug identifications and sexual assault verification, forensic science methods are used only when outside agencies investigate specific offenses. There are no services for minor offenses or as an adjunct to routine internal intelligence gathering. (In the federal facility we examined, laboratory analyses were also routinely used for the drug screening of inmate urine samples.)

Field-test kits for drugs, although offering good presumptive identifications, do not provide specific identification. A laboratory could provide rapid, absolute identifications of contraband drugs and very likely determine which user-quantities came from a single supplier-source. This would significantly enhance intelligence collecting capabilities and investigative precision.

Even basic fingerprinting services offer a compelling argument for more readily available and easily used laboratory services. Fingerprints on contraband property, abandoned or hidden in a common area, or in a shared cell or dormitory, are of obvious investigative value. Examples of more sophisticated services are the evaluation of possible sources for

materials in homemade weapons and the critical examination of incoming mail. We examine below the issue of whether this increase in services points to an internally located laboratory, or to easier access to external services.

Novel Forensic Laboratory Applications—Two features of a prison population make it suitable for novel forensic science applications: its size and its well-defined, closed set of individuals and objects.[6]

The small size of a prison population means that there will be enhanced significance to many evidential findings. Suppose we find a piece of evidence (such as a bloodtype) that would associate perhaps 1 in 20 individuals with an incident. Location of such a feature within a large city population would have much less inherent value than finding it within a smaller population, be it a prison, small town, or whatever. The restricted, recorded, and accountable mobility of prisoners (and staff) within a prison underscores the potentialities of this finite property.

Furthermore, the closed set of individuals allows for the possibility that all inmates can be characterized with respect to various traits, such that the finding of that feature or trait would definitively prove the involvement of that individual. A finding of a blond hair, although of little significance in an open population, carries great weight if there is only one blond person in a closed set. This closed set advantage applies equally well to other types of physical evidence, such as shoes, clothing, paper items, writing implements, containers, glass, drugs—almost anything where there is a reasonably limited set of objects in the prison.

The Prison Investigator's Perspective

Investigators at all three institutions expressed complete satisfaction with their free-world support agencies. Although forensic services were almost never used, apart from an outside investigation, investigators were confident that, if an internal investigation were of sufficient concern to prison officials, forensic laboratory services would be made available.

In response to the suggestions outlined in the section on the forensic scientist's perspective above, prison investigators and administrators saw no real value in such services. A number of arguments were offered:

- the field-testing kit results for drug identification are accepted at disciplinary hearings and have met external judicial challenges[7];
- the rapid administrative resolution of offenses (within a few days) prevents a laboratory analysis, even in favorable circumstances;
- many cases are not sufficiently serious to merit the additional work;

[6]We are aware that these observations apply with greater weight and appropriateness to prisons than to jails. The latter have mainly short-stay prisoners and a very considerable turnover. However, access to the different parts of a jail or prison is limited, controlled by security barriers, and generally logged. Much depends, in these circumstances, on the speed with which an investigation moves. Finally, it should be noted that some persons, especially those whose criminality or putative criminality is greater, spend prolonged periods in jail, either serving the longer misdemeanor sentences, or awaiting trial or, having been sentenced, awaiting trial on fresh charges. Some may also be retained in jail waiting to testify against others. With these qualifications and observations in mind, therefore, we refer in this section of the article to jail as well as prison populations.

[7]However, we note that field-test kits have been challenged in the courts as has the chain of custody of samples. In *Kane v. Fair* [2], an Emit® test was found to be unreliable and could not be introduced into a disciplinary hearing unless corroborated by an independent test. In *Wykoff v. Resig* [3], both Emit and the chain of custody were challenged. True randomness was enjoined in urine-testing in *Storms v. Coughlin* [4]. But in *Peranzo v. Coughlin* [5], the court declined to grant a preliminary injunction on an Emit urine test, and in *Jensen v. Lick* [6], the court upheld validity of the Emit test.

- the investigators already know who is doing what through intelligence;
- an internal laboratory would awkwardly overlap with other laboratories, particularly when investigations developed or otherwise became sufficiently focused to involve the police; and
- prison or jail laboratory activities would create new legal issues and attract external criticism.

Possible counterarguments are implicit in much of what we have observed above, but it might be helpful to set them out here in itemized form:

- field-test kits incompletely characterize samples and cannot provide sample comparisons which would be of investigative value, such as determining the source of raw materials, or the tracking of sample distribution;
- nothing in laboratory techniques should impede a rapid administrative resolution of offenses; the problem is rapidity of access to laboratory services and results;
- the seriousness of a case and the justification of the extra work involved in an investigation are subjective judgments, and it is at least plausible to argue that these judgments are being made in the context of unduly limited expectations of order and security;
- intelligence systems need supplementation (*a*) in order to verify what may be intentionally misleading information, (*b*) to allow appropriate disciplinary action to be taken without compromising sources, and (*c*) to enhance the climate of order and control, and to provide a deterrent;
- there is no necessary reason why an internal laboratory would cause conflicts with an external laboratory. Indeed, the handling and preservation of specimens would very likely be improved should internal laboratory services be provided; and
- a laboratory adhering to professional procedures and accepted standards should meet all legal challenges. Further, the presence of such staff in an institution should provide some educational stimulus to improve the collection and handling of evidence generally.

The Social Perspective

Two sets of issues arise, given the underutilization of forensic science methods in the custodial setting:

1. *The issue of fairness to an accused.* Is there a right to the complete, rigorous scientific evaluation of physical evidence? Does such a right exist for administrative processes as well as for criminal prosecutions?
2. *The issue of fairness to inmates and to victims.* Is there a duty to provide a safe prison environment and thereby a duty to pursue scientific physical evidence examinations where these might help to identify offenders?

Two cases will serve to illustrate how forensic science services become involved in these issues.

Case 1—An inmate is found to have in his possession a white powder giving a positive preliminary field test for cocaine. Based on this finding, the inmate loses one year of "good time," effectively incurring the equivalent of an 18-month to 2-year sentence imposed by a court. (In most jurisdictions there is a one third or one half allowance of good time.)

The inmate might argue that the substance is, in fact, lidocaine, or that the substance, whatever it is, was planted on him by the guards. Either of these possibilities could be addressed by a laboratory analysis. Is there a duty to evaluate these possibilities?

Case 2—An inmate accuses another of a battery in which the accuser's blood was shed. The accused inmate is found to have some blood spots on his clothing which he attributes to his own nosebleed. Information might indicate either that an attack occurred or that it did not. Based on the intelligence, the case is either dismissed or is adjudicated against the accused.

Is there an obligation to conduct the simple blood testing that would either substantiate the victim's or the accused's story?

Discussion

Utilization of Forensic Sciences in General

In criminal prosecutions, scientific evidence in itself significantly affects neither prosecutorial decisions to charge nor rates of conviction. Only at the formal trial phase does scientific evidence have a measurable effect [*7*]. It may be argued that the omission of forensic sciences therefore has no adverse impact on less formal adjudicative processes. This argument is specious.

First, forensic sciences operate "behind the scenes" in the investigative stages of a case, helping to define a suspect pool and to screen specific suspects. Thus, they contribute to the quality and veracity of the investigative process. In fact, at the police investigations level, rates of case clearance have been found to be three times greater in cases where scientific evidence has been examined [*8*].

Second, the scientific assessment of evidence guards against its misapplication in judicial proceedings. The goal is not for scientific evidence to be highly persuasive and influential in the resolution of a case, but rather to use and refine available information and to avoid either underrating or overrating its significance.

Science, by definition, is involved with testing hypotheses. When an investigator develops a suspect, there is a hypothesis that the individual committed the offense. Scientific evidence has the potential either to support in the hypothesis-forming stage (contributing to a more reasonable supposition) or to test the hypothesis, thus proving, dismissing, or modifying it. The decision whether or not to use forensic science services must be superimposed on the wish to investigate in the first place, which is in turn driven by institutional priorities, efficiency of operations, and the amount of formality desired. It may be administratively desirable to ignore some incidents, or to handle them indirectly, without full investigation before hearings.

The initial decision to refer a case outside the prison profoundly affects the investigative scope, the nature of the case resolution, and the amount of public attention that will be generated. The criteria for making this decision are therefore of some interest, particularly where the decision is discretionary and not subject to review. In the federal prison, all incidents were subject to outside investigation and to prosecutorial review. At the state institution, certain categories of offenses were subject to outside referral, but fear of reprisal significantly reduced case reports. In the county facility, there appeared to be considerable discretion in making an outside referral, institutional pressures that discouraged referral, and no mechanism for review of the decision. A prosecutor's decision is widely understood to play a central part in the criminal justice process, and the factors governing the exercise of this discretion are generally appreciated. Delegation of such decisions to prison investigators or administrators must raise issues of public concern where serious criminality or weighty liberty issues are involved.

The Question of an Accused's and a Victim's Rights

In spite of due-process arguments for its use, the omission of scientific analysis of evidence has not surfaced as a significant legal issue in the courts at large. The question may be discussed in terms of a number of subsidiary issues.

1. Is there a duty to collect potentially informative physical evidence from a crime scene?
2. Is there a duty to analyze any potentially informative physical evidence that was collected?
3. Is there a duty to preserve evidence that is collected or analyzed?
4. Does the accused have a right to analyze or reanalyze physical evidence?

Resolution of these issues has been left to the trial level, absent flagrant circumstances. It is reasoned that because the prosecutor has the burden of proof, the degree to which the evidence is analyzed must remain subject to his or her judgment. Failure to analyze key items of evidence, or failure to present the results through direct examination, may adversely affect the prosecutor's case. This, along with prosecutorial ethics, acts to encourage the utilization of forensic laboratory analysis.

A legal duty to collect evidence has not been recognized in appellate court, nor has a duty to analyze evidence once it is collected. There is a duty, however, to preserve potentially exculpatory evidence once collected and to preserve any evidence that has received laboratory examination, if these examination results are to be used in court.[8] The legal basis for these preservation rules rests with the right to confront witnesses, and thus there is an implied right to reexamine scientific evidence.

In a custodial setting, the major related issue is the failure to use laboratory services. Inasmuch as there is no such duty recognized in the criminal justice process at large, we cannot expect it to emerge institutionally. Furthermore, the right to confront witnesses itself is explicitly reserved in the disciplinary hearing process.[9] Without this right, there is no basis to require preservation of the evidence, even if it is analyzed in some cursory manner.

Prison is to some extent a separate society with its own domestic legal system. Due process, having already been extended to the accused in society at large, is subject to redefinition. Features of this custodial system of justice include the following:

(*a*) rapid resolution of incidents, impeding careful and extensive preparation of cases either by prison investigators or the accused;

(*b*) a lower standard of proof, in which corroborated suspicions are sufficient for disciplinary action;

(*c*) more invasive investigative functions, allowing an overwhelming dependence on informants for investigative information; and

(*d*) the redefinition of offenses. There are necessarily prison-specific rules of conduct and new offenses that are essentially status-based, but conventional offenses may also be redefined. As an example, there is no reason why for disciplinary purposes that there

[8]Loss of evidence through careless police conduct has repeatedly been forbidden [*9–11*]. In *People v. Gomez* [*12*], the court ruled that the state has a due-process obligation not to destroy potentially exculpatory evidence. However, in *Arizona v. Youngblood* [*13*], the Supreme Court ruled that failure to preserve evidence did not violate a defendant's due-process rights unless the defendant can show bad faith.

[9]However, it should be noted that the right to confront witnesses is not unlimited. In *Wolff v. McDonnell* [*14*], it was held (with three dissents) that an inmate in disciplinary proceedings should be allowed to call witnesses and present documentary evidence since this would not be unduly hazardous to institutional safety or correctional goals, "but that due process does not require confrontation and cross-examinations procedures" (936).

cannot be an offense of "possession of a white powder giving a positive field test for cocaine."

Is there a duty to provide a safe custodial setting, since by definition the individual is forced to remain in the circumstances which are provided for him?

Obviously, there may be recourse in the external court system when there is a serious breach of administrative justice. The issue here is whether there is an obligation that mandates a particular method of investigation (taking advantage of scientific evidence). Examining the level of overall justice achieved, rather than considering specific cases, it may be argued that the present extensive reliance upon a system of intelligence is quite effective for investigation of the lesser offenses and that outside investigations by police agencies provide the services appropriate for major crimes.

Policy Options

The first choice that might be made is to leave arrangements as they are, structuring decision-making according to available resources and perceived needs. At the very least, however, this choice requires that some of the major due-process and law-enforcement questions that we have raised above should be addressed. As numerous academic and professional observers have suggested, and courts confirmed, there is continuing cause for concern in the level of disorder, indiscipline, and criminality in many American jails and prisons. The interests of the community, prison staff and prisoners are violated by this state of affairs, and it is legitimate to require all practical and possible steps be taken to effect improvements.

Clearly, a number of remedies must be sought for the various ills of the prison world, and we recognize that an enhanced contribution from forensic sciences is but one of these. If it is decided that forensic sciences should play a greater part in the order and administration of our prisons and jails, further decisions are required. Should improved forensic services be provided through greater access to outside laboratories, by the establishment of an internal laboratory, or by both? We shall discuss these options in turn.

Improved Access to Outside Laboratories—We were informed by the senior prosecutor whom we interviewed that there already exists an excessive demand for forensic science services, that requests outpace the resources available, and that sometimes long delays consequently result. Priorities in access are determined by court dates and requirements. The prosecutor not unreasonably concluded from this that existing resources needed supplementation. It would follow that easier and improved access for prison cases would to some extent nullify the provision of new resources. Despite the assurance that we were offered, that only evidentiary considerations determine whether a free world or prison case should proceed, we are persuaded, *certeris paribus*, that the free-world case will be pursued rather than the prison case, should choices have to be made. We conclude, therefore, that extra resources are unlikely to be made available to permit increased prison access to forensic science services.

The Provision of Prison-Based Laboratory Services—Some of the same reservations apply to a second option—the provision of laboratory services in the prison. As has been noted above, none of our prison interviewees was in favor of such a service, but, since all were satisfied with the existing level of services and methods of proceeding, this was hardly surprising. The prosecutor buttressed this opinion with several other observations. Clearly, he wished whatever resources were available to go to the improvement of outside laboratory services, rather than to the establishment of new laboratories in prisons. He also objected to the concept of prison-based forensic laboratories. He suggested that the smaller the laboratory, the lower the quality of work done. Against this possibly inferior

service would need to be set the considerable necessary investment in equipment and trained and civil-service tenured staff. He pointed out, moreover, that continuing education would be required.

A second objection to the prison-based laboratory concerned the status of such staff in trial proceedings. There is already a willingness on the part of some defendants to impugn the integrity of state laboratory services. Were services to be located in prisons, performed by staff on the institutional payroll, such challenges might be increased.

Of course, in this discussion the term "laboratory" is not defined. Were one to envisage a laboratory providing a full range of forensic science services, then the argument for prison-based laboratories would be extremely weak. Likewise, if one were to envisage services which consisted of little more than the issue of field-testing kits, with some other substance identification and comparison, some of the criticisms of small scale would apply. What training would be appropriate for such personnel, who would provide the supervision, and what educational and career-advancement opportunities would be available? These are critical questions with a bearing on the recruitment, retention, efficiency, and integrity of laboratory staff.

In the light of these questions and objections, we conclude that a system of prison-based laboratories is unlikely to prove acceptable to the various parties, and that it may fall unhappily between the stools of costliness and inefficiency. We therefore set out a third approach to the issue.

Improved Access Plus Limited-Service Facilities—We consider that there may be merit in an expansion of prison forensic services by means of both improved access to external laboratories and limited-service internal laboratories. We recognize that specific decisions on this option would depend on the balance of needs and resources.

We cannot quantify either the present needs-resources equation for forensic services, nor the potential increased demand for such services were they more fully applied in prisons and jails. Nevertheless, we feel reasonably confident in stating a public interest in improved order and control in custodial institutions, and in a higher quality in judicial and quasi-judicial proceedings in connection with prison offenses. For the reasons given above, neither the provision of externally based services, nor a reliance upon internally based services, is likely to win acceptance or to meet needs in an efficient manner. We look, therefore, to a combination of these two approaches, on the basis of the following principles.

(1) Prison-based laboratory services offer limited, but some novel, potential for application and development. The existence of a closed population and of limited mobility in the institution greatly expand the potential of many routine and simple laboratory techniques. Both the detection and repression of unlawfulness and the protection of innocent persons suggest that advantage should be taken of these potentialities.

(2) Laboratory services should be rendered by career laboratory technicians under the supervision of qualified scientists. The career and educational requirements of staff can only thus be met, as can their integrity be protected.

(3) In prisons of a sufficient size, or in prison complexes of a sufficient size, forensic laboratories might be established. These laboratories would have limited functions[10] and

[10]The bulk of investigatory analyses could be covered with a laboratory having capabilities in analytical microscopy and in comparative pattern analysis. The basic laboratory facility would need to include a fume hood, sink, flammable-liquid cabinet, photographic darkroom, and evidence storage room. Necessary equipment would include a refrigerator, polarizing light microscope, comparison microscope, 35-mm camera, and copy camera. Supplies would consist of reagents, film, standard materials, casting and printing media, glassware, and microscopical supplies, along with basic office supplies and evidence packaging materials. Examination of the following types of evidence could be performed efficiently by one well-trained journeyman analyst: drug identification, general substance/particle identification, fingerprint processing and comparison, toolmark analyses, shoeprint analyses and comparison, and collection, preliminary examination, and preservation of biological evidence.

would be under the control of the state or county forensic services, rather than the prison or jail authorities. Security and investigatory staff of the prisons and jails would stand in a client relationship to these laboratories, but there would be an obligation, in adjudications and disciplinary proceedings, to release to accused persons any exculpatory evidence.

(4) Testing and other procedures which might be beyond the competence of the laboratory technicians, or their equipment, would be passed to the appropriate outside laboratory for processing. Processing by the internal laboratory staff, including selection of samples and defining relevant issues, would increase the efficiency with which such samples could be handled by the outside laboratory staff.

(5) Prison-based laboratories would be administered as satellites of the parent laboratory, and it would be permissable (and expected) for non-prison work to be sent to them for processing where the capacity was available for such work.

(6) Staff would be rotated through these satellite laboratories at regular intervals in order to maintain morale, an element of distinction, and distance from the institution, and to preserve career prospects. The satellite laboratories should not be allowed to become dead ends or places of exile.

(7) In addition to laboratory duties, staff at satellite units should regularly undertake the instruction of prison and jail security and investigatory staff in techniques of identifying, preserving, and transmitting evidence. Instruction should also include a consideration of the range of forensic potentialities in intelligence collection and investigation.

Since the above proposal is a departure from established practice, we suggest that it be initiated in the first instance, on a trial basis. Location criteria should include the size of institution to be served (or the complex of institutions), the security level of the institutions, and related security and investigatory needs. Performance should be monitored by a small committee representing the prosecutor, public defender, correctional authority, and laboratory services. Results of the initial evaluation should be published.

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