

Critics worry 'junk science' to reign as forensic panel ends

April 14 2017, by Sadie Gurman



In this March 27, 2017 file photo, Attorney General Jeff Sessions speaks at the White House in Washington. Defense attorneys say they will step up their challenges to certain forensic practices now that the Justice Department has disbanded an independent commission that was studying how to improve their reliability. (AP Photo/Pablo Martinez Monsivais, File)

Defense attorneys say they will step up their challenges to certain forensic practices now that the Justice Department has disbanded an independent commission that was studying how to improve their reliability.

But the absence of research or guidance from the National Commission on Forensic Science could make the task of challenging questionable scientific evidence in court even harder, according to experts who worry that "garbage science" will continue to cloud court cases across the U.S.

"Even if defense attorneys jump up and down and complain about it, they won't have the power of a national commission to back them up," said Erin Murphy, a professor at New York University School of Law. "The status quo right now is to admit it all. The status quo is where things are likely to stay."

Attorney General Jeff Sessions announced this week the Justice Department would not renew the commission, a panel of researchers, scientists, judges and attorneys that had been working more than three years to raise forensic science standards. Research had increasingly shown that techniques such as comparisons of hair found at crime scenes, handwriting analyses, bite-mark evidence and certain ballistics tests are scientifically flawed.

Instead, the Justice Department will build on the commission's work to develop a new strategy on improvements to forensic methods, with the help of an internal committee and a still unnamed forensic adviser, Sessions said.

The announcement drew alarm from some in the legal community who saw the commission as the best chance for an independent look at questionable techniques that have long been used in American courtrooms. They fear its end marks a rollback of recent reform efforts.

Justice Department officials say that concern is premature. They stressed they are still coming up with a plan to advance forensic science and bolster the work of U.S. crime labs, and they are seeking public input. The department also plans to study the needs of overloaded crime labs. The in-house committee will include prosecutors, crime lab representatives, law enforcement officials and grant-makers.

"Nothing is off the table," said Associate Deputy Attorney General Andrew Goldsmith, who spoke this week at the final meeting of the commission. It was due to expire later this month.

Prosecutors praised the move, saying the 32-member commission had often ignored their concerns and had grown unwieldy. A Justice Department office devoted to forensic science, made up mostly of scientists, rather than policymakers and lawyers, would be a better approach, said Bill Fitzpatrick, the district attorney in Syracuse, New York, and chairman of the board of the National District Attorneys Association.

But the commission's strength was its array of voices, said one member, Jed S. Rakoff, a federal judge in New York. The group had made dozens of recommendations to the attorney general since it formed in 2013, and many were adopted, including standards for crime lab accreditation and the ways prosecutors and defense attorneys should share evidence they plan to present in cases.

The panel also had been focusing on finding best practices for the growing arena of digital forensics—evidence collected from electronics like computers and cell phones, Rakoff said.

The creation of the commission stemmed from a series of crime lab failures and a 2009 report by the National Academy of Sciences revealing forensic evidence like bite marks and hair samples that often

helped convict defendants was based on shoddy science. It called for far-ranging improvements. A wave of exonerations followed and ultimately the formation of the commission.

The FBI in 2015 revealed that experts had overstated the strength of evidence involving microscopic hair analysis in cases dating back decades, and the Justice Department promised a review of laboratory protocols and procedures. The Justice Department is reconsidering that review while it devises its new forensics strategy.

The scrutiny of contested practices has led to some change in U.S. courtrooms, but more work is needed, Murphy said. Judges have shown more willingness to limit certain testimony, and forensic experts in Texas have called for a ban on bite-mark evidence, which the California Supreme Court also called into question.

Barry Pollack, president of the National Association of Criminal Defense Lawyers, offered a different prediction: Because it had been trying to find a balance for the use of certain forensic methods, the commission's end might give defense attorneys a better chance of prevailing with judges who are skeptical of the old-fashioned techniques.

"We would have gotten to the point where there was scientific support for some of these disciplines, and that would have allowed their admission," he said. "By preventing that from happening, these disciplines remain open to attack."

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Citation: Critics worry 'junk science' to reign as forensic panel ends (2017, April 14) retrieved 20 September 2024 from <https://phys.org/news/2017-04-critics-junk-science-forensic-panel.html>

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