

The Property Times

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Bullet Discharges in Downtown Court-house Evidence Room

An accidental bullet discharge Friday morning in the evidence room in the basement at the Harris County Criminal Justice Center has injured a county deputy.

The incident occurred about 11:20 a.m. at 1201 Franklin.

Authorities said a deputy was handling an evidence bag when she dropped it on the floor. A bullet in the bag was somehow discharged, injuring the deputy.

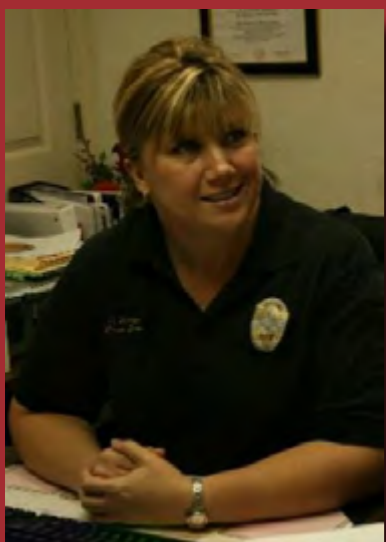
Her injury is not serious, according to the Harris County Sheriff's Office.

PLEASE be careful when you are handling weapons and ammunition as evidence. It only takes one mistake for a tragedy to happen!



Allen PD received a \$500 grant at the 2013 conference to purchase a storage cabinet for flammable items in their property room.

Deputy Connie Jordan named Property Room Person of the Year



Deputy Connie Jordan of the Jasper County Sheriff's Department has been named the Property Room Person of the Year by the Texas Association of Property & Evidence Inventory Technicians.

The award came during their Annual Conference in Austin on Wednesday. Jordan worked several years at the Jasper Police Department, and among those in attendance at the event to see her win the award was Jasper Police Captain Gerald Hall and Lieutenant Mike Poindexter, along with former Chief Harlan Alexander, who Jordan worked for briefly when he recently returned to lead the department in an interim capacity. Also at the conference is her current boss, Sheriff Mitchel Newman.

On her Facebook page, Deputy Jordan said "I was so honored that all of them came for me all the way to Austin! Feeling on top of the world right now!"

(ORIGINALLY POSTED BY KJAS NEWS)

Welcome to the New Year from President Szendrey!

Welcome to a new year! I hope everyone had a good holiday season. It seems like just a short amount of time since we had our 2013 conference but it's been 3 months and we're into the new year. If you've made resolutions I hope you're still keeping them and keep at them until you are successful.

One thing I neglected to mention during the last conference was the fact that I changed employers. This happened two weeks before the conference so I hadn't even had a chance to get my feet wet at the new job. After 18 years with the Williamson County Sheriff's Office, an opportunity to work with the Georgetown Police Department became available. I was fortunate enough to be hired and am now well into the daily routine of my new work place. I'm loving the challenges and the new experiences that come with my new employer and I'm still able to do the evidence function, which is a job I truly love.

At first I was a little anxious about starting a new job with all the unknowns that come with it. But it's working out and I'm finding out my anxieties were unfounded. We can all benefit from facing, and overcoming, new challenges. Don't look at them as an insurmountable obstacle, but rather as a chance to grow and learn. Often times with our job duties we have new challenges come our way. Take time to analyze the situation, make a plan of action, and tackle the job at hand. That's how we grow and learn and mature in our careers.

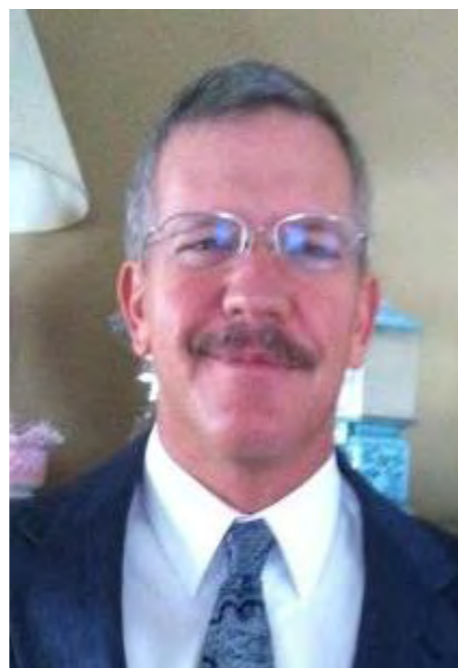
For all of you reading this that attended the 2013 conference I'd like to thank you for attending. Seeing all of you in the classes and during the social night really means a lot to your Board Members and Officers. We work throughout the year between conferences to make the conference topics relevant to your jobs and a value for you and your agencies. The ideas and feedback we get from you help us to continually improve our conferences so that they stay fresh and educational for you. Please feel free to contact any

Board Member or Officer if you have any suggestions or ideas. We really do value your input.

I'd also like to remind you to keep in mind that we are accepting applications for Technician of the Year, Grant Fund, and Scholarships. If you, or someone you know, want to apply for a grant or a scholarship the applications can be found on the TAPEIT website (www.tapeit.net). You can also find the application for Technician of the Year on the website. Print it out; get it to your supervisor. Many supervisors don't even know the Technician of the Year award exists and the only way they'll have to find out is if you bring the application to their attention.

In closing, I look forward to serving you, the members, as the President of your association. I have the support, wisdom, and guidance of the wonderful people who are your Board of Directors and Officers. Without their hard work all year long all of the accomplishments made wouldn't happen. And I know I speak for all of the Board when I say that we don't do what we do for ourselves, but do it for you, our members. After all, the members are the most important part of TAPEIT. Stay Safe!

Paul Szendrey (paulszendrey@gmail.com)



EFF to Texas High Court: A Cell Phone Isn't a Pair of Pants

"Is a cell phone really a pair of trousers?"

That's the question posed in a Texas case dealing with whether the police need a warrant to search the contents of a cell phone sitting in a jail's property room. In a new amicus brief we filed in the Texas Court of Criminal Appeals, we explain police need a warrant before searching an arrested person's cell phone.

Teenager Anthony Granville was arrested at his high school for a misdemeanor and booked into the county jail. All of his belongings, including his cell phone, were taken from him and placed in the jail's property room while he was locked up. Three hours after his arrest, a different officer than the one who arrested Granville at the high school went into the property room and, without a search warrant, looked through Granville's phone in search of evidence connected to another, unrelated misdemeanor felony.

The trial court suppressed the evidence taken from the phone, finding the officer had plenty of time and opportunity to obtain a search warrant and no exigent circumstance justified the search. The state appealed to the Texas Court of Appeals, arguing that Granville had no expectation of privacy in the contents of his cell phone while it was in the jailhouse, noting that looking through the phone was no different than looking at a person's clothes when they are booked into jail. The appellate court disagreed with the government's analogy, finding the amount of information stored on mobile devices make a cell phone search far more invasive than a search of clothing. Now the case is in front of the Texas Court of Criminal Appeals and we've

filed an amicus brief along with EFF-Austin, the Texas Civil Rights Project and the ACLU of Texas urging the high court to affirm the decision of the two courts before it that found the government's warrantless search violated the Fourth Amendment.

In our amicus brief we explain the government had no excuse for not obtaining a warrant before searching Granville's phone. A person doesn't surrender their expectation of privacy in the contents of their phone once the phone is in the hands of jail officials. Plus none of the exceptions to the search warrant requirement applied. This wasn't a search "incident to arrest" since it took place hours after Granville was arrested, when the phone was out of his control. And it wasn't an "inventory search" because once the phone itself was inventoried and secured by the police, there was no need to inventory the data on the phone. Plus, a inventory search can't be used as a pretext for a clearly investigatory search, which this certainly was.

Trying to pigeonhole the search of a cell phone into legal precedent addressing something quite different only highlights the need to have the law account for technological changes. As Professor Orin Kerr observed recently, "thanks to changing technology and its widespread adoption, searching a person meant one thing in 1973 and means something quite different today." Courts are slowly recognizing this. In *United States v. Cotterman*, the Ninth Circuit Court of Appeals recently ruled that given the amount of information stored on electronic devices, border agents must have a reasonable suspicion of criminal activity before engaging in a "forensic

examination" of an electronic device. Part of the court's justification was that although the amount of items a person can carry in physical luggage is necessarily limited, the same isn't true with electronic devices. A broad electronic search policy would be the equivalent of searching luggage for "not only what the bag contained on the current trip, but everything it had ever carried."

The appellate court's obvious conclusion that "a cell phone is not a pair of pants" follows this correct line of thinking and makes clear that our privacy rights don't become eviscerated simply because invasive searches not contemplated 30 years ago can now happen with just a few taps on a screen.

Special thanks to Amy Eikel of King & Spalding LLP in Houston, Texas for writing our brief.

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"Hold yourself responsible for a higher standard than anybody expects of you. Never excuse yourself."
- Henry Ward Beecher

Where's Your Evidence?

For more than a decade, lawyers for death row inmate Hank Skinner fought prosecutors – in Gray County and the attorney general's office – for the right to DNA-test certain items of evidence. Skinner was convicted and sentenced to die for the 1993 murder of his girlfriend Twila Busby and her two grown sons in the home they shared in the Panhandle town of Pampa. The crime scene was bloody – Busby was bludgeoned, her sons repeatedly stabbed – and while some DNA tests have been performed, there was plenty of evidence that hadn't been tested, including a sweat-and blood-stained windbreaker. The jacket is crucial, attorney Rob Owen has argued; found next to Busby's body, the tan snap-front jacket resembled one regularly worn by Busby's now-deceased uncle Robert Donnell, who the defense claims was obsessed with Busby and may have been her real killer. In short, testing the jacket might help prove Skinner's innocence – or confirm his guilt.

On June 1, 2012, the state finally dropped its opposition to the testing. Just two weeks later, Owen was again frustrated when the AG's Office informed him that the windbreaker was missing. "According to the state, every other piece of evidence in this case has been preserved," he said at the time. "It is difficult to understand how the state has managed to maintain custody of items as small as fingernail clippings, while apparently losing something as large as a man's windbreaker."

No one seems to know when or how the jacket went missing. The Pampa Police Department, which investigated the murders, originally held all of the evidence related to the case. When the time came for Skinner to be tried, the evidence was handed over to Gray County. Some time after Skinner was tried, the jacket simply disappeared – and no one knows where it went, said Gary Noblett, a 41-year veteran of the Pampa PD and custodian of its evidence and property storage. Over the years, he said, a number of law enforcement types have called looking for it – including officials with the AG's Office. "As far as I know of,

no one's ever been able to find that thing," he said. Skinner remains on death row as DNA testing on other items of evidence continues.

Skinner's case is not unusual. Unfortunately, missing evidence is "way more common than you'd think," says evidence expert John Vasquez. Vasquez worked in property and evidence management for 25 years, first for the military and then for the Fort Worth and Wichita Falls PDs, before starting his own evidence-control consulting business. More often than not, the evidence hasn't actually been removed from a law enforcement storage facility – though scandals involving stolen evidence are unnervingly common, as officials with the Houston PD can readily affirm. Instead, says Vasquez, missing evidence is generally misplaced evidence – logged into one area of a storage facility and then moved without anyone noting the new location, or overlooked when a department's evidence-tracking system is upgraded.

That is, perhaps, the good news – though having something and not knowing where it is, or not being able to find it, is hardly less damaging than discovering that an item has been stolen or destroyed outright.

Indeed, an investigation by the Chronicle into the state of criminal evidence storage and retention in Texas reflects that while state laws firmly mandate the preservation and maintenance of evidence that may contain biological material, there is little consistency in how these laws are actually carried out, including wide disparities in how evidence is packaged and maintained. Legislation enacted in 2011 extended by decades the length of time that items of evidence that may contain DNA must be stored, and directed a group of stakeholders to come up with guidelines and best practices for the handling and storage of that evidence. However, many law enforcement officials see the legislation as merely a good first step, and moreover, an unfunded mandate.

Property and evidence technicians and

managers are often poorly paid and receive very little training, if any, on how to do their jobs, says Vasquez. That's a combination that can quickly lead to scandal for a police department working within a criminal justice system that increasingly relies on science to make evidence meaningful.

As forensic science evolves and DNA testing becomes more precise, the amount of material being collected has also increased, thrusting the maintenance of evidence – once considered the "red-headed stepchild of law enforcement," says Vasquez – into the legal spotlight, and expanding the need for skilled inventory management. "We are somewhat overrun by stuff," says Belton Police Chief Gene Ellis, a representative of the Texas Police Chiefs Association who was among a group of stakeholders involved last year in the creation of best practices for evidence preservation in Texas. DNA testing "has enhanced so that we're able to process things and come up with DNA evidence where we couldn't before."

Without sufficient understanding of the critical role that the proper preservation of evidence now plays – not only in convicting the guilty, but also in freeing the innocent – the system is in serious trouble, officials warn. "Evidence has been one of the biggest issues we're dealing with in law enforcement," says Tony Widner, chief of the Graham PD, a small department south of Wichita Falls. "You're not just talking about the credibility of the department; you're talking about a victim seeing justice."

In legislation alone, Texas is actually "one of the leading states" when it comes to property and evidence-related procedures, says Vasquez, former president of the Texas Association of Property and Evidence Inventory Technicians, which advocates for training for evidence technicians. "Texas is pretty much at the forefront." Gayla Robison, who serves as TAPEIT secretary and oversees property and evidence for the Burleson PD, agrees; it's far worse in Arkansas or New Mexico, she says, where there are few evidence laws. Yet law enforcement agencies are tasked with keeping safe

Across Texas, municipal police departments and sheriff's offices are the primary repositories for all kinds of items – from a bloody shirt collected by detectives in a murder investigation to marijuana grow-lights, plants, and cash seized in a narcotics raid; from a wallet found on the sidewalk to the personal belongings of county jail inmates; from vials of blood extracted from drunken driving suspects to sexual assault examination kits collected from alleged rape victims. Each item must be maintained in the same condition as it is brought in until the law says it can be disposed of. Texas statutes cover it all: when and how to destroy drug evidence, what procedures need to be followed before abandoned property can be auctioned off, how long materials that may contain biological evidence must be kept. Texas has one of the nation's strongest laws covering the retention of evidence that might contain biological material. In 2011, after a number of DNA exonerations, lawmakers expanded the definition of "biological material" to include any item that contains blood, semen, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or "any other identifiable biological material" that may exonerate or incriminate a person suspected of a crime. Lawmakers further required that evidence in all unsolved felony cases be retained for at least 40 years, or kept until an inmate is executed, dies, completes the adjudicated sentence, is released on parole, or completes probation. The law requires all parties to receive notice of any planned destruction, and that process can be halted by the defendant, prosecutor, defense attorney, or court.

To address the added costs, lawmakers designated the Texas Department of Public Safety the depository for all biological evidence for counties with populations under 100,000. But that was all they did to ease significant operational and financial burdens that now fall on the more than 2,000 law enforcement agencies across the state, including roughly 800 local police departments. More evidence will have to be saved for far longer periods of time – in part because the law doesn't limit the retention of biological materials to those collected in connection with violent felonies, but rather requires keeping material collected in every

felony case.

The new law "creates opportunities to solve many cases," notes Belton Police Chief Ellis, but it also raises questions. For example, should a letter that likely has a person's DNA on it be kept as evidence in connection with a felony fraud case? he asks. "If you follow the letter of the law, you're going to need to retain that."

Lawmakers and law enforcers are trying to anticipate scientific developments and guarantee that evidence will be around for coming advances – as with the extraction of so-called "touch DNA." That, says Vasquez, is a fancy name for the shedding of skin cells onto objects merely touched or picked up – like a salt shaker on a table. DNA remains on nearly every item a person comes into contact with, and DNA scientists are steadily perfecting the ability to extract individual DNA profiles from a pool of donors – perhaps being able to isolate the DNA of one person from among many who have touched a restaurant salt shaker over the course of a day. When that evidence is readily accepted by courts, the realm of potential evidence will increase exponentially. "[T]his philosophy has never changed: When a detective gets on a crime scene, [he] has to think like [a] suspect," Vasquez explained during a meeting with Robison, Mansfield PD evidence manager Vincent Hunter, and the Chronicle. "What has changed is thinking about it in a way of his touching something. Is there evidence there? We always taught officers, 'Bring us everything and the kitchen sink, and we'll go from there.'" Robison laughed wryly; she's had an officer bring in a kitchen sink, she said. So has Hunter. "They are literally bringing in kitchen sinks," Vasquez said.

Generously, only 7% of what is brought in as evidence is actually used in court, but all of the items collected by police are regulated by retention laws, so the cost to individual departments adds up. The Austin Police Department, for example, maintains a roughly 62,000-square-foot evidence warehouse (purchased and outfitted for roughly \$3.2 million, says APD's evidence manager James Gibbens) where it stores an estimated 600,000 items, with approximately 60,000 items brought to the unit each year, at an annual cost of about

\$1.1 million.

State lawmakers have done much to beef up evidence retention requirements – but they've done very little to ensure that the laws are followed with any consistency. For example, they haven't provided financial assistance to train evidence technicians or to provide for proper long-term storage. The 2011 law also directed a group of stakeholders to develop best practices for collection, retention, and retrieval of evidence, but they remain suggestions, and without financial incentive it is difficult to ensure those practices are followed. The sizes and budgets of law enforcement agencies vary wildly across the state: APD has a vast warehouse, tightly maintained and managed, but that's not the norm. According to Vasquez, the norm for most agencies is, at best, disorder. And then there's the really bad: He's seen chemicals seized from a meth lab stored in cardboard stacked atop other boxes of evidence and leaking a corrosive brew; he's seen a human skull stored without packaging or any identifying information; he's seen a grenade, stored in a glass jar and kept in a locker easily accessible to county jail inmates; and he's seen boxes of evidence quite literally pitched into a closet, without regard to how the agency might later locate any individual items.

Lawmakers have so far failed to pass legislation that TAPEIT has spent a decade advocating: one code for all the laws governing evidence destruction. Currently, those laws are spread throughout different government codes. "How do you know what to do with found property, if you don't know to look in the [Code of Criminal Procedure] chapter on 'Search Warrants'?" Vasquez asks. If the state won't consolidate evidence and property laws into one place, won't require training or certification for evidence technicians, and won't provide a pool of money to help law enforcement agencies comply with best practices, serious problems – lost or stolen property, or the untimely and improper destruction of evidence – remain quite likely. If the state wants to standardize procedures, that's great, Vasquez, Robison, and Hunter agree, but they each insisted that to get it right, "you need to train the end users."

That's not happening, not only in Texas, but across the country, says Joseph Latta, a retired 31-year veteran of the Burbank, Calif., PD who serves as executive director of the International Association for Property and Evidence. There's "no consistency, anywhere you look," he says. This isn't particularly surprising, he notes, since police officers are, by and large, in charge of evidence: "In the police department, we chase bad guys; we don't take care of stuff," he says. "It doesn't matter whether you're in Houston or Corpus Christi, Albuquerque or L.A. We may end up with the stuff, but we don't know how to take care of it."

Open any number of evidence rooms across the country and "you just want to cry," says Rebecca Brown, a policy advocate at the Innocence Project who was among the stakeholders tapped to develop Texas' new best practices and who, along with Latta, has been part of a U.S. Department of Justice-funded group working on a set of national standards. "Evidence rooms have often been ... I wouldn't say forgotten, but not [a] resource-heavy" focus for law enforcement, she says. Texas "does have good statutes," she says, "but the question is how [they're] being translated" into practice.

Unfortunately, says Latta, there is often little focus on implementation unless and until a department faces scandal – which, he notes, happens almost daily somewhere in the U.S. "It's unfortunate," he says, "but [the evidence room] doesn't get to [be] the top [priority] without a problem."

That was certainly the case in Houston, where years of neglect and mismanagement routinely put the HPD's evidence operation in the headlines. No one understands this better than HPD Capt. Charlie Vazquez, who oversees the 44 people in the department's property division. On average, the HPD takes in 65,000 items per year and stores nearly 400,000 at any given time – not including narcotics evidence, which is kept at a separate facility. "We made mistakes so bad they actually made a movie out of us," Vazquez says. Indeed, that 1981 made-for-TV movie (The Killing of Randy Webster) starred Hal Holbrook as the father of 17-year-old Randy Webster, killed in 1977 by a Houston cop who said the teen threatened him with a gun. As it turned

out, the gun found next to Webster's body had been taken into evidence by the HPD in the Sixties and had long been recorded as destroyed; the weapon had instead been taken from evidence and was ultimately used as a throwdown in the Webster shooting.

Yet it wasn't until 2007, after HPD acknowledged that some 30 firearms had been stolen from evidence over the course of six months and likely returned to the streets, that officials made the move to upgrade the department's evidence operations. Security at the decrepit facility, used continuously since 1902, says Vazquez, was lax at best; two years and some \$14 million later, HPD moved its operations into a state-of-the-art warehouse facility. In 2011, Vazquez was tapped to take over the division, and he has earnestly vowed that the department will not repeat the mistakes of the past – a point he has impressed upon HPD command staff. "When I was put over here, I was trying to point out ... just how important this operation is. I went through all of the [scandals] – the missing weapons, missing DNA," and then, he said, he offered up a lesson in Texas history. Remember the massacre at Goliad? he asked the HPD brass. In that case, Mexican President Santa Anna ordered the execution of more than 300 captured Texas soldiers; the slaughter horrified the country, and just a month later, during the decisive Battle of San Jacinto, after which Texas gained independence from Mexico, troops rallied with battle cries that included "Remember Goliad!" Vazquez paused and looked at the command staff: "I said, 'We need to remember Goliad as well,'" he said, putting up a photo of 1103 Goliad Street in Houston, the site of the department's century-old evidence facility. "Just like people came from Ohio, Tennessee, and New York [to fight at San Jacinto], I need people – [command staff], homicide, patrol – to fight for property," he told his colleagues. "Otherwise you're back to where you were."

And, frankly, going backward in a time of fast technological advancement is not an option, Vazquez says. Every item of evidence must be carefully considered and painstakingly tracked. "Instead of just being a fork, now it's a fork with possible DNA on it," he says, meaning it

may have to be retained for decades – as well-preserved and easily retrieved in 30 years as it is the day it's brought in. With this level of heightened scrutiny comes the need for more thorough and carefully implemented policies; other than a jail, notes Belton's Chief Ellis, a department's evidence operation is the "largest liability in an organization."

That is indeed the case, says Ed Harris, APD's chief of field support operations. Harris remembers well the day he first toured the department's evidence storage facilities more than a decade ago. There were guns dumped in rubber trash cans in the basement of the department's Downtown headquarters, and evidence was locked inside a simple metal cage erected in a corner of the HQ's outdoor garage. "Oh my God, what have I gotten myself into?" he recalls thinking after the tour. "We had stuff everywhere. We were just like a lot of agencies." For years he fought to get the situation cleaned up, and, in 2010, the department finally moved its operation into its new facility. There are secured vaults for guns and money and drugs, two commercial refrigeration units for all manner of biological material, and aisles and aisles of blue plastic tubs and white bankers' boxes branded with bar codes that help to track the evidence stored inside. Applicants for Austin evidence jobs are vetted as rigorously as police cadets; it slows down the process but ensures integrity, says manager Gibbens. "I fought like hell to get where we are," Harris says. "I knew it was a ticking time bomb, and we had to take care of it before it went off."

Hillsboro Police Chief Tony Cain understands that intimately. Some eight years ago, Cain's property manager stole money from evidence; she said she intended to pay it back before anyone knew it was gone. She was fired. And Cain's "heart was broken, not only from the criminal side of it, but also that this person who we really trusted would steal from us," says the 18-year veteran. The incident made Cain realize that he needed tighter security and better training for employees handling evidence. "Probably most departments our size don't put the same resources towards this, but we know the importance of it," he says.

And whenever the opportunity presents itself, he lets other Texas chiefs know exactly how high the stakes are. "What makes it so important is that it's the glue that binds us with the community. It's about trust," he says. "You do a good job of catching the crook, but because of the system it sometimes takes [a long time] to get adjudicated." Evidence is what makes that happen, he says. "The evidence part is not the fun part; the fun part is arresting people. But the evidence is about following rules and getting the community to trust us to get them justice. If we don't do the dirty work, justice can't be done."

For Cornelius Dupree, it took more than 30 years for justice to open his Texas prison cell. In 1980, Dupree was sentenced to 75 years in prison for a rape and robbery he did not commit. It wasn't until 2011 that he was finally exonerated – precisely because Dallas County had maintained for more than three decades the evidence that would set him free. Indeed, with 24 DNA exonerations since 2001, Dallas County has freed the most wrongfully incarcerated men in the state that leads the nation in exonerations. But exactly why Dallas saved all that evidence, decades before there were any legal requirements to do so, is something of a mystery. Certainly, in that regard Dallas is a state, and perhaps a national, standout: nowhere else in the state does there exist such a comprehensive library of evidence. And District Attorney Craig Watkins has been widely applauded as a prosecutor unafraid to use that evidence to uncover past mistakes. But even Watkins isn't entirely sure how or why he's been fortunate enough to have the evidence in order to set right so many wrongs. "I don't believe that when Dallas stored this evidence they thought of DNA advancing to this level, but for whatever reason, we stored it and science has caught up," he says. Watkins suspects that the motive for keeping the evidence wasn't so that the county would be able to review its own work for error, but so that it could "protect the conviction."

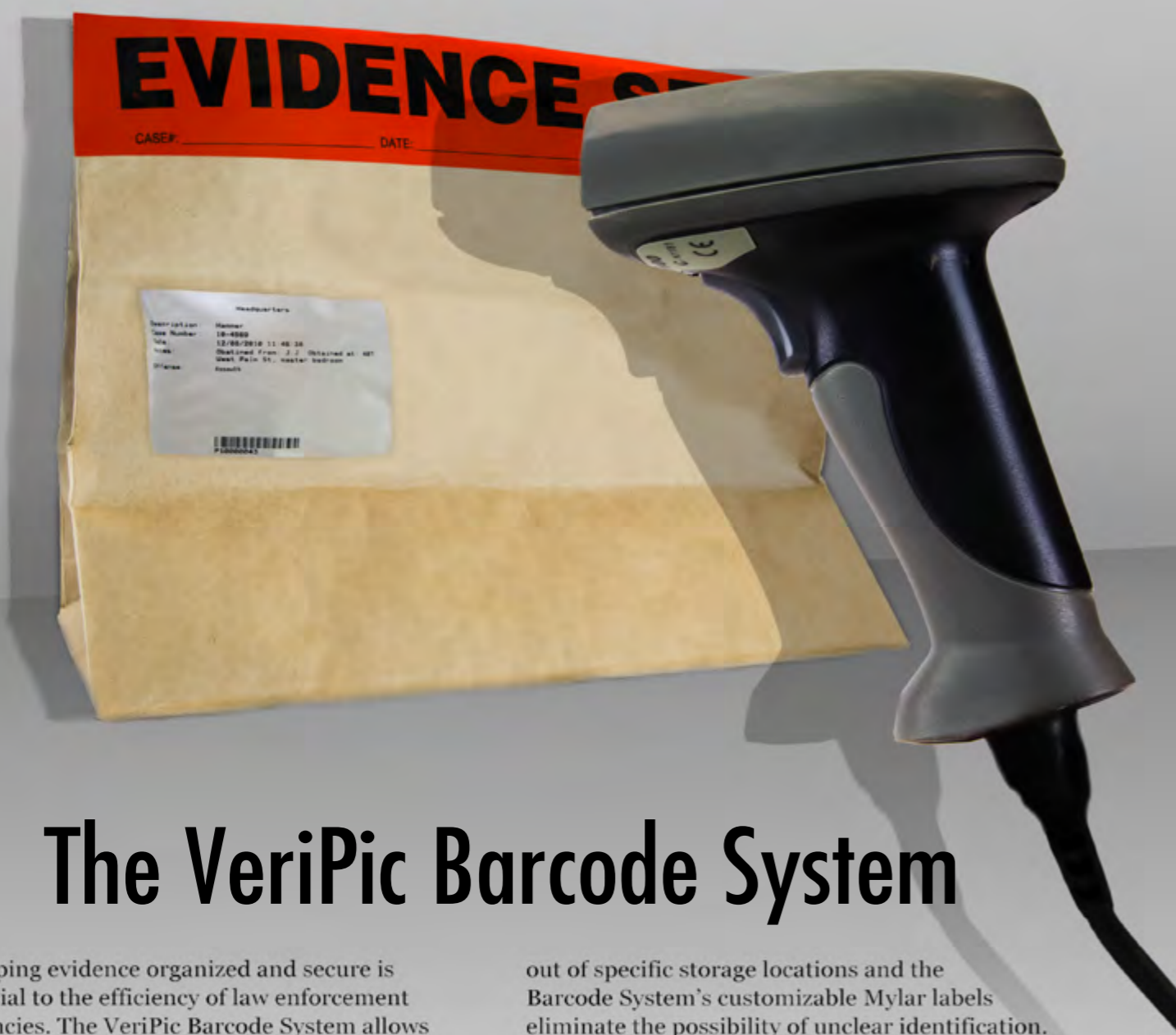
Of course, evidence does both – and that's the point, he says. "We're responsible for some of the most important acts forced upon human beings – the taking of freedom or, in the worst cases in Texas, the taking of life." And being sure evidence is protected

is key to fostering certainty within the criminal justice system, he says. "When the determination is made [that] there may be mistakes in the process, we don't want to destroy our ability at some future date to right that process." Watkins says the story of Dallas' exonerations should serve as a cautionary tale for the rest of the state – and that his county's experiences demonstrate the need for mandatory, standardized evidence-handling policies throughout the state. "I think that's critical. You go from one county to the next, and you have different policies," he says, and there's "no excuse" at this point not to ensure compliance by all law enforcement agencies. "Dallas is positioned to redefine prosecution because we have the old evidence and we [are] able to advocate – and we will – for statewide standards" and policies, not only for storage, but also for training for employees tasked with ensuring evidence is properly retained and easily retrieved.

That is music to Gregg County Commissioner Darryl Primo's ears; in his county – as in many others – there are no written policies about who handles evidence, or where or how it should be stored. An 18-year official in the Northeast Texas county that includes the city of Longview, Primo has become passionate about the problems of evidence storage and retention, an interest prompted by the growing number of exonerees in Dallas County. The more he read about it, the more he wondered whether his own county would be able to put its hands on key evidence if the need arose to revisit a prosecution. He decided to find out; he made calls across the county, to the D.A., to the sheriff, to the district clerk. Did anyone have a policy in place regarding the storage and retention of evidence? No, he was told. Well, then who was responsible for keeping evidence in criminal cases, he wondered.



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(Where's Your Evidence ... cont.)

The county had evidence stored in any number of locations – “a locker at the sheriff’s office, in a closet” for some items, he says; biological evidence, he learned, was being stored in a small dorm fridge kept by the district clerk. The materials were stored next to Cokes and candy bars, and the refrigerator was accessible to all employees. Primo was stunned. “It was a little old dorm fridge in her office,” he recalls. “A defense lawyer would disqualify that evidence in a heartbeat.” The clerk has since moved evidence to a locked refrigerator – but only after Primo made a stink about the situation to a local newspaper. “She had no idea that if the evidence gets contaminated that it is not admissible in court,” he says, that she was “sealing the fate of anyone who might need that evidence.”

Primo has been pushing local officials – including judges, the sheriff, and the D.A. – to take seriously the need to develop stringent policies about how evidence will be handled and who will be responsible. So far he hasn’t had much success, he says. The county’s “never had an incident” that would warrant that, he says he’s been told. In July 2012, he penned a letter to the county’s five criminal court judges, again suggesting that the county “adopt a written policy to govern” storage and preservation of criminal case evidence. To date he hasn’t gotten a single response. “I was very surprised,” he says. “You would think they’d care.”

Primo doesn’t think his county’s experience is unique. “We’re all over the map,” he says. “It’s the law in the state of Texas that counties keep ... evidence. That’s the law legislators have passed ... but who is to keep it or how it is to be kept is a hodgepodge.” Responses to an informal questionnaire emailed to Texas sheriffs and to the state’s district and county clerks by the Chronicle confirmed wide disparities in the way evidence is handled and stored. Many clerks said they did not have any policies governing the storage of criminal evidence, and many said those duties are handled by someone else in the county. While many sheriffs responded that they do refrigerate biological evidence, for example, many also responded that they do not segregate drugs from other stored evidence. Primo believes strongly that the state must step

in and require that policies be written and standards be followed. Funding the enterprise can be accomplished with an extra fee on court filings, he suggests. “Nobody foresaw this coming,” he says of the DNA revolution. “We can’t undo what we did in the past, but we can take steps now to ensure this stuff is protected from now on for someone 20 years down the road.”

The crime scene inside room 126 of the Sand and Sage motel in Odessa revealed the aftermath of the violent and bloody death of Father Patrick Ryan, a well-liked Catholic priest stationed in the tiny Panhandle town of Denver City. Two years after the 1981 murder, James Harry Reyos, who was friendly with Ryan and says he’d had a sexual encounter with the priest days before he was murdered, was sentenced to 38 years in prison for Ryan’s killing. Reyos is adamant that he is innocent, and virtually everyone who knows the case well agrees. Importantly, Reyos had a solid alibi for the time of the murder that included a speeding ticket issued to him in New Mexico, hundreds of miles from the scene of the crime. Unfortunately, Reyos, an alcoholic who has expressed deep shame over his homosexuality – and the unexpected sexual encounter he had with Ryan – later told law enforcement officials while in a drunken stupor that he was “responsible” for the crime. That was considered a confession and was apparently enough for jurors to ignore other concrete details that point to Reyos’ innocence. Reyos has long tried to clear his name and has had champions along the way – notably both from law enforcement and from famed and now-deceased Dallas Morning News investigative reporter Howard Swindle – thus far without success.

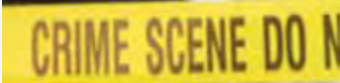
Had the crime happened in Dallas County instead of Ector County, there is good reason to believe that the quest to clear Reyos would already have been successful. Ryan was found inside the motel room naked and badly beaten, his hands bound tightly with a white sock. There was blood spatter and bloody fingerprints throughout the motel room, open beer cans on a dresser, and discarded cigarette butts littering the floor – all of it evidence that today might be subjected to DNA testing that could definitively reveal the identity of his killer. Unfortunately, none of that

evidence still exists; Ector County discarded it long ago, officials there told us in 2005. (See “Who Killed Father Ryan?,” June 17, 2005.)

Of course, it is hard to know exactly how many people may be serving sentences for crimes they did not commit – and that worries Primo, as he struggles to get his county to enact policies that might prevent that outcome. “The issue becomes, how many other cases could have, or would have, been resolved in a more just manner if the evidence had been retained?” he wonders. To think that the state could be preventing miscarriages of justice but simply isn’t because of a lack of will or even a minimal amount of funding for training and preservation, disturbs Primo. “To a person sitting in a jail cell who knows they’re innocent who wants testing, to find out that the county hasn’t cared about that evidence ... that’s really sad.”

Indeed, UT law professor Bill Allison knows well the power of long-held evidence; he represented Michael Morton back in 1986 after Morton was accused – falsely – of murdering his wife Christine at their home in Williamson County, a crime for which Morton spent nearly 25 years behind bars before finally being exonerated in 2012, thanks to DNA testing of evidence that had until recently been ignored by the state. “We ought to be looking five to 10 years down the road,” toward scientific advancements and should be working toward them, he says. “We ought to know what’s coming.” Dallas D.A. Watkins agrees. “Out of an abundance of caution,” he says, Texas needs to act now to ensure compliance with evidence laws and to mandate proper training for all in law enforcement who handle evidence. “Science will progress, and science allows us not only to find mistakes that were made in the past and to make them right, but also to go forward to ensure that we don’t repeat these mistakes in the future.”

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Public

The public has never been more critical of the criminal justice system and evidence management. DNA is solving decades-old cases that provide long-awaited justice, and convicted people are being proven innocent as well. Law enforcement agencies have been successfully sued because the evidence was mismanaged, which stalled their exoneration for many years. It is imperative that agencies understand the importance of managing not just incoming evidence, but evidence they have had for decades.



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Texas A&M Statistician Helps Restructure Houston Police Crime Lab

by Patel Vimal, Texas A&M University

The scandal-plagued forensics division of the Houston Police Department has made major headway in recent years fixing mistakes of the last decade. A Texas A&M University statistician is now part of a national team of scientists providing technical advice to the country's second-fastest growing city in its efforts to create an independent forensics laboratory.

Cliff Spiegelman is the only statistician in the nine-member Technical Advisory Group, a panel that will advise the independent city-chartered organization that took over the Houston Police Department forensic division. The advisory body will provide input on best practices in forensic science and lab operations to help move past the lab's troubled history, which included a temporary shutdown in 2002 following an audit that revealed a variety of issues, from unqualified personnel and lax protocols to shoddy facilities and compromised evidence.

"The end goal is to have a crime lab that's not associated with the police department, so it's not trying to please its employer, but rather focused on doing good science," said Spiegelman, a distinguished professor in the Department of Statistics.

It's a task well-suited for Spiegelman: He has been an ardent advocate of the need for the criminal justice system to better embrace science in the courtroom.

Relying on his statistics expertise, Spiegelman was a forceful opponent of a method of forensic testing called Comparative Bullet-Lead Analysis (CBLA), which partly through his work the FBI discredited in 2007. The abandoned technique used chemistry to link bullets from a crime scene to those owned by a suspect and was first used following the 1963 assassination of President John F. Kennedy.

Spiegelman also makes a few out-of-state trips a year — often for free — to testify in cases in which he believes the forensic science is flawed. He often works with the Innocence Project, the national non-profit legal clinic dedicated to exonerating wrongfully convicted people through DNA testing and other post-verdict methods.

"It's an area of science where I have expertise, and there's a shortage of statistical help," Spiegelman said. "And Houston is a community not far from our own. I think I can do some good and help cut down on the number of false convictions and on the number of guilty people walking around free."

Spiegelman's panel will advise the Houston Forensic Science Local Government Corporation, Inc., which was established by Mayor Annise Parker and the Houston City Council. The Technical Advisory Group will help the HFSLGC meet and maintain high standards of technical performance and accreditation and advise the board of new developments in the rapidly changing fields of forensic science, according to a news release from the City of Houston.

In the May release, Parker described the establishment of the advisory panel of scientists as "an important milestone in the process of forming an independent forensic science center of the highest quality."

Spiegelman is a founder within statistics of the field of chemometrics, the science of using data to extract information from chemical systems. He also is a senior research scientist with the Texas A&M Transportation Institute, the state's transportation research agency. He joined the Texas A&M Department of Statistics in 1987 as an assistant professor, earning promotion to full professor in 1990 and to distinguished professor in 2009.

The other members of the advisory panel are: Bruce Budowle, director of the Univ. of North Texas Institute of Investigative Genetics; Darrell Davis, a former Drug Enforcement Administration lab director in Dallas; David Epstein, an expert in forensic chemistry; Antonios Mikos, a professor at Rice Univ. and member of the National Academy of Engineering; Surgur Srihari, a distinguished professor at the State University of New York and expert in data handling and document analysis; Elizabeth Todd, a chief of the Dallas County Institute of Forensic Sciences; and Bobby Wilson, a chemistry professor and former provost of Texas Southern Univ. HFSLGC board member Enrique Barrera, a mechanical engineering and materials science professor at Rice University, is serving as a liaison between the board and the advisory panel.

Click [here](#) to learn more about Spiegelman and his efforts to connect statistical science with the criminal justice system.

Source: [Texas A&M Univ.](#)

Former Raytown police officer charged for thefts from evidence room

KANSAS CITY, MO (KCTV)
By Laura McCallister, Multimedia Producer

A former Raytown police officer has been charged in connection with thefts of drugs and valuables from a Raytown police evidence room, Jackson County Prosecutor Jean Peters Baker announced Friday.

Justin M. Pool, 35, faces three felony counts of theft of a controlled substance and two other felony counts of theft of property.

The thefts occurred in January, according to court records filed Friday. An investigation by the Missouri State Highway Patrol's Division of Drug and Crime Control found missing valuables, including gold jewelry and controlled substances, including pills of oxycodone. Pool was an officer in Raytown at the time.

The Raytown Police Department requested the Highway Patrol investigate after Raytown police began to suspect that thefts had occurred. Raytown police do not believe the loss of any evidence should impact any open criminal case.

Prosecutors requested Pool's bond be set at \$50,000/10 percent or secured.

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Critical Evidence

To careful observers of Michael Morton's long search for justice, one of the biggest revelations of Mark Alan Norwood's capital murder trial came late in the day Wednesday, when a Williamson County employee named Jennifer Smith took the stand. For much of the day, testimony had centered on the bloody blue bandana that had been found behind the Morton home in 1986 and was finally subjected to DNA testing in 2011. (The results exonerated Michael, who had been wrongly convicted of murdering his wife, Christine, and brought about the indictment of Norwood, whose DNA was found intermingled with her blood.) As readers of my series on Michael's case may remember, that DNA testing had taken place over the heated objections of then-Williamson County D.A. John Bradley. Michael's attorneys had filed their first motion for DNA testing back in 2005, and Bradley had fought them for the next five years until an appellate court stepped in and issued an order that the testing be performed.

The battle over DNA testing has not been discussed in front of the jury in the Norwood case. (Nor have any of the details of Michael's wrongful conviction, due to a court order that bars any testimony about it during Norwood's trial.) But Williamson County's longstanding resistance to having the bandana tested was very much on my mind when Smith—who supervises the county's evidence room—testified that no one had been able to locate the bandana until it was finally discovered on May 25, 2010. (This date, not coincidentally, follows closely on the heels of a judge's order instructing the county to submit the bandana for DNA testing.) It was on that day, Smith said, that she was visited by a prosecutor and an investigator from the D.A.'s office who instructed her to open every single sealed envelope in the Morton evidence file. Eventually, after carefully opening and re-sealing each envelope, she was able to locate the bandana. "It wasn't labeled properly, so we didn't know it was there," Smith told the jury.

In fairness to Smith, she seemed diligent and eager to modernize the poorly-organized evidence room that she had inherited. She testified that after more digging, she eventually managed to locate the strand of hair that had been found with the bandana in 1986. (The hair was hidden, as if it were a Russian nesting doll, inside a succession of mislabeled manila envelopes.) Then, and only then, was the evidence ready to be submitted for testing. In other words, throughout the five years that Williamson County had staged a pitched battle in state and federal court to block DNA testing of the bandana and the strand of hair, no one actually knew their whereabouts.

Much of Wednesday's testimony highlighted the capriciousness of Williamson County justice, and testimony from John Kirkpatrick, Christine's older brother, emphasized local law enforcement's seeming indifference to aggressively investigating the case. Kirkpatrick's lingering exasperation was evident as he described arriving at the Morton home the morning after the murder. "I didn't see any police," he told the jury. "I was frustrated by the total lack of investigation. I felt like so many things should have been happening for such a recent event." Frantic to take action before leads went cold, he said he made phone calls around town, trying to see if anyone could conduct a search of the surrounding area with tracking dogs, which he hoped could pick up the scent of his sister's killer. "As far as I was concerned, this was an outside intruder that had come in and killed my sister," he testified. "It seemed so obvious."

Out of desperation he decided to try to re-trace the killer's footsteps. He started at the spot where he felt certain that the intruder had entered the Morton home: the sliding glass door at the rear of the house, which had been unlocked on the morning of the murder. From there, he walked across the backyard to the inside perimeter of the privacy fence, where he said he noticed one, or maybe two, impressions in the ground that appeared to be where someone had landed after jumping the fence. Then he walked around behind the fence and looked back at the Morton home. "You could see through the fence," he said. "There were gaps in the boards where you could see Michael's comings and goings, and when Chrissy was gone. This was how someone had cased it out."

He told the jury that he explored the densely wooded lot behind the privacy fence until he reached a nearby construction site. It was there, by the curb, that he spotted the bandana. "The moment I saw it, I knew it was important," he said. "I carefully picked it up and looked at it." He remembered noting that portions of the bandana were discolored. "I'm not going to say I knew it was blood, but it looked abnormal," Kirkpatrick told the jury. He picked up the bandana by the corner, being as careful as possible not to contaminate it. Then he walked back into the Morton home, placed it in a Ziploc bag, and called the sheriff's department. Kirkpatrick stated that he was never questioned by law enforcement about the bandana, and he never heard about it again.

Kirkpatrick said he left Texas after his sister's funeral. "I put this as far out of my mind for so long," he testified. He went on to explain that he and his wife had only recently informed their grown children—who are 28 and 30—that Christine had been murdered.

A normally taciturn marine biologist, Kirkpatrick was overcome with emotion several times as he recounted memories of his baby sister. He told the jury of attending her 1979 wedding to Michael, at which she aimed her bouquet right at him, striking him in the chest. When he let the bouquet fall to the ground, she picked it up and forced it into his hands. Three months later, he told the jury, he met his future wife, Diane. Kirkpatrick also recalled the day that he learned Christine had been murdered. His father, John, called and said, "I'm going to tell you the worst news you're ever going to hear in your life."

The other witnesses who took the stand Wednesday included two former law enforcement officers, a crime lab technician, and a crime scene photographer.

Former Williamson County patrol deputy John Chandler testified about a report he had written that I had never heard of before. Chandler stated that he wrote the report after speaking with one of the Mortons' neighbors, who said they saw a black van just a few doors down from the Morton home at 7:21 a.m. on the morning that Christine was killed. (Christine is believed to have been killed shortly after Michael left for work early that morning.) Chandler's report—which Michael's legal team never saw—seems potentially related to other neighbors' accounts of a green van that was seen behind the Morton home around the time of the murder. These leads were never followed up on or passed along to Morton's defense team.

Chandler also testified about another important clue that should have tipped investigators off to the fact that Christine was killed by an unknown intruder. He stated that a burglar alarm sounded at a house that just was a block away from the Mortons' home—roughly a half block from where John Kirkpatrick found the bloody bandana—at 7:33 a.m. that same morning. (Chandler put this information in a report, but Michael's defense team was never of its existence.) Because the home's owners were out of town at the time and no one appeared to have actually entered the house, Williamson County sheriff's deputies failed to investigate further.

As I listened to Chandler testify, I was stunned. How might the course of the investigation have gone differently if someone had followed up on these seemingly obvious leads? If fingerprints had been lifted from the exterior of that house, or if casts had been made of those footprints, would that have helped identify Christine's killer? We'll never know.

*Originally published in Texas Monthly - Wednesday, March 20, 2013
by Pamela Colloff*



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-Michelangelo, age 87



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More Hospitals to Collect Sexual Assault Evidence

Throughout August, The Texas Tribune will feature 31 ways Texans' lives will change because of new laws that take effect Sept. 1. Check out our story calendar for more.

Victims of sexual assault will no longer have to travel to potentially far-off hospitals to have forensic evidence collected, following the implementation of a new law this fall.

Starting Sept. 1, all Texas hospitals with emergency rooms will be required to have staff trained in at least basic collection of forensic evidence from sexual assault victims.

Currently, communities in Texas are required to have one facility designated as the primary care center for victims of sexual assault. If the victims go to a hospital that lacks the designation, they are stabilized but would have to go to the primary center for evidence to be collected. Now, all emergency room hospitals will have to offer to collect such evidence.

The primary care center designation stems from a 2005 law that required communities in the state to devise plans for law enforcement, health care providers and sexual assault victims' advocates to respond to sexual assault cases.

Under Senate Bill 1191, any hospital with an emergency room must have physicians and nurses trained in a basic level of forensic evidence collection — a standard still less rigorous than that required for the Sexual Assault Nurse Examiners that most primary care centers have. The hospitals will also be required to give patients the option of a transfer to the primary care center after they have been medically stabilized.

Requiring all hospitals to have a SANE program — which are found mostly in primary care centers — would be impractically expensive, said Jennifer Banda, the Texas Hospital Association's vice president of advocacy, public policy and HOSPAC, the political action committee the association operates. SANE certification is costly, and currently, there are not enough certified personnel in the state for every hospital to have a SANE program, she said.

Currently, 312 sexual assault nurse examiners are certified in the state, according to the Texas attorney general's office, which runs that program and certifies the nurse examiners. (A map

under this story shows where those nurse examiners are located in Texas.)

Although primary care centers will remain the best option for survivors, they are often not a viable one, said Torie Camp, deputy director at the Texas Association Against Sexual Assault. Camp cited distance, family and professional obligations, and travel costs as reasons victims might not go to a second hospital after being stabilized.

"At least they're going to have their evidence collected with someone with some level of training" under SB 1191, she said, adding that it "may not be the best standard of care, but it's going to get the job done."

SB 1191 was primarily authored by state Sen. Wendy Davis, D-Fort Worth, who said it was inspired by stories of women

in theory be added to training that emergency room doctors and nurses already undergo, she said.

Until licensing boards determine how to certify nurses and doctors in basic evidence collection, it's hard to determine the costs for hospitals to meet SB 1191's standards, said Sherry Brown, who chairs a policy and procedure committee for Seton Medical Center.

The center operates multiple hospitals in Texas, many of which do not have SANE programs.

Depending on the hours of training deemed necessary, the cost "could be substantial," Brown said.

"It's going to be a very large undertaking" for hospitals that don't have SANE programs, she said.

"Starting Sept. 1, all Texas hospitals with emergency rooms will be required to have staff trained in at least basic collection of forensic evidence from sexual assault victims."

who had to go to multiple hospitals for treatment and evidence collection after being sexually assaulted.

"My fear is that some women won't continue to do that," Davis said. "They won't go forward and prosecute their case."

Kelly Davenport, an Austin Police Department sergeant who deals with sex crimes, said that she does not believe SB 1191 will change the number of crimes prosecuted in Austin but that it could have a major impact in rural areas.

In those regions, survivors who find out they may need to drive several hours to have evidence collected, "may think twice before going through it," she said.

"It might be a vast improvement where people know they can get the services they need and the response they want locally," she said.

Banda, who worked with Davis' office in drafting SB 1191, said having all hospitals provide professionals trained in basic evidence collection would present them with a standard that "wouldn't be impossible to comply with." The training for forensic evidence collection could

In addition to hospital regulations, SB 1191 stipulates that the Department of State Health Services publish an online list of hospitals designated as primary care facilities for sexual assault survivors. DSHS is "still determining how we'll collect that information," spokesman Chris Van Deusen said in an email.

Sexual assault is historically underreported, with only 18 percent of victims reporting the incident, Camp said. Victims might not report the crime for a variety of reasons, and they can have evidence collected without speaking to law enforcement, she said, leaving it unclear whether SB 1191 will increase sexual assault reporting rates.

"But I can hope that if a sexual assault survivor is engaged positively by the system — even if it's the medical system — then perhaps they'll be encouraged to pick up the phone and call law enforcement," she said.

BY SHEFALI LUTHRA and KK REBECCA LAI

This story was produced in partnership with Kaiser Health News, an editorially independent program of the Henry J. Kaiser Family Foundation, a nonprofit, nonpartisan health policy research and communication organization not affiliated with Kaiser Permanente.



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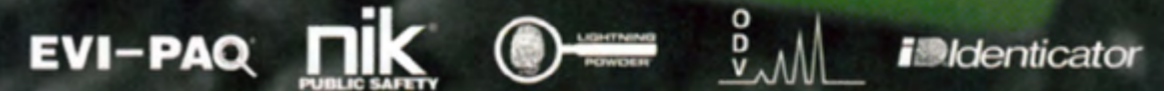
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Marijuana disposal boxes installed at Colorado airport

By Hugo Martin
 January 19, 2014, 11:00 a.m.
 Originally published in Los Angeles Times

Colorado Springs Airport recently installed three green metal containers in the terminal where travelers can deposit marijuana, which is legal to buy in Colorado but banned in the airport.

Sorry, but the airport is not taking job applications for amnesty box attendants.

With recreational marijuana now on sale in Colorado, Denver International and Colorado Springs airports have made it clear that travelers cannot bring pot through their facilities. Even medical marijuana is forbidden.

But the folks at the Colorado Springs airport, about 70 miles south of Denver, don't want travelers to dump bags of overlooked pot into the terminal trash bins. For that reason, the airport has installed "amnesty boxes."

A spokesman for the airport said the boxes will be monitored 24 hours a day, with Colorado Springs police responsible for emptying the boxes and destroying the drugs left inside.

EDITOR'S NOTE: Our Police Department actually has two of these disposal units and there is not a week that goes by that we don't find disposed of drugs for destruction. We recently destroyed approximately 500



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MISSING EVIDENCE PROMPTED REVIEW OF COUNTY FORENSICS, CRIME LABS

ELYRIA — The review that led to the impending closure of the Lorain County Forensics Laboratory was prompted when a bag of prescription drugs a county judge had ordered destroyed went missing.

General Division Court Administrator Tim Lubbe said the final decision to shutter the Forensics Lab, where probationers are drug tested, was ultimately a financial one and not connected to the missing pills, which were later recovered and destroyed.

Lubbe said an internal probe traced the disappearance of the pills to Emmanuel de Leon, who oversaw the Forensics Lab as well as the county's Crime Lab, which is operated by the county commissioners to test evidence, including drug, s seized during criminal investigations.

De Leon also served as the chief deputy in the county's Adult Probation Department, a position he resigned from in a letter dated Thursday that cited the closure of the Forensics Lab as the reason for his departure. De Leon will be laid off from his job as director of the Forensics Lab on Jan. 31, the same day two other workers in the lab also will lose their jobs, Lubbe said.

According to a letter scheduling a disciplinary hearing that was sent to de Leon on Jan. 15, he was accused of misconduct not only in connection with the pills, but also for two guns and a police scanner that disappeared from the Probation Department's evidence room in the old Lorain County Courthouse. That hearing, which had been scheduled for Tuesday, never took place because de Leon resigned, Lubbe said. De Leon and his attorney did not return messages seeking comment Tuesday.

The decision to destroy the pills came last fall after Chief Probation Officer Beth Cwalina inquired about a large amount of evidence that had been seized by the county's probation officers over the years, Lubbe said.

Administrative Judge James Burge said that it became apparent to the General Division judges, who oversee the Probation Department, that probation officers had been seizing items that they probably shouldn't have been taking. If there was evidence of a crime, such as drug or weapons possession, Burge said, probation officers should have been turning that evidence over to a police officer.

That policy was changed roughly six months ago, according to Burge and Lubbe. And although a new policy hasn't been put into writing, the probation officers have been told not to seize anything.

"We collect nothing, and if we do it's going to go to a cop," Burge said.

The policy change left open the question of what to do with years of accumulated seized items and Burge ordered the evidence destroyed.

In an Oct. 28 court order, Burge ordered the destruction of 169 pieces of evidence ranging from weaponry such as guns, swords, crossbows and daggers to drugs and drug paraphernalia. Also ordered destroyed were more unusual items such as a vibrator, fingernail clippers and a lanyard with two keys. Missing evidence

Also slated for destruction was a "misc. zip-lock (sic) bag of random prescription medication."

Lubbe said that as the items were being inventoried for destruction in the days that followed Burge's order, Cwalina noticed that the bag of prescription drugs was missing. He said de Leon was on vacation at the time and so Cwalina talked to other probation officers who had been involved in rounding up the old evidence for destruction. Those officers told her to talk to de Leon, Lubbe said. When de Leon was contacted, he twice denied knowing where the drugs were, Lubbe said.

But days later, he said, de Leon came in while still on vacation and produced the medication and offered up an explanation.

"His decision to take the drugs was so that he could use them as a baseline (in drug tests), or as a standard, as he called it," Lubbe said. Lubbe said de Leon told him he was trying to save the county money it would have spent buying drugs from a pharmacy to use as standards in lab work.

"I don't have any evidence that he committed a crime," Lubbe said.

Still, the issue prompted Lubbe to place de Leon on paid administrative leave Nov. 21. But Lorain County Administrator Jim Cordes said that created a problem for both the Forensics Lab and the Crime Lab. He said

de Leon is the only person working for the county who could certify the results of the lab work.

So the county set de Leon up in an office in the Lorain County Administration Building where he has spent the past two months reviewing the results of the tests and certifying them.

Meanwhile, the destruction of old evidence continued, with Burge issuing two more orders to that effect in November.

Lubbe said that in December the internal reviews determined that two guns, a 9 mm semiautomatic pistol and a .22-caliber gun of undetermined make, were missing, as was a police scanner.

"The foregoing items were logged into your custody and there is no evidence of their destruction," Lubbe wrote in the Jan. 15 letter to de Leon.

Although not mentioned in the letter, Lubbe said a few other items, including at least one BB gun, also can't be located.

Exactly what happened to the guns, scanner and other items is unclear, Lubbe said. He said it's possible the weapons were destroyed under separate court orders in individual cases.

Lubbe also noted that the old courthouse has been burglarized several times in recent months, although there's nothing to suggest that the evidence room was entered. He said during the most recent break-in, which took place over the holidays, two computers were stolen.

The alleged mishandling of the pills convinced the county's judges that they needed to review their policies and procedures to better determine how the Forensics Lab — and by extension, the Crime Lab — was being operated, Lubbe said.

"There was a concern that we were not fully apprised of processes and we wanted to make sure at the end of the day that we were doing our best to maintain the public trust," he said.

Both the Ohio Bureau of Criminal Investigation, which operates the state's crime lab, and the Ohio State Board of Pharmacy were brought in to evaluate the two county labs,

(cont. from Page 25)

which share staff and space in the basement of the old county courthouse.

Lubbe said he's not aware of any written BCI recommendations, but the Pharmacy Board completed a four-page report that concluded "there is a lack of security and accountability of dangerous drugs used in this lab."

The report suggested that the labs update their comprehensive evidence logs, as well as completing drug purchase and chain of custody records. It also made reference to the missing pills.

"Due to the incident with Group 7 Item #9 on journal entry, baggie of pills for destruction, this facility must have better security of keys," the report said.

Despite the problems, Lubbe and Burge both said it was the cost of administering the drug tests that led the judges to close down the Forensics Lab, which conducted 48,760 tests in 2013.

In a Jan. 8 letter to Lubbe, Cwalina wrote that the Forensics Lab was charging \$10 to administer the tests, which provide extensive analysis of urine specimens, including the level of illegal drugs in a probationer's system.

Burge said that level of detail is unnecessary for judges when determining whether someone has violated the terms of his probation by using drugs illegally.

"To me, it's drunk, drunker or drunkest," Burge said. "To me, if I've told you not to drink, I don't care what your alcohol level was and the same with drugs."

The lab analysis also took days to produce results, Cwalina wrote, something that put Lorain County out of step with other probation departments, where the standard practice is to use instant tests. She wrote the cost for the instant urine tests will be \$2.46 each.

Cwalina also wrote that while probationers are supposed to pay for their tests, many of them cannot afford it and the Probation Department ends up picking up the tab.

The shift to instant tests is expected to save the courts roughly \$200,000 per year, Lubbe said.

He said the changes mean that the Probation Department will only need two people, rather than the current five at the Forensics Lab, to handle drug testing. The two employees who will remain will be responsible for monitoring probationers as they take the tests.

The decision has set off a scramble among other probation departments and agencies in the county who paid the Forensics Lab to conduct drug testing for them. Cwalina noted in her letter that the requests for those tests dropped off last year.

County Juvenile Court Administrator Jody Barilla said juvenile probation officers and judges like the more detailed testing because it gives them a better understanding of what a juvenile probationer is doing.

She said the Juvenile Court didn't learn the Forensics Lab was closing until last week.

"Obviously, it was very short notice that we were given about the closing," Barilla said. "We are trying to figure out what we're going to do as an alternative."

The closure of the Forensics Lab has also left the future of the Crime Lab in doubt.

Cordes said he and the commissioners have largely taken a hands-off approach to the lab over the years, leaving the day-to-day operation in de Leon's hands. He said de Leon, who county records showed earned \$63,498.72 in 2013, was a court employee and only received a portion of his salary from the commissioners.

Cordes said he will ask the commissioners to approve a measure today that would see them hire de Leon at a reduced salary to continue to run the Crime Lab for at least another month while the lab is restructured.

"I've got to keep the lab open, and I can't keep the lab open without (de Leon)," he said.

Cordes said he didn't know the full details of the allegations against de Leon and

couldn't see taking any disciplinary action against de Leon for something he may have done while he was working for the courts.

"As of right now these are unfounded allegations because they haven't been vetted through any disciplinary process that I'm aware of," he said.

The bigger issue, Cordes said, is how to fund the Crime Lab without the Probation Department sharing the cost of lab employees.

County Budget Director Lisa Hobart said it cost \$249,340 to run the Crime Lab in 2013, but a joint levy that funds both the Crime Lab and the Lorain County Drug Task Force brought in only \$153,701 for the lab last year. Combined with another \$18,240 in miscellaneous revenue, the Crime Lab brought in a total of \$171,944, she said.

Hobart said the commissioners have been supplementing the cost of operating the Crime Lab with carryover money. The lab had a carryover of \$429,283 from 2013 into 2014.

But Cordes said that money will only last for so long now that the commissioners will be responsible for paying the full cost of the lab and its workers.

The commissioners will consider whether to approve putting an additional levy to fund the Crime Lab on the May ballot during their meeting today.

County Prosecutor Dennis Will said he's received several concerned calls from local law enforcement agencies worried that the Crime Lab would close along with the Forensics Lab. The Crime Lab is widely credited with avoiding delays in cases that would come from sending drug evidence to BCI's Reynoldsburg lab for testing.

Will said he while he was aware of some inconsistencies at the Forensics Lab, he hadn't heard the allegations of missing drugs and guns.

"I will be making inquiries," he said.

Contact Brad Dicken at 329-7147 or bdicken@chroniclet.com. Originally published in *The Chronicle Telegram*



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