Out to Lunch: Saks & Koehler Reply to Rudin & Imman's Commentary

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Saks & Koehler Reply to Rudin & Inman’s Commentary

Michael J. Saks & Jonathan J. Koehler

At several points in their comment on our article in Science (1), Rudin & Inman (2, 3) asserted or clearly implied that we had been dishonest in our presentation. In each of those instances Rudin & Inman’s charges are groundless, as we demonstrate below.

Moenssens Quotation
Rudin & Inman wrote:

“We were also intrigued by their quote: “All [forensic science] experts are tempted, many times in their careers, to report positive results when their inquiries come up inconclusive, or indeed, to report a negative result as positive.” This quote is attributed to an article by Andre Moenssens (Moenssens, 1993). A quick check with Dr. (sic) Moenssens revealed that the author of the quote was actually the late Fred Zain. (Moenssens, 2005) To include such a quote out of context, without revealing its infamous author, seems to us, at best, disingenuous.

Had Rudin & Inman examined the actual source [see Fig. 1, right], they would have discovered that the words were indeed those of Moenssens, that they were consistent with the context in which they appeared, that Moenssens was not quoting Zain or anyone else, and that Saks & Koehler had accurately attributed the statement to its author, Andre Moenssens.

“Rearrangement of Data”

Referring to our Table 1, which provides information on the underlying facts in the original trials which later gave rise to DNA exonerations, Rudin & Inman assert that we engaged in “heavy-handed rearrangement of the data” which “would appear to deliberately misrepresent the data.” The opposite is true.

Rudin & Inman reach their conclusion by assuming that the count by Scheck and Neufeld is flawless and that any departures from it must be some sort of deception. What actually happened was this: Soon after the book, Actual Innocence (4), was published, one of us had occasion to question Neufeld about the data reported in an Appendix to the book. From that conversation it became apparent that the table in the book was imperfect. First, the table reflected double-counting of some cases (violating the principle that any categorization system must be exhaustive and mutually exclusive). Second, there was no sound reason for disaggregating various kinds of forensic science errors into sub-categories while keeping all other sources together in single categories (e.g., eyewitnesses, police, defense lawyers, etc.).

Scheck and Neufeld provided to us a database containing their most complete compilation of facts from the original trials that later led to DNA exonerations. We carefully re-counted the cases annotated as containing (honest) errors by forensic scientists and false or misleading testimony by forensic scientists, to identify a more systematic and accurate list which allowed more direct comparison among the sources of erroneous convictions. We shared the results of that count (along with the database) with several researchers interested in the problem of erroneous convictions, as well as with Scheck and Neufeld. No errors or other mis-steps in our re-count were brought to our attention.

What Rudin & Inman failed to see or did not mention was that, by our count, the total proportion of errors attributable to forensic science decreased in comparison with the original count by Scheck & Neufeld.

Six References

In our article we noted that scientists have begun to question some of the core assumptions held by most forensic scientists, and referred readers to six publications. Rudin & Inman comment that, “A quick check reveals that most of the supporting references were written by attorneys, several by the authors themselves.” First, neither of us is an attorney. More importantly, as to the six references to which Rudin & Inman refer: five of the six are written by people with scientific education, training, and/or work experience. The one written by an attorney (sans formal scientific education, training, or work experience) contained substantial discussion of important research studies which, like all of the other references, support the statement we made in the article.

We refrain from commenting on numerous other issues and allegations in Rudin & Inman’s comment with which we are tempted to take issues. Instead, we close by noting that Rudin & Inman neglected to mention the most significant point they could have made, namely, that at the end of the day they quite agree with us. In their book (5), they wrote: “A community effort is needed to produce a body of empirical work that can support that pragmatic leap of faith to a conclusion of a single common source.” It is hard to think of a better one-sentence summary of the essential point of our article.

References

(4) Scheck, Neufeld & Dwyer, Actual Innocence (2000).
crime scenes in seventeen cases. Then, when Harding also accused his supervisors, a state police spokesman interviewed on 60 Minutes admitted that if the supervisors were not directly involved, they were certainly guilty of failing to be aware of what was going on under their noses.

Lapses in honesty are, of course, not confined to crime laboratories. For example, in late 1992, the Richmond, Virginia, newspaper published stories about a private laboratory that is regularly asked to perform thousands of tests on water, air and soil samples for industries, military bases and homeowners to check for a variety of pollutants. These test results were then submitted to state agencies as proof of compliance with environmental regulations. It came to light that this laboratory had either falsified test results or not performed tests and fabricated the results out of thin air. State officials characterized this practice as potentially one of the largest environmental crimes in the state. After state and federal agents raided the laboratory and seized ninety-three boxes of paperwork, and during the weeks of investigation that followed, the laboratory continued as if nothing had happened.

Again, we cannot generalize and suspect all forensic scientists of sinister motives. I am convinced that the forensic disciplines are peopled with basically honest and straightforward, competent, experts. But that belief may lull us into a false sense of security. We are of course tempted to say, "it could never happen here" or "our people are not like that." The lawyers, judges, and department heads in all of the above cases probably believed the same thing, until the opposite was established in a court of law. And these are just some of the cases that have come to light.

The temptation to fabricate or to exaggerate certainly exists. All experts are tempted, many times during their careers, to report positive results when their inquiries came up inconclusive, or indeed to report a negative result as positive when all of the other investigative leads seem to point to the same individual. Experts can feel secure in the belief that their indiscretions will probably never come to light. Not all succumb to that temptation; in all likelihood most

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46 Lischansky is listed in the current membership directory of the prestigious International Association for Identification, the leading professional group of fingerprint experts.

In a news item, a third former member of the same police unit, a lieutenant, was reported to have been sentenced for faking fingerprint evidence. See Former State Police Official Sentenced in Scheme, N.Y. Times, Sept. 9, 1993, at B8.

Norah and Keith Respond to Saks, et al., Rebuttal

Saks and Koehler take issue with several points we raised in our two part commentary (Rudin and Inman, 2005, 2006) on their 2005 article in *Science*.

1. We apologize for the inaccurate representation of Dr. Saks as an attorney. This was perhaps an understandable assumption as he teaches at a law school.

2. Our concern over the rearrangement of data was neither that it was rearranged, nor the final effect on assigned forensic science errors. Rather, it was that Saks and Koehler failed to even mention that it was re-parsed or to tell us the criteria for reassignment. Right or wrong, the initial representation by the Innocence Project is what they reference and their chart is clearly different. Good science, indeed good scholarship of any sort, requires transparency and clarity regarding the methods used to analyze a data set. Especially as this chart forms the core of their thesis, the “protocol” used to form their conclusions for the data should have been detailed. We blame the editors equally for this critical omission.

3. Saks and Koehler are perhaps most upset over our comments regarding the quote from the Moenssens paper. (1993) Hence some clarification is in order. When we initially tried to track down the paper that is the source of the quote, we were unable to locate it, as it was published in a rather obscure journal. In an attempt to locate the paper, we contacted its author, Professor Andre Moenssens. Moenssens himself was unable to provide us a copy of the paper, but recollected the quote and its source. We properly attributed our comments to a personal communication with Professor Moenssens. As the first rumblings of discontent from Saks and Koehler began to surface, we again attempted to locate the original paper, and finally obtained a copy. Although Moenssens did have Fred Zain in mind when he wrote the comment (as evidenced in our personal communication with him), Zain is not formally referenced in the paper. Hence, in the absence of any communication with Moenssens, Saks and Koehler could not have known the source of the comment. Nevertheless, that they would accept and quote without question that ALL experts were tempted to report positive results [our emphasis] says much about Saks and Koehler’s lack of familiarity with the discipline and its practitioners. It is telling that, when told of its use by Saks and Koehler, Moenssens commented in an e-mail to us that:

“Upon re-reading it, I would not have included that comment if I had been able to foresee that it would be so taken out of context in order to criticize forensic scientists generally. I intended to say that, although innerly having the thought that a “match” probably did exist, the overwhelming majority of folks in our profession, other than a few Zain-types, have no problem resisting the “temptation” (again, a bad choice of words, in retrospect) and would always take the cautious approach by opting for inconclusive. They certainly would never falsely record or change outcomes that their testing had not obtained, as Zain was found to have done repeatedly.”

We are happy to provide the entire Moenssens article in PDF format to any reader who is interested.

4. Saks and Koehler are correct that we agree with many, perhaps most, of the points in their paper. As they point out, we have written previously, as well as extensively in the commentary that so upset them, about the need for an interdisciplinary approach to forensic science. However, they should not be so surprised that we (and many of our colleagues) fail to welcome their attempt to redefine a basic precept of the profession. As social scientists, they should be well aware that any discipline is defined by its language and terms. We reiterate that the phrase they created, discernable uniqueness, on which their entire thesis is based, shows a fundamental misunderstanding of the most basic concept in criminalistics, that two items may or may not share a common source. We recommend that, before they suggest a paradigm shift to a profession outside their own expertise, they take the time to study and understand the existing paradigm.

5. We submit here that if a paradigm shift is occurring, it is in the field of law, where ever more attorneys are questioning the foundations of the forensic science disciplines and the quality of the work product of the laboratory. This, as we have commented many times, is a good thing. The challenge to forensic science is to live up to the promise of introducing sound science into courts of law, rejecting that which is expedient, crafted, biased, or speculative. Other times and other forums are required for that discussion, but it should include a wide variety of participants and stakeholders.

References:
Moenssens, A., personal communication, 2006.

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