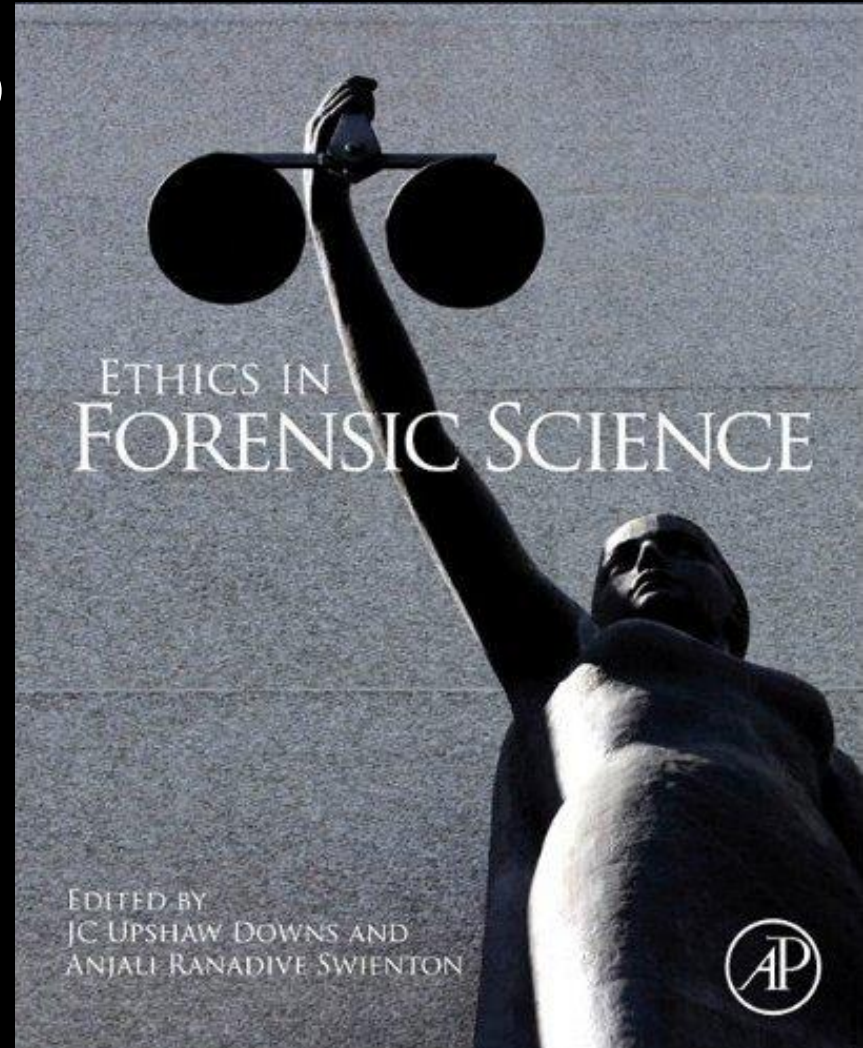
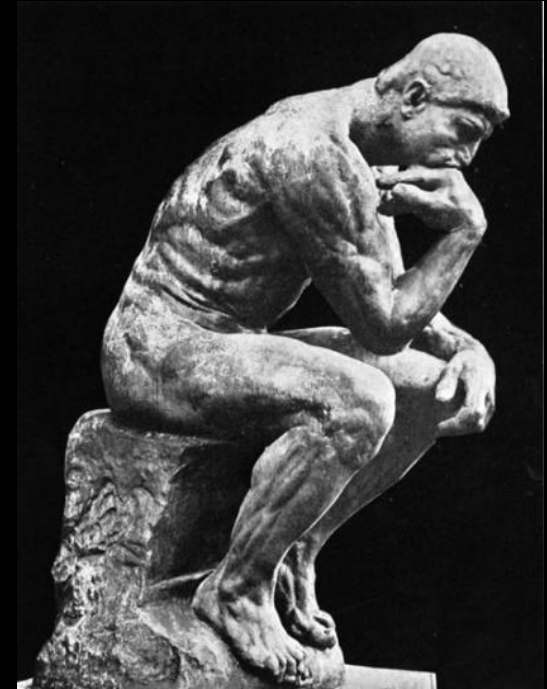


# Ethics & Forensics: Ideals & Realities

J.C. Upshaw Downs, MD  
forensX, LLC



# A Brief History of Ethics



In civilized life,  
law floats in a sea of ethics.

- Earl Warren

How important are ethics in today's society?

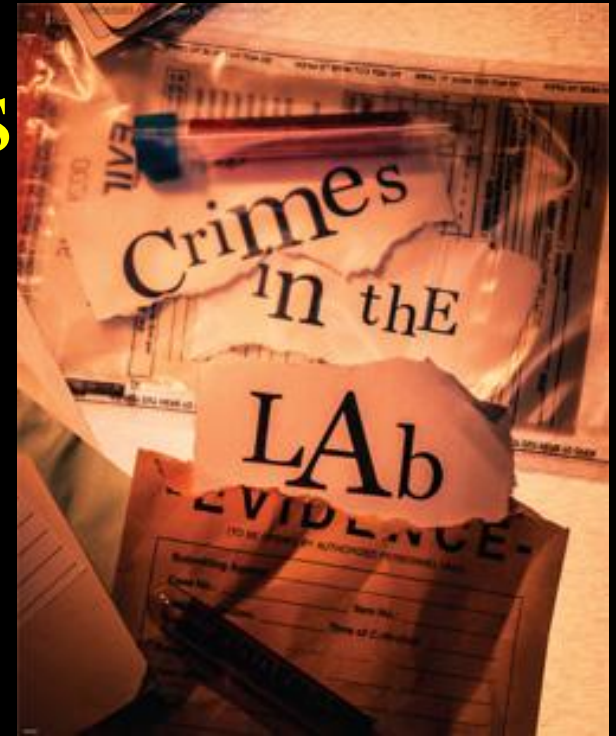


# Moving forward avoiding the slippery slope

*“The spread of evil is the symptom of a vacuum. Whenever evil wins, it is only by default: by the moral failure of those who evade the fact that there can be no compromise on basic principles.” – Ayn Rand*

# Case Studies

- Gilchrist
- West
- Hayne
- Zain
- Houston
- New York
- San Francisco
- Nebraska
- North Carolina
- FBI



# Rogue Forensic Scientists

- Fred Zain



- Joyce Gilchrist



# Media

10/04 to 7/08 Chicago Tribune

## “Forensics Under the Microscope”

- Critics tell experts: Show us the science
- Unproven techniques sway courts, erode justice
- Arson myths fuel errors
- From the start, a faulty science
- When labs falter, defendants pay
- Scandal touches even elite labs
- Report blasts FBI lab
- Bite-mark verdict faces new scrutiny
- Hearing highlights DNA tests' delicacy

# Media

10/04 to 7/08 Chicago Tribune

## “Forensics Under the Microscope”

- Mother hoping DNA frees son
- DNA test raises questions in case
- Man executed on disproved forensics
- Bad laboratory blood analysis took 17 years of his life
- Death Row inmate wins resentencing
- Digitized prints can point finger at innocent
- 12 years behind bars, now justice at last
- U.S. seeks review of fingerprint techniques
- Top lab repeatedly botched DNA tests



# Media

10/04 to 7/08 Chicago Tribune

## “Forensics Under the Microscope”

- Judge doubts lip print, orders retrial in murder
- Exonerated by DNA, guilty in official’s eyes
- Guilty said bite expert, Bogus says DNA
- Information contained in the articles
  - newsworthy
  - thought-provoking
  - inflammatory headlines

The vast majority of forensic analysts in this country are ethical, responsible and hardworking and don't deserve to have their reputation tainted by a few "bad apples." But as history shows, it only takes a few fraudulent scientists to taint dozens of cases with devastating results. Sometimes, negligence—rather than fraud—jeopardizes the integrity of forensic analysis and can lead to wrongful convictions. This happens when training of lab employees is insufficient or when proper safeguards are not in place to prevent contamination or double-check analysts' work. In all of these instances, the government has an obligation to investigate the source and determine the extent of the

“Most scientists are rigorously honest about what really matters to them, like the accurate reporting of procedures and data. In other areas, however, such as disputes over priority or credit, they tend to behave like the ordinary mortals they are. Scientists are not disinterested truth seekers; they are more like players in an intense, winner-take-all competition for scientific prestige and the resources that follow from that prestige. The *sooner we admit to these facts and learn to distinguish between serious scientific misconduct and common human conduct by scientists, the better off we’ll be.*”

# Mechanisms

- For most, a waste of time
- *Dislike does not make another unethical*
- *Fairness and neutrality*
- *Normative behavior*

“There are sadistic scientists who hurry to hunt down errors instead of establishing the truth.”

- Marie Curie

# Forensics and Medicine

- Ethics, like beauty, is  
in the eye of the beholder
- No where in FS is this more apparent  
medicine is an art and a science...
- Put another way  
there are scientific facts  
there may be myriad interpretations

# Different Opinions

- Incontrovertible Error
- Can both be ethical and disagree?
- When opinions differ

what is the issue?

our ethics may differ

is this a style vs. substance issue?

there is a *large* grey zone

*just because we disagree*

*doesn't make either of us bad or wrong or unethical*

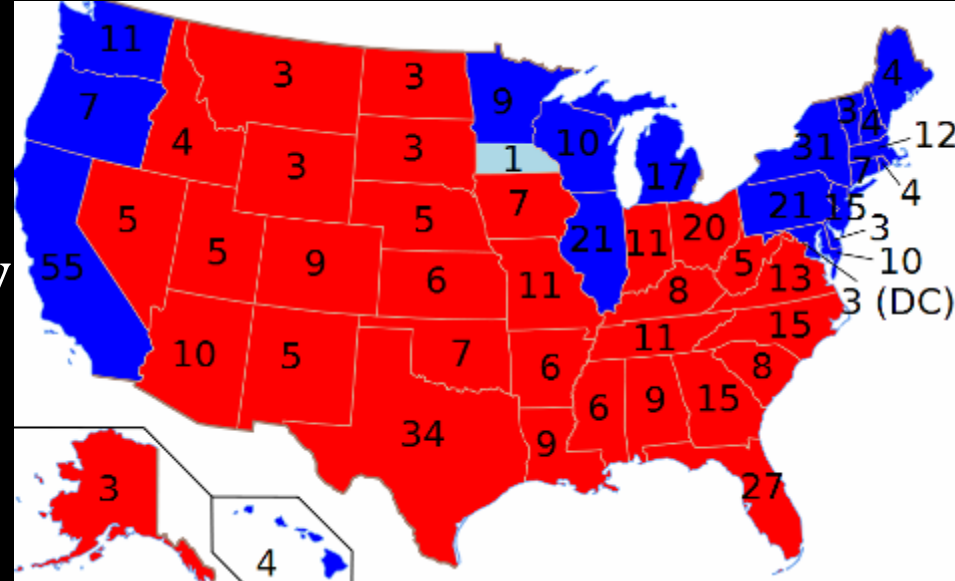
# Ethical Duty

- If competent individuals will not take a position contrary to their own, *who is left to speak for the other side?*
- “They” may not like what you have to say, but are you willing to take the case – even if it tends to incriminate/exculpate



# Middle Ground?

- Polarization
  - easier to tear down
  - look to politics
  - “us” vs. “them”
- Adversarial system
  - do we expect it to be any easier?
  - prosecution vs. defense
  - plaintiff vs. respondent



# Legal System Misconduct

## ADVERSARIAL SYSTEM

- Prosecutorial
- Defense
- Judicial
- Jury

# POLITICS/GOVERNMENTAL EMPLOYEES

- 1958 Code of Ethics for Government Service<sup>7</sup>
- Senate Select Committee on Standards and Conduct (1964)
- Select Committee on ethics (1977)
- House Committee on Standards of Official Conduct (1967)
- Committee on Ethics (2011)
- Congressional Ethics Office (2008)
- Mechanism – censure

# POLITICS/GOVERNMENTAL EMPLOYEES

- Code of Federal Regulations
- Office of Personnel Management &  
Office of Government Ethics
- Joint Ethics Regulation for the military
- Military Code of Conduct
- Uniform Code of Military Justice

# Ethics affects everything

RELIGION

LAW ENFORCEMENT

EDUCATION

ATHLETICS

ENTERTAINMENT

BUSINESS/INVESTMENT

MEDICINE/RESEARCH

# MEDICINE/RESEARCH

*“The moral dimension of medical education requires that students and residents acquire a crucial set of professional values & qualities, at the heart of which is the willingness to put the needs of the patient first”*

- NAME/AAFS
- AMA Code of Ethics
- State Medical Boards
- Flexner report

# Learning the painful lessons

*“...when experience is not retained, as among savages, infancy is perpetual.*

*Those who cannot remember the past are condemned to repeat it.” – Satayana*

*“Those who live in the past are destined to stay there.” – JCU Downs*

Try not to become  
a man of success,  
but rather try to become  
a man of value.

Albert Einstein



# Core values

- Speak cautiously
- Commit fully
- Exercise self-restraint
- Maintain balance
- Accept criticism
- Eschew resentment
- Invest in people

# Professional/organizational ethics

- *Aggressive growth*  
*can create unmanageable risk*
- *Get facts quickly and*  
*manage risks aggressively*
- *You are only as strong as your weakest link*
- *Accept responsibility*
- *Take the long view*

# Comparing Various Codes

- ASCLD
- AAFS
- NAME
- AMA



# When the line is Crossed

- Reporting
  - employer
  - board of oversight
  - professional organizations
- How far does it go?
  - who is right
  - how bad is it
  - overall effect

# HOW TO DO IT?

- Accepted ethical norms
- Cyclical continuing education
- Availability

Clarification - ombudsman mechanism

Binding & enforceable/Legal

Fair and open to the extent allowable

# HOW TO DO IT?

- Objective neutral confidential investigation
- Probable cause
- Hearing
  - Directly challenge evidence & witnesses
  - Present a defense
  - Mechanism for appeal
- Graded response with appropriate severity

# Don'ts

- Investigative/conclusory bias
- Partisanship
- Charade appeals/resolution process



# Possible structures?

- Business model
- Investigative model
  - Reactive
  - Legislative assembly
  - cumbersome
- Advisory model

# Conclusions

- Need
- Universality
- Fairness
- Acceptance
- Endorsement
- Enforceability

The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy

Martin Luther King, Jr.