DAEDALUS

The case for post-conviction DNA testing

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MOST locals have great faith in the criminal justice system of Singapore.

So it seems well-nigh impossible that there can ever be a wrongful conviction here as a result of faulty DNA testing. Now, however, the possibility of just such a miscarriage of justice seems to have surfaced.

Recently, the Health Sciences Authority (HSA) revealed that, between October 2010 and August last year, it had used a DNA test reagent at 10 times higher a concentration than required. This could have led to samples with very little DNA material returning negative test results.

So while "there was no possibility of falsely indicating any DNA profile that was not present", the Attorney-General's Chambers (AGC) noted, "other DNA that may have been present in low amounts may not have been identified".

The unprecedented snafu involved 412 criminal cases, of which 278 cases have already seen convictions. The rest (134 cases) are going to or are ongoing in the courts.

In 260 of the 278 resolved cases, the accused pleaded guilty without reference to the DNA results. In the other 18 cases, DNA tests "did not materially impact their resolution" but these convicts will be informed and may ask for retesting.

The AGC ordered retesting in 87 of the 134 active cases. The other 47 convicted persons will be notified and they or their lawyers may request retesting.

Of course, any criminal justice system will inevitably have an error rate. But one wrongful conviction is one too many, especially in a capital case. Now that this has transpired, some are arguing that an inmate should be allowed to petition for DNA retesting, if so desired.

In rape and murder cases, this could matter a lot, since there would typically be ample biological samples. In 1987, Britain became the first country to use DNA testing precisely to exclude a suspect in a rape case. Later in the same year, DNA evidence was used for the first time in the United States to convict a rapist.

However, Britain would have to wait till 2003 to see its first person still serving time exonerated after post-conviction DNA testing. The hapless fellow had been arrested at age 18 in 1987 for a brutal rape and murder that he did not commit.

But this happened only in the context of its Criminal Cases Review Commission doing its job in looking for any miscarriage of justice. He had not petitioned for the retesting. Since there is no official stand on such retesting in Britain, no resources are devoted to it. Thus, such testing there will be sporadic at best and unlikely to develop along US lines.

In the US, by contrast, inmates can petition for retesting even if DNA testing was done at trial, as there could have been laboratory errors. Or, more sensitive DNA technology available today may offer conclusive results if previous testing had given only inconclusive ones.

Of the US convicts who have petitioned for retesting, several who turned out to be factually innocent have been freed. The first of such successes came in 1989. So far, 281 prisoners, 17 of whom were on death row, have been thus freed in the US. Last week, the authorities released Rickey Wyatt, 56, after he had spent 31 years in prison for a rape that DNA retesting showed he never committed.

After a US National Institute of Justice report came out in 1996 detailing the stories of 28 men thus freed, all states (except for Massachusetts and Oklahoma) have passed laws that permit prisoners to petition for post-conviction DNA testing.

However, these laws are very restrictive. For example, some states do not permit retesting unless the prisoner's lawyer can show that retesting is likely to turn up another suspect. The reason that restrictions have been put in place is to prevent prisoners, especially those with very long sentences, from simply trying to secure their freedom through retesting.

A flood of requests for retesting, the non-meritorious along with the meritorious, could inundate the public prosecutor's office. Then there are also unseen human costs as victims and their families are made to relive their trauma, since retesting entails taking DNA samples from the victim and the case is reopened.

Such concerns will need to be taken into account in any push for DNA retesting.

But given that there are now 180,000 DNA profiles in the eight-year-old HSA database, the issue of post-conviction DNA retesting merits some attention.

While exonerating the factually innocent is desirable, it is also true that, in the US experience, about half of retesting is estimated to confirm guilt ultimately. Such cases get no publicity.

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But if ever convicted persons here do get to ask for retesting, experts suggest that appropriate penalties be put in place first, to discourage the factually guilty from taking a second stab at the justice system anyway.

Local experts think that any post-conviction retesting in Singapore is more likely to be done under non-routine circumstances such as the HSA snafu. But if ever convicted persons here do get to ask for retesting, experts suggest that appropriate penalties be put in place first, to discourage the factually guilty from taking a second stab at the justice system anyway.

One way is to make the convict pay for such testing, as most jurisdictions in the US do. But this is unfair since it would be biased against the indigent while favouring those with families that can pay.

Instead, experts suggest that it might be better to punish the factually guilty who ask for DNA retesting nevertheless by making them lose any time-off they may have accumulated for good behaviour if retesting should confirm their guilt. (In practice, with time-off for good behaviour, actual time served here can be up to a third less than the sentence.)

Such penalties should mean that those who ask for DNA retesting to exonerate themselves are more likely to be factually innocent to begin with.

Meanwhile, at the HSA, some sock pulling is in order. May such errors never happen again.

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