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Court Invalidates a Decade of Blood Test Results in Criminal Cases

CHARLESTON, W.Va., Nov. 11— Hundreds of blood tests that West Virginia prosecutors have used to link defendants to crime scenes over a 10-year period are now invalid because a former State Police serologist may have fabricated the results, the West Virginia Supreme Court of Appeals has ruled.

At the court's request, an independent team of serologists spent the last five months combing through the testimony of Fred Zain, the State Police serologist from 1979 until 1989. In the 36 cases it investigated, the team said, it discovered that Mr. Zain had lied about, made up or manipulated evidence to win convictions in every single case.

In addition, "there was evidence that Mr. Zain's supervisors may have ignored or concealed complaints of his misconduct," Justice Thomas Miller wrote in the unanimous recommendation of the state's high court. **Falsified Testimony Found**

At least 134 prisoners may be entitled to new hearings because falsified testimony helped put them in jail, the court ruled. Most are violent offenders who were convicted in part on the strength of blood or semen residues found in cases of rape or murder. In June, the justices ordered county court clerks across the state to preserve the evidence in 134 cases tried between 1986 and 1989.

But there may be more. According to the report, State Police records do not account for every case in which Mr. Zain testified. Within the next few weeks, corrections officers will hand out forms to prisoners who think they are entitled to new trials. Serologists will then take blood samples from each of these prisoners and try to match the unique genetic materials in the prisoners' DNA to crumbling stains on car seats and carpet samples that have been rotting in police lockers for years.

If the testing of DNA, a process not widely used in the late 1980's, affirms a convict's guilt, he will not get a new hearing. If it does not, it will be left to the circuit judge to decide whether the prisoner would have been convicted without Mr. Zain's testimony, and thus whether he is awarded a new trial.

When he left the State Police in 1989, Mr. Zain took a job in Texas as a serologist in the Bexar County Medical Examiner's office. He was dismissed from that job in June after similar

complaints about doctored test results. Wrongdoing Is Denied

Mr. Zain has denied wrongdoing. His lawyer, Larry Souza of San Antonio, today characterized the report as "pure character assassination" in an interview with Public Radio.

"If they're going to charge him with a crime, then charge him with a crime," Mr. Souza said.

In the ruling issued on Wednesday, Justice Miller said the team's findings were "shocking and represent egregious violations of the right of a defendant to a fair trial."

Local law-enforcement officials say they have not yet decided whether to pursue criminal charges against Mr. Zain. The one-year statute of limitations on the misdemeanor count of false swearing has already expired since his last testimony in a West Virginia court. Other options include charging him with perjury, a felony, or pursuing a Federal charge of violating defendants' civil rights.

Suspicious about Mr. Zain's work arose in 1987, when a West Virginia man, Glendale Woodall, was charged with two rapes. Mr. Woodall's conviction and a 335-year sentence were thrown out by the State Supreme Court of Appeals in 1988. The action was taken after DNA tests, the first admitted by a state court in the United States, proved that Mr. Woodall could not have been the women's assailant.

Mr. Woodall's lawyer, Lonnie Simmons of Charleston, also found that Mr. Zain's blood typing tests, which identified Mr. Woodall as among the 6 in 10,000 men who could have raped the women, were flawed. She also found that he had changed his identification of a hair found in the car of one of the women, from an unidentifiable pubic hair to Mr. Woodall's beard hair. Prisoner Is Freed

A local judge threw out the charges against Mr. Woodall, who was freed after five years in prison.

Still, no one suspected widespread fraud until a wrongful imprisonment lawsuit that Mr. Woodall had filed was settled quickly and quietly by state officials for \$1 million, the maximum available under the state's insurance policy. Documents obtained through a Freedom of Information Act request showed that the case had been settled because of Mr. Zain's fraudulent testimony.

Kanawha County's prosecuting attorney, William Forbes, began a criminal investigation. After several months of investigation, he asked the Supreme Court of Appeals to appoint a special judge and a panel of lawyers and scientists to examine Mr. Zain's testimony. That resulted in the report the justices adopted on Wednesday.

The justices' report said that in 1985, two West Virginia State Police officers who worked under Mr. Zain complained that he was writing laboratory reports based on blank laboratory slides. The two officers told investigators that nothing had been done.

When one of Mr. Zain's supervisors wrote to the Federal Bureau of Investigation about his

concerns about Mr. Zain's test results, the report said, agents "made amusing comments like, 'Fred does not do things by the book,' and called him 'pro-prosecution,' " but recommended no action. The next year, Mr. Zain became head of the crime laboratory.

The authorities in Texas have been waiting for the results of the West Virginia report before taking action against Mr. Zain. At least one prisoner, Jack Davis, of New Braunfels, Tex., may be facing the death penalty because of testimony from Mr. Zain that helped to convict him of a 1989 murder.