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## New York Court of Appeals Finds Abuse of Discretion in DNA Evidence Rulings

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One Battery Park Plaza • New York, New York 10004-1482 • +1 (212) 837-6000

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**April 16, 2020** — The firm helped The Legal Aid Society win a significant ruling before the New York Court of Appeals that will prevent New York trial courts going forward from admitting evidence in criminal prosecutions without first affording defendants the opportunity to challenge its reliability through a Frye hearing.

On March 31, the New York Court of Appeals held that the lower courts in the two cases on appeal -- *People v. Cadman Williams* and *People v. Elijah Foster-Bey* -- abused their discretion as a matter of law in admitting DNA evidence tested through two discredited methods of DNA analysis without first holding a Frye hearing to determine whether the proof derived from the methods was generally accepted in the relevant scientific community. The two methods at issue -- low copy number (LCN) DNA testing and the forensic statistical tool (FST) -- were employed in these cases and numerous other criminal cases in New York state courts to extract and interpret minuscule biological samples that are too small to test using gold-standard DNA testing methods.

HHR and Legal Aid argued in their supporting amicus curiae brief that a flood of lower court opinions denied Frye hearings regarding these methods solely on the basis of initial and inadequate examinations by a small number of courts, without performing their role under Frye of preventing dubious challenged scientific evidence from being presented to the jury. A proper Frye analysis would have readily allowed lower courts to determine that the novel techniques are not generally accepted as reliable within the relevant scientific community. Only a single public laboratory in the United States has ever used these methods in forensic casework -- the New York City Office of Chief Medical Examiner (OCME) -- and they were validated solely by OCME.

The Court's ruling clarifies the standard for determining when a Frye hearing is warranted and will put an end to a decade-long trend pursuant to which lower courts simply defer to prior trial-court decisions as a substitute for engaging in a meaningful Frye inquiry, in the face of a challenge to the admissibility of scientific testing methods.

"Scientific community approval, not judicial fiat, is the litmus test for the admission of expert evidence generated from a scientific principle or procedure, and it is not to be assumed that one hearing is automatically 'enough' to hurdle a Frye inquiry in a different matter," the Court's opinion stressed.

Prior to trial, both Williams and Foster-Bey moved for orders precluding prosecutors from introducing expert testimony regarding any conclusion generated by LCN and FST analysis -- or, in the alternative, for a Frye hearing on its admissibility -- arguing that these methods were not generally accepted as reliable by the relevant scientific community. In both cases, however, the trial courts denied that application without first holding a Frye hearing, and the New York Supreme Court Appellate Division affirmed.

While the New York Court of Appeals ruled that it was an abuse of discretion for the trial courts to admit DNA evidence in both cases absent a Frye inquiry, it found that the errors were nevertheless harmless with respect to these two defendants in light of the remaining evidence adduced in each case at trial. However, the ruling will afford Legal Aid's clients and countless criminal defendants going forward a crucial opportunity to challenge the admissibility of potentially unreliable evidence.

HHR began working with Legal Aid's DNA Unit on the amicus curiae brief in January 2019. After gaining an in-depth understanding of DNA analysis, the HHR team worked on distilling and communicating complex scientific issues to persuade the Court. In October that same year, the HHR team was honored at Legal Aid's annual awards ceremony -- the 2019 Pro Bono Publico Awards -- for their work on the amicus brief.

Miles Orton and Sabrine Tribié prepared the brief, under the direct supervision of partners Marc Weinstein and Bill Beausoleil.

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