

# North Carolina's Corrupted Crime Lab

Adapted from Reason.com, by Radley Balko (2010)  
(<http://reason.com/archives/2010/08/23/north-carolinas-corrupted-crim>)

Greg Taylor served 16 years in prison after he was falsely convicted of murdering a prostitute in Raleigh, North Carolina. He was released in February by a special three-judge panel after it was discovered the blood police claimed to have found in his SUV wasn't blood at all. In the wake of that debacle, North Carolina Attorney General Roy Cooper ordered two retired FBI agents to conduct an investigation on the State Bureau of Investigation (SBI) crime lab. The report came out last week, and it is damning.

The report found that SBI agents withheld exculpatory evidence or distorted evidence in more than 230 cases over a 16-year period. Three of those cases resulted in execution. There was widespread lying, corruption, and pressure from prosecutors and other law enforcement officials on crime lab analysts to produce results that would help secure convictions. And the pressure worked.

A stunning accompanying investigation by the Raleigh *News & Observer* found that though the crime lab's results were presented to juries with the authoritativeness of science, laboratory procedures were geared toward just one outcome: putting as many people in prison as possible. The paper discovered an astonishingly frank 2007 training manual for analysts, still in use as of last week, instructing researchers that "A good reputation and calm demeanor also enhances an analyst's conviction rate." Defense attorneys, the manual warned, often "put words into the analyst's mouth to try and raise inaccuracies." The guide also instructs analysts to beware of "defense whores" — analysts hired by defense attorneys to challenge their testimony.

Forensic science in America is corrupted by a fundamental conflict of interest. In far too many states, crime labs fall under the auspices of law enforcement, usually reporting to the state attorney general. A forensic analyst's real aim should be to follow the science, even if results prove disappointing to bosses

who are trying to secure convictions. But the pressure from prosecutors, even when it's not overt (which it often is), produces bias even in the work of the most fair-minded analysts.

The relationships between SBI crime lab researchers and North Carolina prosecutors aren't just cozy, they're downright cuddly. The *News & Observer* reports that in one case two blood-spatter specialists ran through multiple experiments in order to produce even one that would make the blood patterns on a defendant's shorts support the prosecution's case. The two analysts are seen on video high-fiving after finally producing the desired result.

For those clinging to the notion that analysis in a law enforcement-managed laboratory can be independent, the newspaper uncovered prosecutor reviews of crime lab analysts indicating the contrary. In 2003, for example, a North Carolina state prosecutor wrote in a review of a drug analyst, "If [*Name of SBI specialist and expert witness*] gets any better on the witness stand, the Johnston County defense bar is going to try and have her banned from the county!"

These weren't a few rogue analysts; the crime lab's problems extend across a wide array of forensic disciplines. Until 1997, the lab's serology unit didn't release negative test results *as a matter of policy*. If tests showed that a substance that police claimed was blood wasn't in fact blood, analysts simply kept those results to themselves.

Greg Taylor was wrongly convicted precisely because of this policy. A substance that police falsely identified as blood was found in Taylor's truck. But the field tests that police use to find blood at a crime scene have a high margin for error. More sophisticated lab tests showed that the substance wasn't blood, but a SBI analyst testified at Taylor's innocence hearing that technicians were told to ignore these tests if they contradicted the field-test results.

In another case, an attorney for a woman accused of killing her mother was shocked to learn that the lab's DNA tests on blood found at the crime scene matched his client. He called the lab and asked them to retest. They refused. He was finally able to obtain a court order for a new test. It was negative. It turned out that a lab technician had swapped the sample provided by his client with blood taken from the crime scene.

The SBI crime lab scandal is only the most recent story of forensics malfeasance. In recent years there have been forensics scandals in Virginia, Maryland, Mississippi, Oklahoma, Nebraska, California, Michigan, Texas, and at the FBI. And this is only a partial list. At some point, it becomes sensible to conclude that these scandals aren't the result of isolated bad actors, but of a system that produces them.

Last year the National Academy of Sciences released a scathing report on the use of forensics in the courtroom, finding systemic problems ranging from analysts routinely overstating the implications of their test results, to the widespread use of forensic specialties like bite-mark analysis that have little basis in science at all.

Most forensic disciplines were invented by police investigators, not scientists. Courts have allowed these disciplines to be admitted into evidence before they've been subjected to any serious scrutiny from the scientific community. The methods used in most crime labs disregard critical scientific principles such as blind testing, competency testing, peer review, and statistical analysis. Yet when a forensic specialist testifies in the courtroom, his testimony usually carries the weight and veneer of actual science.

North Carolina Attorney General Roy Cooper is a good illustration of the political hurdles standing in the way of fixing any of these problems. Cooper deserves praise for ordering such a comprehensive investigation. It takes guts for a politician to risk being labeled "soft on crime," especially a politician who is a current or former prosecutor.

Still, Cooper was made aware of the problems in SBI as long ago as 2005, when he was pressed by local media and activists to look into how Floyd Brown, a developmentally disabled man who can't recite the alphabet past the letter K, was able to articulate to SBI investigators a detailed confession about how he murdered an elderly woman in his neighborhood. Brown served 14 years in a mental institution before he was exonerated in 2007. Cooper didn't order an investigation into Brown's case until last year, and even then only in the face of a lawsuit.

And even after Cooper's own damning report and the series of follow-on investigations by the *News & Observer*, Cooper is treating the SBI scandal as if it were a series of isolated cases and not a systemic problem. Cooper told the paper he sees nothing wrong with lab researchers consulting with prosecutors before performing their analysis, a practice proven to produce biased test results (SBI analysts are also discouraged from consulting with defense attorneys). He also objected to moving the crime lab to a different government agency so that analysts wouldn't be reporting to prosecutors, telling the *News & Observer*, "You don't want to hobble law enforcement by removing key tools such as technology to prevent them from solving crime." No, you don't. But moving the lab wouldn't do that. It would merely prevent analysts from feeling they need to please prosecutors by providing them with favorable test results.

So will the lab at least open itself to peer review and observation? John Watters, a 17-year veteran of North Carolina's Department of Justice who, as the *News & Observer* reports, stated that he'll resist any effort to allow outsiders to evaluate the lab's work. In fact, the lab banned outside observers in 2009.

So long as government officials retain that mindset, we'll continue to see forensic scandals like the one currently unfolding in North Carolina. Which means preventable mistakes will continue to send innocent people to prison, and allow guilty people to remain free.

# In Criminal Cases, Should Science Only Serve the State?

Adapted from Reason.com, by Radley Balko (2009)  
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Last month, the National Academy of Sciences (NAS) released a wide-ranging report expressing alarm at the way forensic science is used in the courtroom. Among the many problems the report addressed was the tendency of many states to see state-employed forensic experts not as independent scientists, but as part of the prosecution's "team."

The problem with that sort of arrangement is obvious: It introduces pressure—subtle or overt—on scientists to produce results that please police and prosecutors. The NAS report recommends that state-employed forensic experts be neutral. Today, far too many crime labs and medical examiners report to the attorney general of their states. Others report directly to the prosecutors in their jurisdictions. Ideally, government medical examiners would not only be independent of the state's law enforcement agencies, they would be free to testify *against* any state claims unsupported by scientific evidence.

But that isn't the case in most of the country. In fact, it's almost universally accepted—among both prosecutors and medical examiners—that a government medical examiner should *never* testify against the district attorney who serves in the same jurisdiction, even if the medical examiner strongly disagrees with the prosecutor's conclusions. Lately, that already dubious notion seems to be expanding. Many law enforcement officials believe that government forensic experts should be barred from testifying for the defense in *any* case, even in other jurisdictions.

Earlier this month, the Minneapolis *Star-Tribune* reported that Minnesota District Attorney James Backstrom rebuked his county's medical examiner, Dr. Lindsey Thomas, because members of her staff had testified for defense attorneys in other counties, calling into question the conclusions of those counties' medical examiners. In one email to Thomas, Backstrom called the practice "a conflict of interest," and complained that the "added credibility attached to someone who is

currently a coroner/medical examiner in another community who testifies as a defense expert makes any prosecution more difficult." In Backstrom's view, the actions of Thomas' staff were no different than if he were to testify that he disagreed with another prosecutor's strategy or conclusions. Backstrom ended one email by threatening to block Thomas's reappointment as the county's medical examiner if the practice continued.

Backstrom not only exhibited a fundamental ignorance of the purpose of forensic science in the courtroom, he also tellingly revealed a striking philosophical difference between the fields of science and law enforcement. Law enforcement officers—be they police officers or prosecutors—assume a sort of fraternity that precludes them from criticizing one another. Cops almost never testify against other cops—even when a fellow officer has broken the law—and prosecutors rarely criticize other prosecutors. Scientists, on the other hand, are not only willing to criticizing other scientists, but the process of peer review—a fundamental component of the scientific method—actually *depends* on such criticism. Backstrom's efforts to undermine peer review are alarming, particularly given that his efforts are aimed at the courtroom, where so much is frequently at stake.

Sadly, Backstrom's view is all too common. Last week, the local Fox affiliate in Atlanta ran two investigative pieces critical of Georgia's chief state medical examiner, Dr. Kris Sperry. The station's big scoop was that Sperry—who has an impeccable reputation among his peers—was regularly testifying for criminal defendants in other jurisdictions. The report quoted a sheriff and former county coroner in Harrison County, Mississippi, both still angry at Sperry for contradicting the state medical examiner's testimony in a murder case. The piece included quotes from both Mississippi officials stating that a medical examiner who gets a government paycheck should never contradict another government medical examiner in court. One Tennessee official said

the practice was akin to a police officer testifying against another police officer.

Again, this is nonsense. We need *more* doctors willing to hold their rogue colleagues accountable, not less. For the last three years, I've been reporting on the severe inadequacies of Mississippi's criminal autopsy system. In particular, I've reported on Dr. Steven Hayne, who over the last 20 years has done 80 to 90 percent of the state's autopsies, carrying an impossible workload of some 1,500 to 1,800 autopsies per year (by his own account), despite the fact that he isn't board-certified in forensic pathology. Hayne's colleagues have known for years that he's little more than a rubber stamp for prosecutors. He has inflicted incalculable damage on the state's criminal justice system.

Kris Sperry, along with several current and former state medical examiners in Alabama, is one of the few doctors who has been trying to hold Hayne accountable. Over the years, Sperry has written letters to professional organizations asking for Hayne to be investigated. Yes, he has also testified against Hayne and other disreputable Mississippi medical examiners in court. He ought to be lauded for that, not condemned. The other problem here, as the NAS study points out, is that there is currently a critical shortage of board-

certified medical examiners. If every forensic pathologist with a government job or contract were barred from ever testifying for criminal defendants, there wouldn't be many doctors left to testify. The few who were left couldn't possibly testify in every case where they're needed—and in those cases they do take, they could easily be impeached by prosecutors as guns-for-hire.

But then, maybe that's the point.

You'd think that a forensic expert who tells the jury that he testifies for both defense attorneys and prosecutors would carry *more* weight on those occasions when he testifies for the state. That would show a doctor whose testimony follows the science. But for prosecutors like Backstrom, the primary concern is not embarrassing his fellow district attorneys, and ensuring that credible doctors with state credentials don't screw up another prosecutor's case—even if that case is based on faulty science.

It takes an odd definition of justice to believe that state-paid scientists should only use their expertise to help win prosecutions. Unfortunately, that view seems to be the prevailing one.