

Prosecutors don't belong in the crime lab business

December 17, 2008 by Crime Lab Report

Crime Lab Report's recent editorial about forensic testing laboratories operating under a police command structure drew more comments from our readers (most of them in agreement with our analysis) than any other editorial we've written since we began our publication two years ago.

Clearly, there are many reasonable people who believe that crime laboratories should be independent of law enforcement agencies and there are certainly good arguments to support that position. Independence can often create an environment where there is less chance of bias and, in some instances, gives crime labs the ability to advocate more effectively for needed resources.

Our position has been, and will remain, that science is culture-driven. As long as the culture is appropriate, it ultimately doesn't matter who is in control.

Recent events in Orange County, California, however, have convinced us that there are limits to the application of our reasoning.

What we are talking about are crime laboratories governed by prosecutors.

You've probably seen the scenario play out hundreds of times in movies and television dramas; a police investigator cracks a big case and has his or her first meeting with the DA to present the evidence. The prosecutor studies the merits of the case and concludes, to the dismay of the police, that there is insufficient evidence, procedural problems, or the apparent violation of the suspect's civil rights. This in turn ignites a passionate verbal confrontation between the police and the prosecutor.

While often very frustrating to those in law enforcement, what we are witnessing is the genius of our criminal justice system – the commitment to protect the innocent, sometimes even at the expense of letting the guilty go free.

You will remember from your civics classes that our government has three branches that are expected to remain separate: legislative, executive, and judicial. Part of the executive branch's role in government is to police, which comprises one component of a system designed to maintain law and order in society. The legislative branch, on the other hand, creates laws that are eventually interpreted by the judicial branch.

Prosecutors play a significant role in this balance of power. They have the final say as to whether a case moves forward in the courts. They also have some discretion when it comes to plea bargaining and sentencing recommendations. In this role in particular, they provide an important check against abuses of authority. It is as much their job to prosecute defendants as it is to ensure that they carefully scrutinize the investigative practices of the police.

CRIME LAB REPORT

Media and public policy analysis for the forensic science community

Historically, forensic laboratories have their origins in some of the largest and most progressive police departments in the United States such as Los Angeles, Chicago, and New York. Since the police are charged with the investigation of crime, it makes sense that police agencies in the cities with the largest populations were the first to embrace the latest scientific technologies to aid them in combating the crime waves that would mark the latter half of the twentieth century.

Over time, word of the use of these new tools spread to other agencies. That is how most crime labs came to operate under the auspices of law enforcement agencies. It was simply a necessity.

Crime Lab Report believes that many of the same concerns about police controlled crime labs apply to those run by a prosecuting attorney, but on a much larger scale and with an unacceptably high level of risk.

We know that there are outstanding and trustworthy scientists working in the small number of crime labs operated by prosecutors' offices. But we also know that the pressure placed on prosecutors to win, particularly in today's legal climate, can imperceptibly erode the kind of culture that is necessary to facilitate the dispassionate practice of forensic science.

Forensic science should be the most objective and unbiased evidence available to the criminal justice system and should be perceived as such. But when it emanates from the prosecutor's own office, *Crime Lab Report* believes that this objectivity becomes much less believable and, in the worst instances, may even be lost in the process entirely.

Most of the crime labs that are currently affiliated with prosecutors are located in California, so this does not appear to be a trend.

But *Crime Lab Report* is concerned about one district attorney who succeeded in taking control over an established and respected forensic science laboratory despite the fact that prosecutors in that jurisdiction have a documented history of attempting to exert undue influence over the scientists who work there.

The story begins in 2005 when the Orange County Sheriff's Crime Lab was asked to examine several pieces of evidence, including a hat, shirt, BB gun, and steering wheel cover relating to an armed robbery and carjacking investigation. A suspect, James Ochoa, was identified by eyewitnesses in three separate photo and in-person lineups.

A police detective reportedly told the crime lab analyst that if the DNA evidence did not match Ochoa, the case was closed. The evidence that was examined by the Orange County lab, DNA and latent fingerprints, both excluded Ochoa. Alibi witnesses also placed Ochoa at his home at the time of the crime.

Prosecutors allegedly contacted the lab and requested a meeting before the results were released to the defense attorney. Ochoa's attorney had agreed to represent him pro-bono because he felt that his client was being railroaded. According to court papers, a deputy district attorney asked

CRIME LAB REPORT

Media and public policy analysis for the forensic science community

the crime lab to do something that conflicted with the scientific evidence: tell the defense attorney that his client's DNA was found on the shirt.

According to a March 12, 2008 story that appeared in the *Orange County, CA Weekly*, columnist R. Scott Moxley reported that the prosecutor in question was a former employee at the Houston Police Department Crime Lab who described herself as a lawyer/scientist. She was quoted as saying "I, in no way, did anything unusual. About every week, we ask the crime lab to reconsider findings."

The prosecution took the case to court anyway. Against the advice of his attorney, Ochoa accepted a plea deal for two years in prison and the exculpatory evidence was never heard by a jury.

About a year later, when a carjacker was arrested in Los Angeles and his DNA was entered into the CODIS system, police learned the true identity of the man who committed the crime for which Ochoa was sent to prison.

Surprisingly, Orange County District Attorney Tony Rackauckas mounted an effort earlier this year to gain control of the crime lab following the indictment of the incumbent sheriff, Michael Carona, on federal corruption charges. Rackauckas was quoted by Moxley as wanting the county board of supervisors to give him control of the lab "in order to streamline processes, improve communications, and maximize operational efficiencies."

Rackauckas also insisted that his office is better suited "to ensure fairness in the criminal justice system, to exonerate those wrongly accused, to help protect our citizens and to enhance support for victims of crime."

In late October, the board of supervisors voted unanimously to place the lab under the control of a three-member oversight panel consisting of Rackauckas, the county CEO, and the sheriff.

The board promised that the panel would be revisited in a year.

The Orange County Sheriff's Department created their crime lab sixty years ago at a time when the premier organization of forensic scientists, the *American Academy of Forensic Sciences*, was in its infancy. It was the first local laboratory in California to be accredited by the *American Society of Crime Laboratory Directors / Laboratory Accreditation Board* after demonstrating conformance to the internationally recognized ISO 17025 standard.

But now, we believe the Orange County board of supervisors has made a profoundly dangerous mistake that will threaten the reputation and effectiveness of their crime laboratory.

The lab's director, Dean Gialamas, was not available for comment. But he is a highly respected member of the forensic laboratory community and is the current president of the *American Society of Crime Laboratory Directors*. We hope his expertise and judgment are allowed to bring clarity and reason to this difficult situation.

CRIME LAB REPORT

Media and public policy analysis for the forensic science community

In a statement released by the *Innocence Project* in New York, Public Policy Director Stephen Saloom stated that prosecutors have no business supervising forensic labs. "Just like we wouldn't want a defense attorney to call the shots in a lab, we wouldn't want a prosecutor [to do so either]. The prosecution's presence on the oversight board, combined with the inherently political nature of crime policy, could create some pressure that may result in politics taking precedence over science."

While *Crime Lab Report* has taken exception to some statements made by the *Innocence Project* in the past, this time we wholeheartedly agree with their assessment.

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