

# CRIME LAB REPORT

*Media and public policy analysis for the forensic science community*

## ABOUT US

*Crime Lab Report* is an independent organization that analyzes media coverage, industry trends, and public policies related to forensic science and its application within the criminal justice system. In this capacity, we seek to keep the public record open and honest so that decisions regarding this critical profession will be based on accurate information.

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## Corrupt journalism is survived, but rarely defeated

APRIL 5, 2011 BY CRIME LAB REPORT\*



KILLERS AND RAPISTS aren't the only ones keeping America's forensic scientists busy these days.

Add wayward journalists to the list.

North Carolina became ground zero in the battle between scientists and reporters when the forensic science laboratory of the State Bureau of Investigation (SBI) was alleged to have engaged in shoddy scientific practices.

The *News & Observer's* coverage of the story was understandably intense and lengthy. No doubt, allegations of forensic science malpractice warrant immediate attention. Taxpayers and their representatives should know if changes at the SBI laboratory are needed.

Exactly what changes eventually occur will affect public safety. Journalists, therefore, have a responsibility to get the story right – the whole story. When they get it wrong, citizens, families, and businesses are placed in danger, and perhaps at a greater financial cost.

Forensic science is an impressively reliable and trustworthy institution that significantly enhances our daily pursuit of justice. The chance of a catastrophic error or instance of malpractice occurring in an accredited laboratory is profoundly low. The chance of it leading to the conviction of an innocent defendant is even lower by orders of magnitude.

Like any human endeavor, mistakes sometimes happen in forensic science. But they are less likely to occur in an organizational culture that encourages and supports the practice of good science. The accreditation program of the American Society of Crime Laboratory Directors / Laboratory Accreditation Board (ASCLD/LAB) has revolutionized forensic science since 1980 and continues to do so to this day.

Unfortunately, *News & Observer* reporters repeatedly misinformed their readers about forensic science and forensic science accreditation. The portrayal of forensic science accreditation as being corrupt, and the characterization of forensic science representatives as being avoidant of legitimate scrutiny, were not even remotely justified.

Not surprisingly, the suggestion that forensic science is failing our criminal justice system, while paradoxically glamorized by popular television shows and movies, makes for a compelling story that sells newspapers.

But when journalists fabricate a fraudulent plot and intentionally advance a story by omitting critical information, it is no longer a matter of selling newspapers. It is about the corruption of journalism itself.

For too many years, this corruption has come to bear heavily on the profession of forensic science, which is too small of a professional to mount an effective defense.

In his 1987 best selling book, *Behind the Front Page: A Candid Look at How the News is Made*, *Washington Post's* Pulitzer Prize winning political correspondent, David Broder, warned that a "form of journalistic corruption" was becoming pervasive in the American media.

He called it "clique journalism."

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According to Broder, clique journalists see the world through the eyes of the groups and friends to whom they have sworn their loyalty. As a result, they become willing accomplices to the dissemination of information that is frequently skewed or incomplete.

## The Innocence Clique

The Manhattan based Innocence Project, led by former O.J. Simpson “dream team” members Barry Scheck and Peter Neufeld, is home to what has become a clique of its own sort. Over 200 exonerations of prisoners around the country since the early 1990s have only strengthened the resolve and energy of this powerful political movement whose goal is to institute sweeping reforms of our legal and judicial systems.

In a political climate where citizens are confident in their system of justice, these proposed reforms, some of which are costly and highly bureaucratic, are more likely to fall on deaf ears.

But if public trust in the accuracy and fairness of criminal justice in America declines, innocence reforms might have a fighting chance. Therein rests the bias that no one in the innocence clique, including a few sympathetic law professors who have committed themselves to advancing the agenda, are willing to admit – or even discuss.

No doubt, innocence activists continue to present some compelling and reasonable arguments that are worthy of serious consideration. But the relentless attack on forensic science continues to defy logic.

The fact of the matter is that forensic science gives people confidence. But with that reputation comes a bull’s eye that the innocence clique stapled to the backs of America’s crime laboratories almost twenty years ago.

The problem, however, is not really the innocence clique. The real problem is the audience afforded to it by a faction of clique journalists who believe in the innocence agenda and are convinced that forensic science stands in its way.

In 2003, for example, Peter Neufeld was quoted as mocking forensic science accreditation by suggesting that it was nothing more than a glorified system of allowing foxes to watch a henhouse. Neufeld was quoted by Philadelphia reporters as asking, “would you still . . . buy steak if it was inspected by the meat packers’ association.”

Inflammatory rhetoric makes news and Neufeld knows it. He also knows that most forensic scientists are too busy to take him on.

## North Carolina SBI Laboratory

Only recently in North Carolina, State Representative Angela Bryant was quoted as saying that ASCLD/LAB accreditation authorities “weren’t doing diddly-squat” to prevent errors or malpractice in the SBI laboratory.

Nothing could have been further from the truth.

The SBI laboratory was first accredited in 1988 and was required to comply with hundreds of quality assurance standards in order to maintain accreditation. Inspectors from around the country came to North Carolina every five years to make sure that it complied with those standards and subjected itself to the required annual internal and external audits. The fact that there is even a paper trail to investigate can be attributed, in large part, to ASCLD/LAB accreditation.

When the American Society of Crime Laboratory Directors (ASCLD) complained about the pervasive misreporting, *News & Observer* reporter, Joe Neff, accused ASCLD of failing to “cite a single example” of “errors or inaccuracies.”

Mr. Neff should know better.

Accurate reporting is not just about getting all the factoids correct. It is also about context and proportion, which were ignored by *News & Observer* reporters in their coverage of the SBI story. ASCLD representatives knew how inaccurate the reporting had become and were demanding accountability.

There is big difference between *reporting errors* and *erroneous reporting*. Mr. Neff and his colleagues are guilty of the latter.

For example, in his reporting, Joe Neff characterized the relationship between crime laboratory directors and accreditation authorities as being “cozy,” implying that the two groups conspire to allow crime laboratories to work without the burden of any strict governance or accountability.

Neff failed to explain that ASCLD and the accreditation board that it created in the late 1970s, ASCLD/LAB, are two separate and distinct organizations that have found creative and effective ways to collaborate in an effort to save taxpayer dollars.

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Forensic science accreditation is not cheap and it is not easy. Efforts to reduce administrative costs have the effect of conserving taxpayer resources and motivating laboratories to seek accreditation when they otherwise might not have been able to afford it.

Why wouldn't the *News and Observer* celebrate these efforts to elevate quality in forensic science at a lower cost? Don't taxpayers demand this sort of collaboration, especially in our current economic slump?

The answer is yes. But Neff and his colleagues gratuitously chose to portray this relationship as being scandalous, which was inexcusable, unjustified, but typical of the rhetorical antics of the innocence clique.

But Neff went further. He claimed that ASCLD President-Elect Jill Spriggs "twice declined interviews with *The News & Observer*" after a presentation she gave to the North Carolina General Assembly attempting to clarify the technical issues involved with the SBI laboratory investigation.

The truth is that President-Elect Spriggs notified Neff by email that she would be happy to conduct an interview. But because of concerns about the *News & Observer's* misreporting, Spriggs requested a chance to review a prepublication copy of any articles in which her quotes appeared. Neff explained that his newspaper's policy would not allow for such a prepublication review.

Jill Spriggs replied, "No, I'm sorry that will not work."

On February 10, 2011, Mr. Neff reported that an SBI scientist "withheld test results" that were favorable to Gregory Taylor, who was convicted of a 1991 murder. According to Neff, the conviction was, "in large part," the result of the scientist's supposed misconduct.

Neff was wrong.

The test results to which Mr. Neff referred were a series of two complimentary tests that were once commonly used in tandem to identify blood. According to transcripts in the Taylor case, the tests were used to determine if a reddish brown stain observed on a critical piece of evidence linking Taylor to the crime was blood.

The first test, intended only as a preliminary chemical indicator of blood, was positive.

The second test, intended to double-check and confirm the accuracy of the preliminary test, was negative.

Because there are legitimate scenarios in which the aforementioned confirmatory test might falsely yield negative results, it was common for laboratories to simply report "chemical indications" of blood when the preliminary test was positive but the confirmatory test was negative.

Simply put, a negative confirmatory result could not be interpreted as the conclusive *absence* of blood.

In the Taylor case, the SBI scientist reported the positive indication of blood. Moreover, he exercised restraint when he limited the certainty of his wording due to the negative confirmatory test.

Contrary to Joe Neff's reporting, the negative result was, in fact, documented in the scientist's notes and was available for court had the case file been discovered – and if the scientist had been called to testify.

But strangely, the scientist did not testify. In fact, his results were revealed during the testimony of a non-scientist evidence officer who commented on the results in open court and was even allowed to opine about the presence of blood without the scientist even knowing it.

Instead of challenging the conclusion, the defense simply agreed to recognize the questioned stain as being blood.

The *News & Observer's* coverage of the SBI laboratory situation, as well as the proportion given to the story, was stunningly poor and worthy of public rebuke. Yet the issues surrounding the Gregory Taylor case are instructive for forensic scientists across the country.

## Science is About Improvement

In years past, forensic scientists issued reports with the understanding that any concerns or confusion about the results would be ironed out in court during cross examination. Indeed, this is the underlying philosophy of our adversarial system.

Accreditation, however, is now rapidly forcing changes to how forensic scientists word their conclusions. It is now recognized that forensic laboratory reports must also include language that mitigates potential sources of confusion or any possible misinterpretation of the results. Waiting until a case goes to trial is too late, by today's standards, to worry about any ambiguity that might compromise justice. Changes are certainly needed; changes are certainly coming.

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We can agree that, in the Gregory Taylor case, had the scientist included language that clarified the preliminary indications of blood as being limited in certainty, confusion would have been avoided. But if the negative confirmatory test had also been reported, the scientist would have been equally responsible for clarifying the limited certainty of the negative result – that the questioned stain could *not* be ruled out as blood.

Looking at past scientific practices through a modern prism is always fraught with peril. Forensic science has come a long way to improve itself through accreditation and strict peer oversight. It is that progress on which ASCLD/LAB accreditation should be judged, not isolated instances of failure that are almost always attributable to weak management practices inside the laboratory and/or within its parent agencies.

The next ten to twenty years are likely to be even more impressive as more laboratories conform to ASCLD/LAB's *International* program, which is subject to international scientific oversight, and advanced by a delegate assembly of crime laboratory representatives from around the world.

Good luck to anyone looking to find news coverage of this important development in forensic science management.

For North Carolina to dismiss ASCLD/LAB accreditation as being a critical part of the SBI laboratory's future will be fraught with more peril than its public policy officials realize. Unfortunately, the *News & Observer's* reporting has misinformed the very decision makers that will consider such action.

Mr. Neff now calls for wounded forensic science officials to produce evidence of errors in his reporting. Mr. Neff and his colleagues at the *News & Observer* would be wise to remember a simple truth about journalism.

When you allow an entire story to lose its context and proportion, your promises to retract "specific" errors are no longer sufficient to compensate for the damage you have done. \*\*\*\*\*

\* Please note that this report includes a minor correction that added approximately five hours after the original publication. Please view our corrections page for more information.

**EDITORS' NOTE:** We would like to thank our readers for their patience as *Crime Lab Report* returns after a one year sabbatical. Many of you have contacted our managing editors to inquire about our publication. We are back and we are excited to continue the work we started four years ago.