

Congress must protect forensic science and taxpayers from bad politics

March 18, 2009 by Crime Lab Report

Communities across the United States have suffered enough. So many Americans who played by the rules, built up their savings, and trusted their government institutions to protect them from corruption, greed, and incompetence have endured historic losses resulting from the dramatic decline in our financial markets.

So policy makers beware. Concerned citizens are not in the mood to watch their safety and physical security being flushed down the same drain as their hard earned money. Forensic science is critical to public safety and must be sheltered from ideological wrangling and bureaucratic red tape.

A month has now passed since the release of the long-awaited report by the National Academy of Sciences titled *Strengthening Forensic Science in the United States: A Path Forward*. Because its publication came at a time when the nation's attention is focused on economic hardships, many people did not take notice of the report calling for a new federal agency to regulate the forensic sciences and allocate funding to address specific needs in the forensic community.

This should come as no surprise. Despite public fascination with forensic science dramas, most people remain uninterested in the activities of real-life forensic scientists until a friend or loved one dies for unknown reasons or becomes the victim of a violent crime. Until such horrific circumstances befall them, they are unlikely to appreciate how slowly the wheels of justice can turn, especially when overworked crime labs are unable to process cases in a reasonable period of time. Even in routine death investigations when foul play has been ruled out, it can take months for basic forensic results to come in, which delays the issuance of death certificates and the payment of insurance benefits.

At a time in our history when Americans have lost so much of their own treasure and are reevaluating the things that are most important to them, they will have minimal tolerance for governmental ineptitude that threatens the health and safety of their families.

And they have good reason. We are now learning that governmental ineptitude played an alarming role in the economic troubles we are facing today.

For example, psychopathic financiers like Bernard Madoff, who perpetrated the largest financial fraud in world history, are not supposed to exist. Powerful federal oversight is in place to stop these schemes in their tracks and discourage the most twisted Wall Street executives from even thinking about cheating honest investors out of their financial futures.

“The mission of the U.S. Securities and Exchange Commission is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation,” according to the SEC website. “As more and more first-time investors turn to the markets to help secure their futures,

CRIME LAB REPORT

Media and public policy analysis for the forensic science community

pay for homes, and send children to college, our investor protection mission is more compelling than ever.”

Yet it is gross incompetence and possibly corruption at the SEC that are now being blamed for allowing the Madoff scandal to survive as long as it did. And the message it should send to the forensic science community and its stakeholders about the dangers of relying on a government bureaucracy is compelling.

According to a *60 Minutes* report aired by CBS on March 1, 2009, the SEC had been warned about Madoff’s activities on five separate occasions beginning in May of 2000. An obscure financial analyst in Boston named Harry Markopolos said it took him only five minutes to figure out what Madoff was up to – and another four hours to mathematically prove it.

But it would take him eight years to get the SEC bureaucracy to budge. And when Madoff finally turned himself in to authorities, the SEC had not yet even begun an investigation.

“That’s typically how the SEC does it,” Markopolos said. “They come in after the crime has been committed, they toe-tag the victims, count the bodies, and try to figure out who the crooks were after the fact, which does none of us any good.

Sound familiar? To many professionals in the forensic sciences it certainly should.

For years, forensic science has been impugned by a network of post-conviction legal activists who are resistant to acknowledging the preventative benefits that forensic science accreditation has provided over the last twenty-five years. In fact, the vast majority of wrongful convictions that they mistakenly claim were attributable to bad forensic science occurred well before forensic science accreditation matured to what it has now become.

But to admit just how powerful and effective accreditation is for preventing forensic science malpractice would weaken any argument calling for governmental oversight. Instead, the focus of these activists remains misdirected towards reactive policies that simply address failures once they have already occurred.

Even in the Madoff case, it was ultimately competition, not regulation, that exposed the massive Ponzi scheme that bilked investors out of nearly \$50 billion. Markopolos was working as an analyst at a Boston investment firm when his boss asked him to research Madoff’s operation and determine what would have to be done to compete with the consistently high returns that Madoff’s clients were enjoying.

Government failed. Industry self-regulation won - and would have put a stop to the scandal eight years sooner if the SEC had listened to Markopolos’ urgings.

We understand that forensic science and finance are two very different industries. But the potential damage that can be inflicted by relying unnecessarily on government oversight is similar.

CRIME LAB REPORT

Media and public policy analysis for the forensic science community

Crime Lab Report is optimistic about the future of forensic science and the growing irrelevance of activists in shaping its future. But as the forensic sciences continue their march towards achieving a better balance between available resources and growing demand, it is important that they not become distracted by what *Crime Lab Report* calls the *reverse CSI effect*.

The *CSI effect* has become a well-known phenomenon in which the public's expectations of forensic science have become distorted by how the profession is portrayed in popular television programs.

The *reverse CSI effect*, on the other hand, is an equally problematic phenomenon where forensic science's expectations of the public become distorted by how enthusiastically viewers react to these television programs. Television ratings are not a measure of public support for legislation supporting crime laboratories. But if the public can be educated about the role forensic science plays in keeping communities safe and peaceful, elected officials will be more eager to give our crime laboratories the support they so desperately need.

The fact of the matter is that citizens do not lie awake at night worried about wrongful convictions nor do they chat over dinner about the scarcity of resources in crime laboratories. They intuitively understand that these are symptoms of larger problem.

What they *do* worry about is crime and the decay it brings to neighborhoods where children play and the districts where honest businesses hope to thrive. Therefore, advocacy efforts must demonstrate how forensic science contributes to public safety by catalyzing the efficiency of our entire justice system. Without forensic science, criminal justice around the world would come to a screeching halt.

The National District Attorneys Association recently mirrored this sentiment with a statement issued in response to the NAS report. According to the NDAA, "we succeed when we are contributing to a safe and secure community where the residents feel justice is fairly administered."

In today's difficult economic times, this will likely be a theme that will resonate with taxpayers and their representatives more than stale policy debates.

Crime Lab Report believes that existing infrastructures are now in place and can be improved to effectively and responsibly distribute federal funds to forensic science laboratories without the creation of a new federal bureaucracy. Moreover, the forensic science community has clearly demonstrated its ability and willingness regulate itself through accreditation. In the coming years, we predict that the augmentation of laboratory accreditation with more widespread professional certification of forensic scientists will adequately address many important concerns raised in the NAS report.

Anyone who testifies before a public body in contradiction to these points must be forced to present evidence supporting their position. Isolated and rare instances of failure, which occur in all industries and professions from time to time, are not sufficient.

CRIME LAB REPORT

Media and public policy analysis for the forensic science community

On Wednesday March 18, 2009, Congress will begin a series of hearings to discuss the National Academy of Sciences report on forensic science. *Crime Lab Report* believes that Congress should act quickly on recommendations intended to help crime laboratories balance their work capacity to meet growing demand and rising expectations. We also believe that accreditation and professional certification can be made mandatory with minimal expenditure of public resources.

Ongoing research into the causes of wrongful convictions is showing that forensic science will prevent an overwhelmingly larger number of wrongful convictions than it will cause. *Crime Lab Report* has spoken with professors at reputable universities who are observing the same trends that editors John Collins and Jay Jarvis reported in their article titled *The Wrongful Conviction of Forensic Science*. And in those rare instances when forensic science malpractice does occur, accreditation can enforce transparency and strictness in how the matters are dealt with.

The NAS committee was charged by Congress to identify the *needs* of the forensic science community. The evidence shows conclusively that forensic science is in need of resources, not additional regulation. But if a National Institute of Forensic Science is created, Congress must ensure that the institute is staffed with proven leaders and practitioners who know the inner workings of crime laboratories and medical examiner/coroner's offices and have track records of excellence in the forensic sciences and forensic science management.

Finally, Congress must protect the forensic sciences from activists who exploit government oversight for the purpose of eliminating professional self-governance, which is vitally important to all critical industries. This is exactly what activists did in New York where the forensic science commission is loaded with lawyers and public health officials but lacking in representation from the forensic science community. The result, according to multiple sources we have spoken with in New York, has been the emergence of a punitive and politically charged environment where scientists and crime laboratory directors are treated like children.

As the experience of Harry Markopolos illustrates, the SEC may be just one example that should give us second thoughts about subjecting forensic science to this kind of technically incompetent oversight.

"What I found out from my dealings with the SEC over eight and a half years is that their people are totally untrained in finance; they're unschooled; they're un-credentialed," remarked Markopolos to *60 Minutes* correspondent Steve Kroft. "Most of them are just merely lawyers without any financial industry experience."

Forensic science cannot be allowed to suffer a similar fate.

Crime Lab Report believes the National Academies committee on forensic science is in agreement. According to their report, "the judicial system is encumbered by, among other things, judges and lawyers who generally lack the scientific expertise necessary to comprehend and evaluate forensic evidence in an informed manner..."

CRIME LAB REPORT

Media and public policy analysis for the forensic science community

We couldn't have said it better ourselves. Forensic science must be governed by those who know forensic science and genuinely care about its future.

Hardworking taxpayers and their families deserve nothing less. * * * * *

Copyright 2009 by Crime Lab Report. All rights reserved. This report contains opinions expressed by CRIME LAB REPORT, which is an independent organization. These opinions may not necessarily represent those of our sponsors or other organizations affiliated with CRIME LAB REPORT and its editors. While every effort is made to ensure accuracy and contextual honesty, all opinions should be corroborated with independent research before being construed as factual. Crime Lab Report will quickly correct and/or retract any information demonstrated to be erroneous. We welcome opposing viewpoints and will publish responses from our readers, which may be edited for economy and clarity.