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Crime Labs Should be Privatized

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Opinion

Crime labs take evidence from police investigation and test them for DNA evidence to help include or exclude a suspect from the defendant pool. Sometimes, crime labs look for fingerprints, although many law enforcement agencies have employees who can do that in the office. Crime lab technicians look for biological matter such as analyzes evidence such as blood, semen, saliva, plant matter, and insects. Usually, law enforcement collects evidence from a crime scene and witnesses and sends it to a crime lab. The collection and storage of the evidence has been problematic for state-run crime labs, which are frequently accessible to law enforcement and the prosecution. However, to minimize possible biases, make crime labs more efficient, and clear backlogs, crime labs should be independent of law enforcement agencies and privatized.

The prosecution and law enforcement should strive to avoid impropriety or the appearance of impropriety. Ethical behavior is paramount in criminal investigations. Once there is one story about unethical behavior by the government, the public's trust falls even lower. There should be no bias in favor of the state. For instance, in Raleigh, North Carolina, "two blood-spatter specialists were caught on video high-fiving one another after running through multiple experiments until they found one that supported the prosecution's theory of a case" [1]. Additionally, "many lab workers' performance reviews were actually written by prosecutors" [1]. According to a 2009 report on forensic science by the National Academy of Sciences, more than fifty percent of U.S. crime labs report directly to a law enforcement organization. "In some cases, this can lead to overt pressure from police officers and prosecutors to produce desirable results. But most of the time the bias is more subtle, and unintentional" [1].

In another example, Fred Zain, a former head serologist at the West Virginia state police crime laboratory, falsified test results in numerous cases for over a decade. Giannelli [2] Zain sent numerous people to prison, including Glen Dale Woodall, who was sentenced to two life terms without parole and 203 to 335 years imprisonment

for double rape. During the Woodall trial, Zain's testimony was contrary to his notes. Woodall was eventually released after newer DNA testing was available, but he never should have been arrested. The American Society of Crime Laboratory Directors investigated Zain and wrote a caustic report, find that Zain erred by:

1. Overstating the strength of results.
2. Overstating the frequency of genetic matches on individual pieces of evidence.
3. Misreporting the frequency of genetic matches on multiple pieces of evidence.
4. Reporting that multiple items had been tested when only a single item had been tested.
5. Reporting inconclusive results as conclusive.
6. Repeatedly altering laboratory records.
7. Grouping results to create the erroneous impression that genetic markers had been obtained from all samples tested.
8. Failing to report conflicting results.
9. Failing to conduct or to report conducting additional testing to resolve conflicting results.
10. Implying a match with a suspect when testing supported only a match with the victim.
11. Reporting scientifically impossible or improbable results.

In addition, non-Americans have discussed the effect that race has on DNA testing. In a study, researchers found that via the use of DNA sweeps, local police exploit laws to expand the scope of DNA profiling, collection, and storage to apprehend unknown miscreants on the strength of nonspecific physical descriptors. But the ethnically heterogeneous nature of US society and the overwhelming racial disparities in arrest and incarceration present largely ignored challenges Washington [3]. This is exactly

what California elected to do under Proposition 69 in 2004. "The approved ballot initiative authorized DNA collection and retention from all felons, any individuals with past felony convictions – including juveniles – and, beginning in 2009, all adults arrested for any felony offense." Simoncelli & Steinhardt [4]. Note that DNA collection is approved for arrested individuals, even if they are never convicted of a crime.

On the other hand, a molecular biologist, Tony Frudakis developed a product that he called the DNA Witness Test [5]. With the test, he was able to identify a suspect's race within a small margin of error in a Louisiana serial killer case. Although the test worked in this instance, law enforcement in general were hesitant to use the technology due to the possible appearance of bias. Frudakis's company eventually went out of business [5].

Another reason why crime labs should be independent of the police is because of botched handling of evidence. For example, in the infamous O.J. Simpson trial, there were several mishaps involving criminal evidence. An important bloody fingerprint located on the gateway at Nicole Brown's house was not properly collected and entered the chain of custody when it was first located. Although it was documented in his notes by Detective Mark Fuhrman, one of the first to arrive on the scene, no further action was taken to secure it. The detectives who took over Fuhrman's shift apparently were never aware of the print and eventually it was lost or destroyed without ever being collected. Other items of evidence were also never logged or entered the chain of custody, which gave the impression that sloppy forensic collection had been carried out at the scene.

The prosecution had expert witnesses who testified that the evidence was often mishandled. Photos were taken of critical evidence without scales in them to aid in measurement taking. Items were photographed without being labeled and logged, making it difficult, if not impossible, to link the photos to any specific area of the scene. Separate pieces of evidence were bagged together instead of separately, causing cross-contamination. Wet items were also packaged before allowing them to dry, causing critical changes in evidence. Police even used a blanket which came from inside the house to cover Nicole Brown's body, contaminating the body and anything surrounding it. Beyond poor evidence collection techniques, sloppy maneuvering at the scene caused more bloody shoe prints to be left behind by LAPD than by the perpetrator.

Crime Museum [6] Furthermore, witnesses testified that "The security of LAPD storage and labs was also brought under scrutiny when it was discovered that some pieces of evidence had been accessed and altered by unauthorized personnel. Simpson's Bronco was entered at least twice by unauthorized personnel while in the impound yard; Nicole Simpson's mother's glasses had a lens go missing while it was in the LAPD facility." (Crime Museum) The majority of Americans believe that Simpson was guilty. Ross [7,8]. However, with the careless and slipshod way evidence was handled, the prosecution was unable to secure a conviction.

Other American cities are known to have neglected crime labs as well, including New York City. Hansen [9]. New York had a former employee who was not well-trained. She worked at the crime lab for over ten years. Other cities with similar problems are Boston, which had an employee who tampered with results, Saint Paul, Minnesota, which voluntarily shut down due to unreliable results, and Oklahoma City, which had an unqualified director [9]. All these state crime labs had employees who intentionally falsified records, some at the behest of the district attorney.

Even if a given state crime lab has trustworthy employees, the backlog is unfathomable. According to the National Institute of Justice, there are two types of backlogs: (1) casework; and (2) convicted offender and arrestee DNA, National Institute of Justice [10]. Casework backlogs occur when law enforcement submits evidence to the crime lab, which must analyze the evidence to determine whether there is enough biological material in/on the evidence to test that has not degraded or been contaminated. Convicted offender and arrestee DNA backlogs occur when crime labs test convicted people and arrestees pursuant to statutory law for identification purposes [10].

The major problem with casework backlogs is that individuals regularly sit in jail until forensic results come back [11]. In some cases, the individuals falsely plead guilty simply to get out of jail. As of June 2019, CBS News found that at least seven states had average lab result turnaround times greater than 100 days in 2019. Rhode Island, West Virginia, and South Carolina all had average turnaround times greater than 150 days. In Illinois, there's a backlog of more than 23,000 cases. In South Carolina, it could take more than nine months to get results back on DNA or firearms testing. In Rhode Island, the backlog is almost 10 months for non-violent crimes. In Idaho, the average DNA and rape-kit testing takes 92 days, but they do have examples of cases that have been pending 615 days -- almost two years.

It's an issue in Arkansas, too, where crime lab director Kermit Channel says the problem escalated about six years ago in connection with the opioid crisis. In his lab alone, DNA and drug cases have nearly doubled since 2014.

CBS News [11] As a result, the National Institute of Justice implemented the DNA Capacity Enhancement and Backlog Reduction Program [10]. It seeks to assist eligible states and local government to "process, record, screen and analyze forensic DNA and/or DNA database samples[, while increasing the capacity of public forensic DNA and DNA database laboratories to process more DNA samples, thereby helping to reduce the number of forensic DNA and DNA database samples awaiting analysis." (National Institute of Justice). The National Institute of Justice grants awards based on need. And here, it seems that the need is great.

Other than giving money to existing inefficient crime labs, there is a viable argument in privatizing crime labs [1]. Whereas many state crime labs are sloppy and biased, private labs have an incentive to protect themselves from liability. It is nearly impossible

to sue the government. Individual crime lab workers employed by state or local governments are protected by qualified immunity, making it difficult to sue them as well. Private labs do not have these protections, so they are more likely not only to be careful, but to preserve evidence in the case of litigation [1]. Furthermore, private labs do not answer to or work with law enforcement and the prosecution, which eliminates the problem of bias in favor of the state. The answer is in the private sector, with federal oversight.

Acknowledgement

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Conflict of Interest

No conflict of interest.

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