

## **PROBE OF CRIME LAB REQUESTED**

### **Analysts' Faulty Work Cited**

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**By Dee J. Hall**

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The work of up to six state Crime Laboratory analysts whose negligence or misconduct may have jeopardized forensic test results should be independently investigated, the attorney for convicted murderer Steven Avery argues in a complaint filed this week.

That those analysts – all of whom were disciplined for their actions – were investigated internally by the state Department of Justice and not an outside agency may also have violated the terms of federal grants supporting the lab, the attorney said.

In an 11-page complaint filed Monday, Jerome Buting said the DOJ is obliged to launch an independent inquiry into the work of the analysts as a condition of the \$578,000 in federal funds the crime lab has received since 2005.

Buting, of Brookfield, argued that an “external and independent” probe should be launched because “actual perpetrators of the crimes...may have eluded justice...(and) innocent individuals may have been convicted with the aid of shoddy DOJ laboratory forensics.”

DOJ spokesman Kevin St. John said his agency will review Buting’s complaint “to determine whether any of his speculation has a basis that merits additional follow up.”

But he downplayed the complaint, saying all the incidents were investigated. Officials will review whether a broader investigation of the analysts’ work is warranted, he said.

### **Disciplinary Letters**

The complaint includes six disciplinary letters to analysts, in which the name of the analyst has been blacked out. According to the letters:

\*An analyst in 2002 falsely claimed to have done a fingerprint match, then submitted falsified documentation to support it. The person drew a written reprimand.

\*An analyst in an unnamed portion of the lab was fired in 2004 after supervisors documented “an extremely high error rate (and) a pattern in inattentiveness” over three years.

\*A DNA analyst was suspended for two days for being drunk on the job in 2006. The misconduct occurred around the same time and in the same laboratory where evidence in the Avery case was analyzed, Buting said.

\*An analyst received a two-day suspension in 2004 for incorrectly eliminating a suspect in a fingerprint match. The same analyst had “false positive” fingerprint matches in two previous instances.

\*In another instance in 2004, an analyst received a letter of reprimand for erroneously identifying a fingerprint for a background check.

\*A fingerprint technician was suspended for three days in 2005 for a series of incidents, including taking fingerprint cards home and making two erroneous identifications on background checks.

\*It is evident that serious negligence or misconduct may have compromised an unknown number of Wisconsin cases,” Buting said in his complaint. “The documents...reveal extensive problems and apparently insufficient responses. If the allegations are true, they deeply affect Wisconsin’s criminal justice system.”

St. John said Buting’s allegations don’t necessarily trigger an investigation. He also sought to distance Attorney General J.B. Van Hollen from the incidents, which occurred “years ago, prior to Van Hollen’s administration.” Van Hollen took office in January 2007, while Peg Lautenschlager served from 2003-07 and Gov. Jim Doyle was attorney general from 1991-2003.

## **Grant terms**

Gabriel Oberfield, research analyst with the Innocence Project in New York City, said the terms of the Coverdell Forensic Science Improvement grants that support the lab require Wisconsin to do more than an internal review.

Agencies that accept grant money must designate “external and independent” investigators to handle “allegations of serious negligence or misconduct,” according to the state’s grant agreement.

In a January report, the U.S. Office of the Inspector General found the U.S. Department of Justice was failing to enforce that requirement. It found that 78 percent of the entities designated to conduct the investigations lacked the authority, capability or an appropriate process to ensure the reviews were done by someone not connected to the labs.

Under the grant, Wisconsin has designated two top DOJ officials to investigate allegations of misconduct against the crime lab: Mike Myszewski, head of the Division of Criminal Investigation; and Kevin Potter, administrator of the Division of Legal Services.

St. John said DCI, which he described as “an independent entity,” will conduct the review of

Buting's complaint. Myszewski and Potter report to Van Hollen, as does the official who oversees the state Crime Laboratory, former Dane County Sheriff Gary Hamblin. Oberfield questioned whether the two top officials could conduct an arms-length investigation of their own agency.

"We have serious issues with DOJ taking on such an investigation given its apparent shortcomings with independence and externality," he said.

### **New York probe**

Investigations started in other states under the federal grant requirements include a 2007 probe of the New York City Police Department's Forensic Laboratory, which found three analysts had falsely claimed they conducted tests on evidence for the presence of cocaine.

The practice – euphemistically known as “dry-labbing” has prompted a criminal investigation and the re-examination of evidence in thousands of drug cases in New York.

One of the disciplinary letters cited by Buting charged that an analyst engaged in similar deception by falsely claiming to have conducted a fingerprint match and falsifying documents on two occasions to make it appear as if the test had been done.

Buting said he began investigating the performance of the crime lab while defending Avery in the high-profile case involving the Halloween 2005 murder of freelance photographer Teresa Halbach.

In that case, DNA analyst Sherry Culhane acknowledged her own DNA had contaminated a control sample used to test DNA on a partial bullet found in Avery's garage in Chilton. During the six-week trial last year, Buting and defense attorney Dean Strang alleged police planted the bullet and Halbach's keys, both of which were found only after multiple searches of Avery's residence.

Buting said he filed the complaint not as Avery's former defense attorney but to force the DOJ to live up to what he said are its responsibilities under the Coverdell grants.