



ROY COOPER  
ATTORNEY GENERAL

NORTH CAROLINA  
STATE BUREAU OF INVESTIGATION  
DEPARTMENT OF JUSTICE

3320 GARNER ROAD  
PO Box 29500  
RALEIGH, NC 27626-0500  
(919) 662-4500  
FAX: (919) 662-4523



GREGORY S. MCLEOD  
DIRECTOR

**MEMORANDUM**

TO: ✓ NCDNJ Chief of Staff Kristi Hyman  
SBI Director Gregory S. McLeod

FROM: Acting North Carolina State Crime Lab Director Joseph R. John, Sr.

DATE: August 4, 2011

SUBJECT: *Report of the Ombudsman*

The North Carolina State Crime Lab (the Crime Lab) welcomes the opportunity to comment upon the above-referenced document.

The Ombudsman is to be commended for assembling this expansive Report during his limited term of office. The Crime Lab acknowledges the Ombudsman's express recognition of significant ongoing efforts over the past ten months to strengthen Lab operations. Indeed, with very limited exception, nearly all the proffered recommendations concern actions already concluded by the Lab or matters which continue to be addressed through initiatives begun several months ago. Again, the Lab appreciates the Ombudsman's validation of these actions and initiatives through his recommendations.

The Crime Lab worked diligently to respond to any individual circumstance raised by the Ombudsman and the Lab's cooperation with his office was complete and unequivocal. Every inquiry was promptly addressed, thoroughly investigated and forthrightly answered. Given the opportunity, the Lab willingly would have responded in similar manner directly to those who communicated anonymously with the Ombudsman.

In any event, the Lab offers the observations set out herein. The Lab will not attempt to detail certain misapprehensions of fact contained in this exhaustive document, recognizing that the Ombudsman may often simply be repeating statements made to him during the communications noted above.

Rather, each of the Ombudsman's recommendations will be summarized in the order listed in the "Executive Summary." The Crime Lab's comments in italics will follow.



1. Provide court testimony evaluation forms to *pro se* defendants (p. 6—including title page).

*Lab procedures currently include this requirement.*

2. Post current and past policies and procedures online (p. 6).

*The Ombudsman was advised by the Lab that this would take place consistent with priority being given to the extremely important, highly involved and complicated process of transitioning to ISO standards.*

*Current procedures and policies have been posted on the NCDOJ website. Older procedures and policies will follow in due course. Further, if requested and/or required by discovery laws for a particular case, past standards and procedures have been and will continue to be conveyed in discovery. Similarly, the Lab would respond to any appropriate public records request.*

*More importantly, as recognized by the Ombudsman (p. 5), the new ISO policies and procedures for the Lab as a whole and for each individual Lab section will be posted online on the NCDOJ website immediately upon completion of review and approval by Lab management. The posting process for the new ISO procedures is anticipated to begin within sixty days. If a procedure is modified thereafter, the online posting will continuously reflect the full revision history.*

3. Allow a period of comment concerning the new ISO policies and procedures (p. 6).

*The new ISO policy and procedures are being developed through an intense, complicated and laborious process. Lab scientists have produced drafts after seeking input from other forensic scientists and reviewing ISO compliant procedures from laboratories throughout the world. A special legal team, consisting of the Lab's permanent legal counsel and two experienced attorneys from the Attorney General's staff, has reviewed the drafts for Lab management approval and adoption. This final phase is currently ongoing and posting of the new ISO procedures is anticipated to begin within sixty days.*

*As soon as the new ISO policies and procedures are adopted, the resultant documents will be placed online. Comment thereafter may be directed to the Lab's legal counsel who, after consultation with Lab scientists, will make appropriate recommendations to Lab management. Comment may be forwarded by use of the NCDOJ "Contact Us" website.*

*In addition, upon selection of the new North Carolina Forensic Science Advisory Board provided in the recently adopted Session Law 2011-19, it is anticipated that the Board will provide constructive suggestions to the Lab regarding the new ISO standards and procedures and may well elect to receive public comment and suggestions through a website.*

*Finally, as the Crime Lab moves towards accreditation, the new ISO policies and procedures will receive intense scrutiny in their entirety by the accrediting agencies to ensure full compliance with the rigorous international standards.*

4. Report DNA Database statistical data including CODIS hits and potential suspect exclusions p. 6).

*As the Ombudsman has been advised by Lab DNA Database Unit supervisors, all CODIS matches have been recorded by the Crime Lab since 2004. In February 2011, the SpecMan data management software program was implemented which not only tracks CODIS matches, but also reflects the progress of those matches through the confirmation process.*

*The Ombudsman has also been informed that a monthly statistical report is prepared by the DNA Database Unit detailing, among other information, the cumulative total number of hits to the state database and to the national database, the cumulative total number of investigations aided, the total number of hits for the month, the cumulative number of hits for the current year, the number of individuals eliminated for the current month, and the cumulative number of individuals eliminated for the current year. This report is sent to Lab management, the SBI Director and to certain designated individuals at NCDOJ.*

*In the past ten months, NCDOJ has issued public releases of information on multiple occasions relating the success of the Lab's DNA operations, including that DNA analysis performed by the Lab through June of this year yielded 173 hits to the DNA database to help solve cases in North Carolina and across the country, that in the same timeframe lab experts used DNA to eliminate more than 100 potential suspects as the source of DNA from evidence tested, and that 420 DNA database hits were recorded in 2010.*

5. Reiterate Lab analyst accessibility to attorneys (p. 6).

*The Ombudsman specifically acknowledges that "Analysts have been and remain accessible to all attorneys associated with a case" (p. 5). Indeed, this has been the practice in the Lab for years as long as the attorney is counsel of record in a case. Under N.C.G.S. § 132-1.4 (a)(b), Lab case files constitute "records of criminal investigations" and thus do not qualify as "public records"—hence the restricted access to counsel of record.*

*To ensure consistency and the fullest appropriate response, the consultation process is currently (and formally) coordinated through the Lab's full-time legal counsel. Any attorney of record in a case may simply contact Lab counsel who will facilitate the requested analyst accessibility.*

6. Educate the legal community (p. 6).

*The Ombudsman may not have become acquainted with the activity of Lab scientists in this role for years--providing forensic science training to participants in the criminal justice system, including both state prosecutors and defense attorneys. Lab scientists*

*have also been presenters at the UNC-CH, Duke, Campbell and NCCU Schools of Law and at local community colleges. Further, initiatives currently underway include exploring opportunities to present informational sessions for the State's trial judges and to work with state bar groups in developing a forensic science continuing legal education (CLE) seminar.*

7. Establish a Crime Lab "Evidence Submission Form Review Committee" (p. 7).

*The Ombudsman may not have learned that an SBI Forms Committee has existed for years to evaluate and review forms utilized by the Bureau and the Lab. A Lab Deputy Assistant Director is a long-standing member of that Committee.*

*The Evidence Submission Form (SBI-5) has been revised on many occasions as experience and utility dictate, two revisions having occurred within the past few months. Attached is a copy of the most recent revision which appears to resolve several of the Ombudsman's stated concerns. Had the Ombudsman forwarded to the Lab a listing of those concerns regarding the SBI-5, they would certainly have been taken into consideration in the latest revision. Nonetheless, his comments, to the extent they may not have been addressed in the current version, have been directed to the Deputy Assistant Director for consideration by the SBI Forms Committee.*

8. Eliminate posting preferences for sworn law enforcement applicants to Lab positions (p. 7).

*As the Ombudsman concedes (p. 21-2), Sess. Law 2009-451, s. 16.5, provides only limited exceptions within which sworn personnel may be hired by the Crime Lab. The Lab has complied with this provision of law since its enactment. It is also to be noted that all NCDOJ position postings, including those for the Crime Lab, are issued by NCDOJ Human Resources.*

*The Ombudsman accurately notes (p. 20) that almost fifty per cent of Lab personnel are now non-sworn (including the Acting Lab Director). This percentage will continue to increase through normal attrition. At both the Raleigh and Triad lab locations, the number of non-sworn personnel presently exceeds that of sworn personnel.*

*In addition, as the Ombudsman correctly states (p. 4), 72% of Lab personnel, including supervisors, have been employed less than ten years and approximately 50% less than five years. Thus, nearly 75% of lab employees, in the words of the Ombudsman, "were not employed during the time of the actions (1980s and early 1990s) that were recently scrutinized" by the independent review (p. 4).*

9. Conduct a review of the requirement that clandestine lab analysts be sworn law enforcement officers (p. 7).

*The SBI may elect to conduct such a review (assuming adequate resources are available to do so in the present fiscal atmosphere).*

*However, it must be stated that extensive experience over many years with the extremely dangerous and volatile sites of clandestine laboratories has presented compelling evidence in support of the existing requirement.*

*It is also noted that the DEA requires sworn law enforcement to respond to these dangerous scenes.*

10. Ascertain, prior to an analyst testifying, the existence of any administrative orders modifying reporting language (p. 7).

*Lab practice and procedure for years has charged all analysts with the responsibility of being aware of and following every current Lab procedure, certainly including any procedural or reporting changes implemented subsequent to the testing conducted in a particular case.*

*Therefore, in any case it is (and has been) a simple matter for counsel for the defense or the prosecution to elicit information concerning any procedural or reporting changes through discovery or questioning of the analyst at trial (either on voir dire or before the jury or both). As the Ombudsman points out, parties in the adversarial context of court proceedings "are expected to solicit information from witnesses to support their case" (p. 23). Thus, the law and court procedure place the responsibility upon counsel, both prosecution and defense, to elicit testimony rather than requiring the analyst to present a testimonial narrative.*

11. Maintain a log in FA of all analyst communications regarding casework (p. 7).

*FA (Forensic Advantage) is the Lab's management information system into which all Lab activity and information concerning a particular case is recorded and accessible to prosecutors and to defense counsel through discovery.*

*The Ombudsman correctly observes that maintaining a communication log "is the current Lab practice." Since the inception of FA in 2008, that system has provided a Communication Log for each case into which Lab analysts are required to enter a record of any communication concerning that case. Moreover, since at least the late 1980s, Lab analysts have had the responsibility of maintaining a record in the case file of any communication regarding that case.*

*The requirement that all communication concerning a case be entered into FA will also be included in the new ISO procedures.*

12. Review process for notifying District Attorneys of scheduled leave time for analysts.

*The Ombudsman may have been unaware that this issue has been a concern of Lab management since well before his appointment. The Crime Lab has requested and received from the FA vendor an estimate of the cost to incorporate this feature into the system and the Lab is seeking approval of this expenditure.*

*The Ombudsman does accurately note that the "Lab is receiving suggestions for upgrades (to the FA system) in order to better meet the needs of both the Crime Lab and attorney end users" (p. 6). The suggestion above is one of the upgrades for which funding approval is being sought in addition to an FA process for District Attorneys to notify the Lab of completed cases (see paragraph number 16 below).*

13. Contract toxicology testing to a private agency (p. 7).

*The Ombudsman has been informed by the Lab that the private contracting of toxicology analysis has been explored and evaluated on many occasions, including by current Lab management.*

*Initially, it must be noted that N.C.G.S. § 20-139.1 imposes certain DHHS procedural, permit and maintenance requirements before chemical analysis test results are admissible in any court or administrative hearing or proceeding. ISO policies also contain very strict procedures and requirements regarding the use of outside laboratories. Consequently, many potential contractors may not legally qualify to perform testing for the Lab.*

*Moreover, the fees charged by contractors who qualify would in the main preclude use of a private company (for example, a surcharge is usually imposed above the basic fee for each additional substance (alcohol, various drugs, etc.) sought to be identified by the testing. Additionally, a travel/court time fee in the range of \$150.00 per hour is generally charged for the time private analysts expend in court appearances.) Obviously, present budgetary restrictions raise the issue of securing funding to address such fees.*

*Nonetheless, the Crime Lab is sensitive to any delay in regards to toxicology analysis. The Lab continues to explore methods of addressing the U.S. Supreme Court Melendez-Diaz decision which held that constitutional Confrontation Clause strictures require the physical presence of Lab analysts in Superior and District courtrooms throughout the state to testify regarding test results. Lab staffing levels established under the prior "affidavit" method of presenting test results have been stretched beyond any reasonable limit by the circumstance of analysts spending far more time traveling and sitting in courtrooms than working in the Lab.*

*A Lab committee consisting of a Deputy Assistant Director and three Forensic Science Managers has been charged with the task of exploring and formulating measures to address this circumstance. Obviously, issues of space, equipment and personnel are all implicated under current fiscal and budgetary restraints. However, as the Ombudsman notes (p. 29), one measure in the process of being implemented in the Toxicology Unit of the Drug Chemistry Section is the assignment of toxicologists to specific geographical areas.*

14. Assign cases to analysts based on geographic regions.

*This recommendation mirrors the regional laboratory concept which has been in place for many years in North Carolina, witness the Triad Lab located in Greensboro and the Western Lab located in the Asheville area. Location of a regional laboratory in the*

*eastern part of the state would be a logical extension of this concept and the topic has been raised as recently as the spring of 2011 by representatives of that area. Unfortunately, difficult fiscal and budgetary times preclude such a development for the present and also prevent the initiation of additional forensic services at the Triad and Western labs which similarly would increase regional accessibility.*

*As noted in the previous paragraph, however, the Crime Lab continues to explore methods of addressing the Melendez-Diaz decision and a Lab committee has been charged with this task. This recommendation also alludes to one measure already in the process of being implemented in the Toxicology Unit of the Drug Chemistry Section, that is, the geographical assignment of toxicologists. Finally, experience and common sense indicate that this concept of regional analyst assignment is practical only in Lab sections with large numbers of analysts, hence its ongoing incorporation into Drug Chemistry's Toxicology Unit.*

15. Create a Citizens Academy.

*This novel recommendation appears to be directed to the SBI as a whole. Regarding the Crime Lab, issues of liability, non-employee safety, quality assurance, confidentiality and security would preclude the Lab from being the situs of any such project.*

16. Encourage District Attorneys to complete the Case Disposition Form.

*The Crime Lab fully supports this recommendation and agrees that it would assist in clearing cases and avoiding unnecessary analysis. As noted in paragraph number 12 above, the Crime Lab has requested and received from the FA vendor an estimate of the cost to incorporate a case disposition notification feature into the system and the Lab is seeking approval of that expenditure.*

CONCLUSION:

*It must be emphasized that since at least September, 2010, the Crime Lab has worked tirelessly to reexamine all current Lab operations and to generate new standards and procedures which meet ISO, the highest international standards for forensic science laboratories. An example of the diligence of the Lab's efforts was the identification of 74 cases which should have been included in the earlier independent review of 1987-2003 Lab cases. For these additional cases, Lab management mandated that the same process previously utilized be followed-- full disclosure, examination of the entire Lab and investigative files by the independently elected District Attorneys, and public reporting of the results.*

*In short, current Lab management and Lab scientists are absolutely committed to operation of the Lab in accordance with the highest scientific and ethical standards. The Crime Lab stands open to a consideration of any proposed strengthening of the Lab's operation such as the recommendations presented by the Ombudsman in the Report discussed herein.*









---

# Ombudsman's Report

This is the initial report of the North Carolina Attorney General's Office of the Ombudsman to the State Bureau of Investigation. The Office was established pursuant to the recommendations of an independent review of the SBI Forensic Biology Section commissioned by Attorney General Roy Cooper.<sup>1</sup> Subsequently, Session Law 2011-19 further established the position at the request of the Attorney General.<sup>2</sup>

The Office of the Ombudsman to the SBI is responsible for a variety of duties, to include:

- Addressing external and internal complaints regarding SBI policies, procedures, and actions by SBI employees;
- Liaising and mediating SBI related conflict with all sectors of the legal field, including prosecutors, defense attorneys, and judges;
- Providing the Attorney General with feedback on issues that could impact the efficiency and effectiveness of operations of the SBI;
- Providing specific recommendations concerning systemic policies, procedures, and practices, and the training of agents, analysts, and other SBI employees;
- Assisting the agency in resolving complaints and mediating conflicts arising from specific situations that require immediate attention;
- Providing answers to public questions concerning the processes and procedures at the SBI;
- Promoting an environment conducive to raising and addressing difficult workplace issues at the SBI;
- Planning meetings and conferences to improve relations with stakeholders;
- Producing concise reports addressing resolutions to potential problems.

---

<sup>1</sup> In *An Independent Review of the SBI Forensic Laboratory*, by Chris Swecker and Michael Wolf, March 2010, it is recommended “[t]hat the SBI Laboratory develop, implement and publish a streamlined process by which prosecutors, defense attorneys, and citizens may bring potential lab errors or omissions and general feedback regarding the operation and performance of the SBI Forensic Laboratory to the attention to a designated Ombudsman. Aside from assisting quality control, the objective of such a program would be the early identification and correction of errors and the identification of potentially flawed policies, practices and procedures.” “Swecker, currently a NC Attorney, is a former Assistant Director of the FBI’s Criminal Investigative Division. At the time of his retirement in July 2006 Swecker was the Acting Executive Assistant Director in charge of nine FBI Divisions including the FBI Laboratory. Wolf served in the FBI Laboratory as an Analyst before becoming a Special Agent. Wolf has a BS in Forensic Science and was the FBI Inspector in Charge of overseeing the overhaul of the FBI Laboratory in 1998-1999. Wolf retired as Assistant Director of the FBI’s Crisis Response Division in 2008.”

<sup>2</sup> SECTION 6. The position of ombudsman is created in the North Carolina State Crime Laboratory within the North Carolina Department of Justice. The primary purpose of this position shall be to work with defense counsel, prosecutorial agencies, criminal justice system stakeholders, law enforcement officials, and the general public to ensure all processes, procedures, practices, and protocols at the Laboratory are consistent with State and federal law, best forensic law practices, and in the best interests of justice in this State. The ombudsman shall mediate complaints brought to the attention of the ombudsman between the SBI and defense counsel, prosecutorial agencies, law enforcement agencies, and the general public. The ombudsman shall ensure all criminal justice stakeholders and the general public are aware of the availability, responsibilities, and role of the ombudsman and shall regularly attend meetings of the Conferences of the District Attorneys, District and Superior Court Judges, Public Defenders, the Advocates for Justice, and Bar Criminal Law Sections. The ombudsman shall make recommendations on a regular basis to the Director of the State Crime Laboratory, Director of the SBI, and Attorney General of North Carolina as to policies, procedures, practices, and training of employees needed at the laboratory to ensure compliance with State and federal law, best forensic law practices, and to resolve any meritorious systemic complaints received by the ombudsman.

The initial activities of the Office involved increasing familiarity with the daily activities and organizational structure of the SBI and the Crime Lab. This orientation revealed a number of challenges faced by the SBI as a whole, in both the field and in the lab. The Ombudsman further endeavored to inform actors in the legal community of the new Office and solicit their concerns.

This report details views expressed by members of the justice community. The issues presented herein are derived from conversations and other means of contact with members of the justice community including prosecutors, defense attorneys, judges, SBI employees, law enforcement and post-conviction services. Prior to discussions with these members of the justice community regarding the SBI and the Crime Lab, the Ombudsman shared that all issues brought to the attention of Office of the Ombudsman will be explored in a confidential and informal manner. Thus, the names of the numerous judges, district attorneys, public defenders, sheriffs, SBI employees and attorneys representing accused defendants with whom the Ombudsman met have not been listed.

Essentially, all of the individuals who have shared their perspectives (from both the legal and non-legal community) recognize the ongoing relationship between the Crime Lab, prosecutors and law enforcement.<sup>3</sup> However some voice opinions regarding whether the Crime Lab has a culture rooted in proving the theories of law enforcement and prosecutors, rather than seeking the truth through science, regardless of whose premise is confirmed. They also express concern for whether the science utilized in the Lab progresses with advances in science. These concerns were not only expressed by those who represent the accused, but also offered by the general public and individuals with educational backgrounds and careers in science.

Some also evaluate how the actions of the Lab compare with the 2009 report of the National Academy of Sciences concerning the future of forensic science laboratories in the United States.<sup>4</sup> “Among its many findings, the committee noted that forensic scientists ‘sometimes face pressure to sacrifice appropriate methodology for the sake of expediency.’ The committee further found that ‘[t]here are many hard-working and conscientious people in the forensic science community, but under-resourcing inherently limits their ability to do their best work.’”<sup>5</sup>

Those who have been supportive of the SBI and the Crime Lab’s work express frustration for what they deem as the mischaracterization of the Crime Lab and its employees. Although the past scrutiny primarily focused on specific individuals, these supporters suggest that there is misplaced concern regarding the present actions of the Lab as a whole. They acknowledge the mistakes of individuals in specific cases, however, they point to the Crime Lab’s record for accuracy across the board. There is further concern that the focus on the Crime Lab has now inappropriately caused questions to arise concerning all Lab activities. For example, it has been shared by both the prosecution and defense that during jury selection in a few trials, jurors have expressed uncertainty about the Crime Lab’s neutrality.

---

<sup>3</sup> N.C.G.S. Section 114-16 provides that the Crime Lab is to provide reasonable service to the prosecution and the criminal justice system. (2010). In 2011, the NC General Assembly modified the statute to indicate that “*reasonable service to the public*” be provided.

<sup>4</sup> Committee on Identifying the Needs of the Forensic Sciences Community, National Research Council, *Strengthening Forensic Science in the United States: A Path Forward* (2009), available at [http://books.nap.edu/openbook.php?record\\_id=12589&page=R1](http://books.nap.edu/openbook.php?record_id=12589&page=R1). “The funding for the National Academy Report came from Congress in 2005 when it provided \$ 1.5 million. H.R. Rep. No. 109-272, at 121 (2005) (Conf. Rep.). As a result, a diverse committee of forensic experts, scientists, and members of the legal community, conducted several years of research and concluded that the pervasive sentiment was that “[t]he forensic science system, encompassing both research and practice, has serious problems that can only be addressed by a national commitment to overhaul the current structure that supports the forensic science community in this country.” *State v. Ward*, 364 N.C. 133; 694 S.E.2d 738 citing Nat. Res. Council report.

<sup>5</sup> See Footnote 4.

SBI employees have also expressed concerns regarding the public's perceptions of the Crime Lab. SBI employees have encountered past criticisms and are accustomed to cross-examination during testimony. However, they now face new challenges of having their professional and scientific work questioned, as well as their individual and personal credibility. Most Crime Lab employees were employed after 2003 and were not employed during the time of the actions that were recently scrutinized.<sup>6</sup> Many of these employees point to the Lab's efforts to adopt changes to further improve the Crime Lab. Some are even eager to share their experiences of testifying in court on behalf of defendants. All the while, there is the continued recognition by Lab employees that improved Lab equipment and funding resources for such improvements would resolve many concerns and aid analysts' work efficiency.

This report endeavors to address matters raised with the Ombudsman by various members of the justice community and provide recommendations to current and foreseen challenges of the SBI and/or the NC State Crime Lab.

## **Executive Summary**

Conversations with the legal and public community have revealed a number of accolades, concerns, and questions regarding the SBI and the Crime Lab. Numerous members of the justice community representing all areas of the court system have offered to the Ombudsman that they are satisfied with the work done by the Crime Lab and regard it as an entity working diligently to provide assistance to the criminal justice system. Most of the questions and concerns raised were neither unique to the prosecution nor to the defense, yet revealed the SBI's need to continuously educate stakeholders of the improvements taking place and of the ongoing reviews of current operations in order to avoid misunderstandings about the actual and current capabilities of the SBI.

There is a shared view that some action may be appropriate to reestablish the position of the Crime Lab following its recent scrutiny. Some offer that there are slight modifications that may be taken by the SBI and the Crime Lab to allow for greater accessibility and improved information sharing. Others suggest that specific and, at times, significant action is necessary.

The SBI and the Crime Lab have taken a number of steps to promote greater confidence in its operations and activities.<sup>7</sup> The Crime Lab will soon receive international (and eventually dual) accreditation. Also, all standards and practices have been reviewed by a legal team assigned to the SBI in order to assure consistency in results. Attention has also been given to assuring that the gradual implementation of modifications does not interrupt the normal process of analyzing samples nor create potential scientific

---

<sup>6</sup> A review of Crime Lab employee records as of February 3, 2011, indicates that forty-three (43) employees have 10 years or more - 28% of the filled positions, one hundred eight (108) employees have less than 10 years - 72% of the filled positions, and sixty-eight (68) employees have less than 5 years - 45% of the filled positions.

<sup>7</sup> A number of the actions taken by SBI include the following: 1) Case files identified in the Independent Report have been audit by the original District Attorneys, 2) Blood Spatter program has been suspended, 3) Pitt County Ballistics Independent Analysis was completed and supported the finding of SBI, 4) a Forensic Partnership has been established with NCSU, RTI & Fayetteville State, 5) ISO Sampling Standards have been implemented in the Drug Chemistry Section of the Crime Lab, 6) the Crime Lab receives additional feedback from court participants in cases in which a Lab employee testifies in court, 7) there has been the appointment of a new SBI Director, an Acting Lab Director, and a Lab Director Search Committee, 8) the analysts named in the Independent Report were removed from case work, 9) the Lab has become equipped to deploy cameras in the Firearms Section, 10) the DNA section has received and passed two audits, 11) implementing International Accreditation Standards, 12) establishing the process for the supplemental certification for Crime Lab employees, 13) establishing a Science Advisory Board, and 14) scanning all historic files into an electronic database.

consequences. However, attention to the dual challenge of progressing while maintaining stability has not allowed for the instant adoption of all changes.

In January 2011, a Joint Select Study Committee on the Preservation of Biological Evidence which considered the actions of the Crime Lab and provided recommendations in the form of a report to the 2011 Session of the 2011 General Assembly.<sup>8</sup> This Committee, authorized by the General Assembly and comprised of various criminal justice system actors, made specific findings and recommendations concerning the SBI and its Crime Lab. However, primarily because of inadequate funding, the SBI has not fully satisfied these recommendations.

The perspectives shared with the Ombudsman regarding the Crime Lab have concerned many of the issues being addressed by the SBI and raised by the legislatively authorized committee. These matters tend to involve the issues of the Lab's accessibility, transparency, and neutrality. Many of these concerns exist due to the lack of easily accessible information to those outside of the Lab. Thus, stronger efforts to inform the public regarding the actions of the SBI and the Crime Lab may serve to improve confidence in the state's crime lab. In addition to taking steps to further educate the public, it is recommended that there be continued actions by the SBI and the Crime Lab to further promote the Lab's neutrality. Finally, in order to assure that actions to improve the SBI and the Crime do not negatively impact long term effectiveness, it is recommended that certain internal reviews be conducted and provided appropriate consideration.

In consideration of the thoughts and concerns shared by various members of the general public and justice community, the Ombudsman offers that the following recommendations be considered in the effort to maintain the progress currently underway. These recommendations primarily propose modifications to activities already in process within the SBI and Crime Lab, as well as other suggestions based on feedback from key stakeholders in the justice community.

## Steps For Moving Forward

### **I. COMPLETED - Internal Progress and Completed Steps**

The SBI has moved forward with a number of improvements in advance of and due to the recommendations detailed in the Independent Review commissioned by the Attorney General. Similarly, a number of additional actions have been voluntarily addressed independent of and in consideration of the Ombudsman's recommendations. This progress by the SBI includes:

1. Crime Lab analysts who testify in court provide evaluation forms to the presiding judge and to both attorneys involved in the case at hand. Evaluations concerning legal issues are reviewed with Crime Lab legal counsel. It is further recommended that analysts provide the evaluation form to pro se defendants.
2. Analysts have been and remain accessible to all attorneys associated with a case. Attorneys who have been verified to be the attorney of record are allowed access to analysts to ask questions about tests performed and to visit with analysts for pre-trial conferences.
3. The Crime Lab will continue to communicate what evidence will or under what conditions evidence will not be tested by the Crime Lab through the online publication of the Crime Lab's Evidence Guide.

---

<sup>8</sup><http://www.ncleg.net/documentsites/legislativepublications/Study%20Reports%20to%20the%202011%20NCGA/Preservation%20of%20Biological%20Evidence%20-%20Joint%20Select%20Study%20Committee.pdf>

4. Although the current electronic discovery system (Forensic Advantage) allows the Crime Lab to satisfy its responsibility of providing all requested information regarding Lab tests to District Attorney Offices, the Crime Lab is receiving suggestions for upgrades in order to better meet the needs of both the Crime Lab and attorney end users. (This may allow for the initiation of a Forensic Advantage Pilot Program within a North Carolina Public Defender Office, which may first require legislative action regarding the discovery process.)
5. SBI analysts will receive additional training and education on courtroom testimony and the discovery process.
6. There has been an agreement between the Crime Lab and the statutorily established NC Innocence Inquiry Commission to establish a process for the retesting of samples deemed appropriate by the Commission for review. Additionally, the Crime Lab and the Innocence Inquiry Commission have partnered to apply for a grant for post-conviction DNA testing from the US Department of Justice.
7. All new policies, procedures and modifications to current policies will be made available for public access in a central, online location.

## **II. EDUCATION - Better Informing the Public and Justice Community**

Public confidence in the SBI and the Crime Lab may be strengthened through additional efforts to share information with the public regarding the Bureau's regular activities and operations. For instance, some concerns regarding the Crime Lab's relationship with law enforcement were put at ease when the public became informed that the Lab did not track convictions following the performance of Lab tests. It is recommended that the following specific actions be taken to provide more transparency through the increased availability of information:

1. It is recommended that current and past policies, procedures, and section wide administrative orders modifying testing procedures and reporting standards be made available for public access in a central, online location, along with the new International Organization for Standardization (ISO) standard policies and procedures.
2. It is recommended that a process be established to allow for a period of comment concerning the new ISO policies and procedures.
3. Because of the lack of exposure that many attorneys have regarding the application of science in the field of law, it is recommended that efforts be made to further educate the legal and non-legal community concerning the science utilized within the Crime Lab.
4. It is recommended that the Crime Lab's DNA Database Unit regularly and publicly report statistical data accumulated by the Lab regarding information such as CODIS matches and the number of cases in which a suspect was excluded by DNA through testing. This report may also include information regarding the occasions in which law enforcement complies with or fails to respond to the Crime Lab's CODIS match confirmation process.
5. It is recommended that it be reiterated and /or posted on the Crime Lab section of the Department of Justice website that analysts have been and remain accessible to all verified attorneys who wish to ask questions about tests performed and to visit with analysts for pre-trial conferences.

## **III. LAB NEUTRALITY - Promoting Lab Neutrality and Assuring Quality**

The Crime Lab has taken steps to assure increased quality and neutrality within the Lab. However, the Ombudsman continues to receive concerns regarding neutrality within the Crime Lab. Some have previously and continue to suggest that Crime Lab employees possess an

ongoing bias towards the prosecution. In order to promote confidence in a NC Crime Lab that seeks the truth through neutral, transparent and scientific analysis, it is recommended that specific and identifiable measures be taken to strengthen the Crime Lab's commitment to maintaining a neutral lab and to further promote integrity in the actions of agents and analysts at the Lab and in the courtroom.

1. It is recommended that the Crime Lab establish an "Evidence Submission Form Review Committee" to evaluate the current form and offer suggested changes.
2. It is recommended that analysts continue to maintain a log in FA of all communication regarding casework. While this is the current Lab practice, it is recommended that it be implemented into Crime Lab policy.
3. It is recommended that positions for hire within the Crime Lab no longer indicate a preference that an applicant be sworn or not sworn as a law enforcement officer unless the position specifically necessitates the execution of duties for which the law requires an individual with sworn officer training. It is also recommended that the SBI conduct a review regarding the discretionary requirement that all Crime Lab analysts reporting to Clandestine Laboratories be sworn law enforcement officers.
4. It is recommended that prior to testifying in court, Lab analysts ascertain if there have been any administrative orders modifying the language used for reporting results when there have been no significant modifications to the testing procedures utilized during a test. This would prepare analysts to provide testimony regarding the current and/ or updated standard.

#### **IV. PROCEDURAL REVIEW**

In the process of implementing changes to further improve the SBI and the Crime Lab, it is important to assess challenges and consequences that may arise upon the implementation of certain steps. With appropriate review, unanticipated ramifications may be revealed. It is recommended that the following matters be reviewed for implementation:

1. It is recommended that a review be conducted to determine the feasibility of assigning cases to analysts based on geographic regions or districts within the state to allow for regular and increased accountability, accessibility, court visits, and attorney contact. The size of the districts may be determined based on the resources of each section. This would be similar to the eight districts to which field agents are assigned.
2. It is recommended that there be a review of the process for notifying District Attorneys of scheduled leave time for analysts in order to provide prosecutors with the maximum notice for scheduling District Court cases.
3. It is recommended that a comprehensive evaluation be conducted to consider whether drug toxicology cases submitted to the lab involving impaired driving should be contracted out (indefinitely or temporarily) to reduce the number of pending cases to a waiting period of 4 months or 120 days from receipt.
4. It is recommended that the SBI consider creating a Citizens' Academy to enlighten and inform citizens of the SBI's many roles in crime control and law enforcement.
5. It is recommended that District Attorneys be regularly encouraged to complete the Case Disposition Form to assure that cases disposed of in court are removed from the testing cycle.
6. Other matters offered to the Ombudsman for consideration in which the Ombudsman fails to make full recommendations concern SBI field officers communication equipment upgrades and Lab testing procedures.

These concerns and recommendations have been primarily offered by prosecutors, defense attorneys, and from within the SBI, upon careful consideration of factors such as:

- i. the frequency of concerns expressed by those in contact with the Ombudsman;
- ii. the available systems and procedures presently in place that may serve as solutions;
- iii. the strategies already implemented by other state bureau crime labs;
- iv. the promotion of fairness for all participants within the justice community;
- v. the urgency, practicality and obstacles present for implementation; and
- vi. the effect on individuals within the criminal justice system and SBI employees.

## **I. Completed - Internal progress and completed steps**

- 1. Crime Lab analysts who testify in court provide evaluation forms to the presiding judge and to both attorneys involved in the case at hand. Evaluations concerning legal issues are reviewed with Crime Lab legal counsel. It is further recommended that analysts provide the evaluation form to pro se defendants.**

Currently, analysts' evaluations are reviewed by their Crime Lab supervisors. Supervisors review both positive and negative comments with analysts who testify in court to assess if any action is necessary to better prepare the analyst for future court appearances. These forms also serve as an effective means of benchmarking and improving testimony presentation in the legal arena. This form allows for the analyst to be evaluated on a variety of areas such as:

- i. Impartiality of testimony,
- ii. Conclusions being supported by scientific data,
- iii. Clarity of testimony,
- iv. Witness calmness regardless of adversarial approaches,
- v. Dress,
- vi. Demeanor, and
- vii. Etc.,

Crime Lab analysts and supervisors receive initial and periodic training concerning in-court activities. This training provides a base for courtroom presentation. Crime Lab supervisors, having backgrounds in science, may be challenged when reviewing critiques regarding legal issues discussed in the evaluations. However, the legal counsel at the Crime Lab has a unique familiarity with the work activities of analysts and with testimony procedures in order to properly assist analysts with these evaluations. Thus, evaluations concerning legal issues are reviewed with Crime Lab legal counsel.

*It is further recommended that analysts provide the evaluation form to pro se defendants as well. Evaluations completed by individuals without legal background and training may not offer the type of legal commentary as that of judges and attorneys. However, it would be appropriate for pro se parties to receive the same opportunity as attorneys and judges to share opinions regarding an analyst's testimony in a case. Such action would only promote the Lab's neutrality and respect for all parties.*

- 2. Analysts have been and remain accessible to all attorneys associated with a case. Attorneys who have been verified to be the attorney of record are allowed access to analysts to ask questions about tests performed and to visit with analysts for pre-trial conferences.**

Defense attorneys, prosecutors, and Crime Lab analysts collectively express a desire for improved communications. Defense attorneys and prosecutors state that analysts, at times, are unavailable to answer questions about tests performed. Some defense attorneys still believe that they are unable to

contact analysts without prosecutorial approval, yet analysts maintain that they are available to speak with both sides and are interested in arranging pre-trial conferences.

The process currently in place provides that when someone calls the Crime Lab to discuss evidence and presents him/herself to be the attorney of record, the analyst must first verify that the person calling is indeed the attorney of record. For prosecutors, analysts call the District Attorney's Office to confirm that the person calling does indeed work there. For defense attorneys, information on letterhead is requested to verify that the person calling is the attorney representing the individual charged. This process has been implemented because co-defendants or family members of those involved in cases will occasionally call to inquire about a case, some pretending to be attorneys. For this reason, analysts must first verify the identity of the caller. At times, analysts may not be available to speak immediately when called and a time to discuss the results must be scheduled.

There is a need to better inform attorneys of the accessibility of lab analysts. There are numerous attorneys who believe they must receive approval from the prosecution prior to speaking with an analyst. *Thus, it is recommended that it be reiterated and/or posted on the Department of Justice website dedicated to the Crime Lab that analysts have been and remain accessible to all verified attorneys who wish to ask questions about tests performed and to visit with analysts for pre-trial conferences.*

**3. The Crime Lab will continue to communicate what evidence will or under what conditions evidence will not be tested by the Crime Lab through online publication of the Crime Lab's Evidence Guide.**

There have been occasions when the Crime Lab has deemed that the testing of certain evidence is not appropriate. Such determinations are made based upon the Lab's standards. However, those unfamiliar with these standards have questioned if the Lab is making decisions about what should be tested on a case by case basis without first knowing the specific facts or theories surrounding the evidence. Thus, there have been requests that the Crime Lab take additional steps to communicate information regarding the specific or known situations in which tests will not be performed.

Online publication of this information helps communicate to law enforcement, prosecutors and defense attorneys the particular circumstances in which items will not be tested by the Crime Lab, pursuant to Lab policies and procedures. The communication of this information may deter the unnecessary submission of evidence that will not be tested. If recognized, the officer submitting evidence at the Crime Lab would be notified when submitting evidence if a test will not be performed by the Lab. The publication of this material, however, allows the officer to have advance notice of whether the requested test is one performed or not performed by the Crime Lab.

**4. Although the current electronic discovery system (Forensic Advantage) allows the Crime Lab to satisfy its responsibility of providing all requested information regarding Lab tests to District Attorney Offices, the Crime Lab is receiving suggestions for upgrades in order to better meet the needs of both the Crime Lab and attorney end users. (This may allow for the initiation of a Forensic Advantage Pilot Program within a North Carolina Public Defender Office, which may first require legislative action regarding the Lab's delivery of information to entities other than prosecutors or law enforcement.)**

The Forensic Advantage (FA) system currently utilized by the Crime Lab provides a simple means of accumulating reports for discovery. FA (also known as F.L.A.I.R.S.) is a web-based information sharing system purchased through a commercial vendor that allows for test results to be downloaded into a high

security access site that provides prosecutors with results and reports quickly.<sup>9</sup> The current FA system allows the Crime Lab to satisfy its responsibility of providing all requested information regarding lab tests to District Attorney Offices for the discovery process.

Although a number of district attorneys have always had open file discovery policies for their offices, open file discovery statutes now requires all district attorneys to pass along all discovery to attorneys representing those charged.<sup>10</sup> Each District Attorney's Office has a designee assigned to access the information from the FA website database and provide the discovery to defense attorneys, usually in the form of a CD or printed document. However, prosecutors opine that FA is not in a format best suited for prosecutors to retrieve and share information with defense attorneys. Prosecutors have identified a number of issues with the current system. Prosecutors would prefer

- i. The ability to sort cases according to name of a suspect, victim or by case type.
- ii. Automatic notifications of when an update has been made. (Prosecutors are required to periodically check FA to inquire if any additional updates or new reports have been posted. Also, most, but not all information can be sent in one combined PDF file.)
- iii. On-demand publication of case reports and data. (Reports are only available for an initial period of 60 days without requests for a report to be published again.)
- iv. Distinction between whether a test was performed for a charged defendant or an uncharged suspect.<sup>11</sup>
- v. Cases identified by court file number rather than the SBI file number.

In an effort to address these issues, the Crime Lab has begun receiving feedback from prosecutors about modifications that would assist in making FA more functional for their use. District Attorney designees have shared suggestions for what may assist in the retrieval of information from FA. The Conference of Elected District Attorneys discussed forming a committee to make additional recommendations based on FA issues faced by offices across the state.

Defense attorneys also desire a means to receive discovery directly from the Crime Lab without having to await its delivery through the District Attorney's Office. However, prior to defense attorneys receiving accessibility to FA, many of the upgrades desired by district attorneys would need to be implemented. Also, legislative action will now be necessary for defense attorneys to receive information directly from the SBI. The recently passed NC Forensic Sciences Act of 2011<sup>12</sup> modified N.C.G.S. Section 15A-903 (c) such that information from the Crime Lab must be provided to the prosecution first before being provided to the defendant.<sup>13</sup>

---

<sup>9</sup> The current version of Forensic Advantage packets the laboratory report, bench notes, case report, submission paperwork, chain of custody report, and communication log in one combined PDF file. The PDF file is page numbered with a Table of Contents indicating where the needed information can be found. Case objects, evidence receipts, Analyst CV, and administrative documents are delivered as separate files within the packet.

<sup>10</sup> N.C.G.S. Section 15A-903

<sup>11</sup> Allowing for the Evidence Submission Form to indicate whether a submitted sample concerned a charged defendant and the court file number associated with that case would serve as a means of initially including this information in FA.

<sup>12</sup> 2011 N.C. ALS 19; 2011 N.C. Sess. Laws 19; 2011 N.C. Ch. 19; 2011 N.C. HB 27

<sup>13</sup> N.C.G.S. Section 15A-903 (c) Upon request by the State, a law enforcement or prosecutorial agency shall make available to the State a complete copy of the complete files related to the investigation of the crimes committed or the prosecution of the defendant for compliance with this section and any disclosure under G.S. 15A-902(a). *[(Newly added in 2011) All public and private entities that obtain such information shall ensure that all material listed in subdivision (1) of subsection (a) of this section is fully disclosed to the referring prosecutorial agency for disclosure to the defendant.]*

Providing a Public Defender's Office with access to FA as a pilot project has been suggested to the SBI for consideration as a recommendation of the Joint Select Study Committee on the Preservation of Biological Evidence and by others from the defense community.<sup>14</sup> Upon any necessary legislative action, the implementation of a pilot project would provide the opportunity to determine the feasibility of providing discovery directly to Public Defender Offices across the state through FA. The Public Defender would receive access upon verification that he/she has been assigned to a case where the Crime Lab has performed an analysis. Upon proper protocols being established, Public Defender Offices could potentially distribute Lab information to attorneys appointed through Public Defender Offices. Installation of FA to Public Defender Offices would not remove the responsibility of prosecutors in the discovery process. However, it may serve to truncate the process through which some defense attorneys receive discovery regarding Crime Lab test reports and Lab discovery. In fact, the district attorneys with whom the Ombudsman discussed this issue did not express any objection to Public Defender access if certain safeguards, upgrades, and modifications were made to the FA system first.

The current process, for instance, provides that a verified defense attorney must wait to receive information from the prosecutor after it has been published into FA. A Public Defender's Office that regularly retrieves information from FA for distribution within the 60 day window would retrieve this information for itself, removing this responsibility from the assigned District Attorney's Office for cases assigned through the Public Defender's Office. Due to the possible implementation of *a Pilot FA Project within a North Carolina Public Defender's Office*, it is recommended that input also be received from *Indigent Defense Services* or a committee of Public Defenders regarding FA upgrades. This may allow for consideration of issues that may not present themselves until the pilot project has begun.

Some defense attorneys desire for individualized password access for each new case. An upgrade allowing for individual password accessibility for each case and/or for every attorney would require significant costs. Also, under the current system capabilities, a password access system would allow attorneys to view all cases assigned to a specific prosecutorial district or law enforcement agency, not just to one case assigned to a single attorney. This would impact the confidentiality of individual cases.

Another reason why it is not currently feasible to grant defense attorneys immediate access to FA is because the current system does not distinguish between individuals who have been charged and those who are being investigated. Thus, the situation may occur in which an attorney learns and is obligated to inform a client of a current investigation. Such information may be detrimental to an ongoing investigation by a police department using the Crime Lab to test certain samples. Therefore, the initiation of any pilot project may not be functional until specific upgrades and modifications have been made to the FA system.

The Crime Lab currently complies with its requirement to provide discovery to prosecutors. The remaining issues regarding usability of the delivery and organization of the information are being addressed. Better packaged information may assist attorneys in moving cases forward more efficiently. There are system modifications that could better satisfy members of the justice community, and efforts have been made by the Crime Lab to benefit end-users by pushing the limits of the system. These modifications would assist the justice community as a whole.

The SBI is now working with the vendor to determine the costs for various upgrades and is using input from the justice community to consider what upgrades are most appropriate. However, there are funding limitations for upgrading the system to the desired level. In fact, there is a consideration as to who should

---

<sup>14</sup> Recommendation 3: The Committee recommends that the Director of the SBI and Laboratory continue to meet with members of the defense bar and prosecution in a working group to develop a process for FLAIRS [FA] access by defense counsel with the goal that 2-3 pilots be authorized by this working group within the next six months.

be responsible for the costs of the upgrade. It has been considered that funding may exist through resources such as the Governor's Crime Commission.<sup>15</sup>

*It is recommended that a designee monitor progress and work with the Governor's Crime Commission in the effort to acquire funding for FA improvements. It is further recommended that a timeline be established for reviewing suggested FA upgrade recommendations, reviewing the vendor's cost estimate of the recommendations, establishing a funding process, and establishing a Pilot Project within a Public Defender's Office upon any necessary legislative clarification. It is also recommended that a timeline be established to determine if FA is the best system to serve the Lab's needs for the sharing of information.*

**5. SBI analysts will receive additional training and education on courtroom testimony and the discovery process.**

There is a need to provide additional training for Crime Lab analysts concerning testifying in court. The training would assist analysts with the practice of relaying information in court and provide greater clarity of what is likely to occur in the courtroom. The training will be coordinated by DOJ staff.

*It is recommended that a portion of the training provide the opportunity for analysts to interact with and receive input from both prosecutors and defense attorneys. The Conference of District Attorneys, Indigent Defense Services, and the North Carolina Advocates for Justice have volunteered to assist with such trainings. The inclusion of such attorneys would add unique courtroom perspectives and provide analysts with the opportunity to better understand what to anticipate in court. Analysts and attorneys, at times, disagree on what information concerning a test result is most important for presentation to a jury. The utilization of defense attorneys and prosecutors during training might provide analysts with a better understanding of the issues they may encounter when providing testimony in court.*

Such training may better prepare analysts to discuss issues that may arise in court from the use of certain terminology. For example, a number of attorneys have expressed concerns that some Crime Lab analysts have described collected evidence samples as blood after a presumptive test and DNA test, but without a confirmatory test. They offer that a DNA test is not a blood test and that the language being used is not accurate. Incorporating attorneys with diverse experiences during a portion of the training may better prepare Crime Lab analysts to explain their testimony and also understand the perspectives of those representing the accused.

**6. There has been an agreement between the Crime Lab and the statutorily established NC Innocence Inquiry Commission to establish a process for the retesting of samples deemed appropriate by the Commission for review. Additionally, the Crime Lab and the Innocence Inquiry Commission have partnered to apply for a grant for post-conviction DNA testing from the US Department of Justice.**

**7. All new policies, procedures and modifications to current policies will be made available for public access in a central, online location.** These new policies and procedures will be under the ISO accreditation standards.

---

<sup>15</sup> The Joint Select Study Committee on the Preservation of Biological Evidence recommended that \$502,358 be provided for SBI automation system upgrades.

## **II. Education - Informing the Public and Justice Community**

- 1. It is recommended that current and past policies, procedures, and section wide administrative orders modifying testing procedures and reporting standards be made available for public access in a central, online location, along with the new ISO standard policies and procedures.**

The Independent Review by Attorney and former FBI Agents Chris Swecker and Michael Wolf recommended,

“That the SBI post all non privileged SBI Laboratory policies and procedures on a public website so that the operations of the lab are transparent and accessible to the public. Such action will stimulate vigorous and healthy cross examinations and public debate of Lab tests and attendant procedures/policies.”

This recommendation has not fully been completed. The audit and report of August 2010 did not indicate that policies and procedures should be published after the new policies and procedures become official in June of 2011. *Thus, it is now recommended by the Ombudsman that the recommendation of the independent review commissioned by the Attorney General be implemented with all deliberate speed to include current, past, and eventually future policies and procedures.*

The Lab will publish the newest policies and procedures on the internet once they are reviewed and completed. (This may occur near the time of publication of this report.) These new policies and procedures will be under the new ISO accreditation standards. However, the cases that are currently being litigated in North Carolina courtrooms involve actions by the SBI under the present policies and procedures under the American Society of Crime Lab Directors. It is important to note that there are also older cases being litigated due to mistrials, retrials, appellate hearings, etc., that involve matters from a time prior to the current policies and procedures. *Thus, it is recommended that former policies, procedures, and section wide administrative orders modifying testing procedures and reporting standards be placed online with the new ISO standards.*

Access to modifications in policy or procedures through section wide administrative orders would also promote transparency. An example of such a modification exists in an administrative order from July 16, 2008. On that date, an order concerning the language used for reporting certain results was made effective. This order directed that unless certain criteria were met, the interpretation of the DNA test shall be **“No Conclusion can be rendered as to the donor of the minor profile.”**<sup>16</sup> Prior to this order, analysts were to testify that the defendant **“cannot be excluded as the contributor to the minor allele.”**

A jury’s interpretation of the conclusion may differ depending upon which standard they hear during a trial. However, without the publication of such modifications, it becomes more difficult for an attorney to know of such a change in reporting standards to present to a jury. Access to specific policies, procedures, and administrative orders is currently available by a formal request or court order. However, in order to request the information, attorneys must already know what specific modifications or procedures are relevant to their particular case. Without the opportunity to stay abreast of all changes, this task may be difficult. *Thus, it is recommended that the online standards reflect the specific changes made to allow the*

---

<sup>16</sup> [Administrative Order 08-PRO-03 – In the event that a mixture profile with a major and minor profile (two identifiable contributors) is obtained, the following interpretation guidelines shall be met before declaring a standard as a possible source of the minor contributor: Two minor alleles are present at one locus in the mixture which are also present in the profile of the standard or the standards full locus profile is observed in a minimum of 2 loci in the mixture. If the above criteria fail to be met then the interpretation shall be “No Conclusion can be rendered as to the donor of the minor profile.”

reader to observe the former and current status of the standard, not just the updated modification. This may be accomplished by publishing a copy of the applicable section wide administrative order modifying testing procedures and reporting standards online, as it will provide clarity of what the former standard was and what the present standard is.

Publication of these materials would place North Carolina's Crime Lab ahead of most states. Few states have full access to policies and procedures online. The FBI, along with state bureaus of investigation in states such as Arkansas, Minnesota, North Dakota, Oklahoma, Virginia, West Virginia, grant access to all or some policies, procedures, manuals, etc. for public viewing on their web pages. (Delaware and Wyoming indicate that the information will be posted to their websites soon.) Additionally, North Dakota provides access to "Forensic Memos" that ordered changes in operational policies and procedures due to changes in legislation and/or from audits.<sup>17</sup>

Currently, attorneys must request copies of past and present policies and procedures. While the process of individual attorneys requesting copies of policies and procedures ultimately grants access to the desired information, it is not the most efficient or transparent means of achieving this goal. The request from an attorney requires the Crime Lab to dedicate employee resources to retrieve and send the desired information. This process must be repeated for every case, sometimes more than once. Some attorneys have suggested to the Ombudsman that the delay in publishing policies and procedures has reinforced their negative perceptions of the Crime Lab. *Therefore, it is recommended that the Lab provide easy access to former policies, procedures and section wide administrative orders on the internet for greater ease in accessibility, as was recommended by the Swecker Report commissioned by the Attorney General.*

Online publication would allow the Lab to direct attorneys who request information to published central, online location, instead of repeatedly reproducing copies. Additionally, the Office of the Ombudsman should further inform the judiciary of the online publication of this information. An informed judiciary may result in judges not issuing orders that require the Crime Lab to provide attorneys with information that is available on the internet for all who desire to acquire such information. The Lab would, therefore, only be required to provide information to attorneys not available online.

North Carolina Indigent Defense Services (IDS) is presently accumulating copies of policies and procedures and publishing them on their website.<sup>18</sup> These policies and procedures are copies that have been provided by various attorneys who have received the information from the Crime Lab as a part of individual cases. Some of the information may have also been received as a part of other record requests. Indigent Defense Services has already published the curriculum vitae of a number of analysts, along with various policies, procedures, and administrative orders for a period of time that goes back to 1996. Indigent Defense Services has also published a copy of the Crime Lab's current policies and procedures.

Upon publication of policies and procedures, it is anticipated that there may be more cross examination of SBI agents and analysts concerning whether there has been compliance with these standards. Online publication may require the determination of what time span would be appropriate in order to provide online access for issues still being resolved due to ongoing trials, litigation and appellate hearings. A time span of approximately ten years may be appropriate. However, further review and consultation with post-conviction groups is needed.

**2. It is recommended that a process be established to allow for a period of comment concerning the new ISO policies and procedures.**

---

<sup>17</sup> <http://www.ag.state.nd.us/CrimeLab/Memos/ForensicMemos/index.htm>

<sup>18</sup> <http://www.ncids.com/forensic/SBI/SBI.asp>.

The Lab is in the process of becoming accredited by the International Organization for Standardization (ISO). Once the Lab is fully operating pursuant to ISO standards, new policies and procedures will be made effective. These new policies and procedures will then be centrally located on the internet to allow the public access to this information.

Once the new policies and procedures are in place, there is currently no established means for the public (scientific, legal, or lay) to contribute or express any potential concerns regarding the new scientific techniques being utilized at the lab. *In an effort to provide greater access to the public, it is recommended that a website link to the Office of the Ombudsman or another DOJ entity exist to allow for comments concerning the new ISO policies and procedures.* This would allow for the public to submit comments for a defined period of time (to be between 60-120 days) after the initial publication of the new policies and procedures.

In order to determine if the comments are of a scientific nature or of a general commentary, submissions could be reviewed by the Office of the Ombudsman or another person designated by the Department of Justice. Comments of a valid scientific nature would be accumulated and provided to the newly statutorily created Scientific Advisory Board prior to its meeting for the Board's consideration. This process of public contribution may allow for improved confidence in the new policies and procedures of the Crime Lab.

3. **Because of the lack of exposure that many attorneys have regarding the application of science in the field of law, it is recommended that efforts be made to further educate the legal and non-legal community concerning the science utilized within the Crime Lab.**

A. Bar Seminars – One way in which the legal community may become more familiar with the Crime Lab and the science used in the Lab is through cooperation with the NC Bar Association or local county Bar Associations in providing Continuing Legal Education (CLE) seminars. The training would provide information about the Crime Lab's operations and present information that may be relevant to attorneys handling cases involving Crime Lab analysis. This scientific training and education may cover topics such as DNA Collection and CODIS, the processing of information and samples for the sex offender registry, etc. Such an opportunity could be offered by the Crime Lab on the SBI campus, through webinar CLEs, or in different areas of the state upon invitation from various legal organizations.

Prosecutors traditionally receive separate training provided through the Conference of District Attorneys. While the subject matter covered in separate trainings may address the specific needs of the audience, the information and handouts provided in any prosecutorial training would be made available to defense attorneys upon request to the Crime Lab.

B. Conferences of District Attorneys – Another way to create a culture of scientifically educated attorneys is to provide information to the Conferences of District Attorneys about the Crime Lab's operations and present information that may be relevant to prosecutors handling cases involving Crime Lab analysis. This information would be particularly valuable for the training of prosecutors beginning to handle Superior Court cases. Utilizing the established Conference would further the effort to provide information about the Crime Lab to all attorneys, not just prosecutors. Because many prosecutors move on to become private defense attorneys, this regular sharing of information regarding the Crime Lab would, in time, lead to a culture of more scientifically knowledgeable defense attorneys as well. Such information sharing should also be extended to IDS and public defenders.

C. General Public - In order to further inform the non-legal community, additional information may be provided on the website for the SBI and the Crime Lab. Accessibility to more information may contribute to a better informed public and would further promote the transparency of the Lab. A number of states

provide various details concerning their labs' activities on their websites. The state of Connecticut has a PowerPoint describing CODIS, the collection of DNA, and statistics regarding the number of cases received and analyzed.<sup>19</sup> New Hampshire provides information concerning the total number of cases received on their web site.<sup>20</sup> Other states also provide various types of information.<sup>21</sup> Additional information such as that traditionally provided in the SBI's Annual Report would serve to better inform the public and provide greater transparency.

4. It is recommended that the Crime Lab's DNA Database Unit regularly and publicly report statistical data accumulated by the Lab regarding information such as CODIS matches and the number of cases in which a suspect was excluded by DNA through testing. This report may also include information regarding the occasions in which law enforcement complies with or fails to respond to the Crime Lab's CODIS match confirmation process.

As of February 1, 2011, DNA samples are taken from suspects arrested for certain crimes. These samples are then submitted into the United States' Combined DNA Index System (CODIS). The Crime Lab has made a number of adjustments for receiving the volume of additional DNA samples being submitted into the CODIS. The Crime Lab has assigned the DNA Database Unit to manage and address all information as it relates to CODIS.<sup>22</sup>

The SBI has access to CODIS samples for numerous persons originally identified as suspects in prior cases. CODIS may connect samples from unsolved cases with individuals recently incarcerated or arrested. It is reasonably expected that the increased number of CODIS samples submitted from new arrestees will result in an increased number of matches or hits to previous submitted samples.

There may be occasions when a newly arrested individual's DNA matches the DNA originally submitted for a suspect in a case in which someone else was found guilty or pleaded guilty. In such instances, the finding or plea of guilt may have occurred when the DNA evidence was inconclusive or not yet available. The revelation of a new match may or may not exonerate a convicted suspect nor conclusively prove the guilt of the new arrestee whose DNA matches that of an original suspect. However, it may potentially indicate the need for further review of the case.

In one specific case, a victim had recently engaged in sexual relations with her boyfriend prior to being assaulted by someone else. When samples were taken from the victim to determine the identity of the assailant, it was anticipated that the boyfriend's DNA would be found due to his recent consensual contact with the victim. The collected samples were uploaded into CODIS as a part of the DNA evidence examination. Without a DNA match, a suspect was eventually apprehended and determined to be guilty.

Years later, the boyfriend was convicted of unrelated charges that required the submission of his DNA. CODIS subsequently alerted that his DNA was a match to DNA that had been uploaded in the prior case. However, it was eventually recognized through the confirmation process that his DNA was present due to his consensual contact with the victim.

---

<sup>19</sup> <http://www.ct.gov/dps/cwp/view.asp?a=2155&q=314998>

<sup>20</sup> <http://www.nh.gov/safety/divisions/nhsp/forensiclab/index.html>

<sup>21</sup> Alabama and New Mexico go as far as providing the contact information for all lab employees online. It is not recommended that contact information for individual analysts be shared publicly. <http://www.adfs.alabama.gov/Labs.aspx> (Alabaman Department of Forensic Sciences lists the names of analysts at each of the Regional Labs. <http://www.dps.nm.org/lawEnforcement/forensics/contact.php>

<sup>22</sup> This Unit is additionally assigned the responsibility of overseeing the expunction and removal of all DNA samples that should no longer be included in the CODIS database, as is required by law.

This example is noteworthy because it indicates the importance of the confirmation process and also of the effectiveness of CODIS to alert authorities to matches. It further brings attention to the Crime Lab's position of processing CODIS matches and following up with law enforcement to confirm the CODIS match. This confirmation process is also necessary because the Crime Lab is not positioned to know the outcome of the original case, as it does not track convictions or exonerations.

A process has already been implemented within the Crime Lab to address these issues. This process confirms that CODIS hits match the sample previously submitted for an original suspect. The result shows again the importance of the CODIS system, and the analysts' work in pursuing information even after the apparent conclusion of a case. With this knowledge, the DNA Database Unit serves as the mechanism to alert the proper authorities when a match occurs due to a CODIS hit. The information the DNA Database Unit accumulates regarding CODIS hits and matches is shared with the original District Attorney's Office and the original law enforcement agency.<sup>23</sup> In addition to procedures followed by the DNA Database Unit to confirm CODIS matches, it is recommended that slight changes be made to the process currently in place.

The current procedure provides that once there is a CODIS confirmation, the case analyst notifies the investigating officer by phone. This conversation is documented in FA. The officer then has 30 days to submit a standard sample of the original suspect for verification. When the original suspect's standard is submitted, a report is sent to the District Attorney's Office to notify them of the result. If the officer does not submit the standard within 30 days, the case analyst still generates a report stating that the investigating officer was notified on a specific date and the case is not considered complete until a suspect standard is submitted.<sup>24</sup> The District Attorney also receives a copy of this report. Legislative action may also be needed in order for the Crime Lab to notify the original attorney who represented the accused of the ongoing confirmation process.

*To encourage officers to re-submit sample standards for verification, it is recommended that the Crime Lab work with representatives of local law enforcement stakeholders to develop a system of additional notifications to ensure action.* For example, one idea for offered for consideration from within the SBI would require for notification to continue to be sent to the individual officer who submitted the sample for the original tests, but also to the agency supervisor, Chief of Police, or Sheriff. This system of dual notification would inform the superior officer about the requests made to the subordinate. Additionally, if the original investigative officer is no longer employed with that law enforcement agency, this dual notification allows for the agency head to be made aware of the Crime Lab's request for the submission of the original suspect's test standard for verification. It is unlikely that an agency head would knowingly choose to delay the potential exoneration of an individual, nor would he/she desire the attention that may follow the failure to act upon appropriate notice.

*It is also recommended that the Crime Lab publicly report statistical data regarding the results and frequency of all CODIS hits.* This regularly published report would serve to assist the public in understanding the efficiency or effectiveness of CODIS. *It was also offered from within the SBI that the report may also reflect the time that passed (i.e. < 30 days, < 60 days, <90 days, etc.) prior to a law enforcement agency providing a sample standard for verification in cases in which notification is appropriate.* These timelines will ascertain whether law enforcement agencies have been cooperative in providing sample standards for confirmation in a timely manner. This information may also be shared on

---

<sup>23</sup> A SpecMan data management software program was implemented in February 2011 to track both CODIS matches and the confirmation process.

<sup>24</sup> Reasons offered to the SBI for the failure of some officers to submit a sample standard typically are because the prosecutor does not wish to proceed with the case, the officer is unable to find the suspect, fails to follow up on the collection, the evidence has been destroyed, etc.

the Crime Lab's web site. Because a monthly summary is already reported, it is not anticipated that regularly sharing this information would require great difficulty.

In addition to assuring that certain DNA samples are expunged, the DNA Database Unit currently records the number of cases in which a suspect was excluded by DNA evidence. Each forensic scientist in the Forensic Biology Unit reports the number of individuals who have been excluded as possible matches for samples that have been submitted for testing. The results and accumulated information is currently only shared with a limited number of individuals within the SBI and the Department of Justice.

The SBI currently publishes an annual report of each section of the SBI. However, regularly or annually publishing this report separately and in detail would serve to greater inform the public of the ongoing operations within the DNA Section of the Crime Lab. For example, the fact that this process excluded twenty-three (23) individuals in March 2011 and four hundred twenty-three (423) in 2010 may be shared with the public through such a report. Providing such statistical information on the Crime Lab's website may also serve to better inform the public about the usefulness of CODIS.

- 6. It is recommended that it be reiterated and /or posted on the Crime Lab section of the Department of Justice website that analysts have been and remain accessible to all verified attorneys who wish to ask questions about tests performed and to visit with analysts for pre-trial conferences.**

Analysts remain accessible to all attorneys. Attorneys who have been verified are allowed access to ask analysts questions about tests they performed and to visit with analyst for pre-trial conferences. Additional action is still required in communicating this fact, as there are still numerous attorneys who believe that communication with analysts must be approved by the prosecution. *Thus, it is recommended that it be reiterated and/or posted on the section of the Department of Justice website dedicated to the Crime Lab that this policy is and has been in effect.*

### **III. Lab Neutrality - Assuring and Promoting Lab Neutrality**

- 1. It is recommended that the Crime Lab establish an "Evidence Submission Form Review Committee" to evaluate the current form and offer suggested changes.**

Concerns have been expressed regarding what information is available to analysts prior to the testing of submitted samples. Concern also exists regarding what evidence is tested by the Lab and who makes the decision about what evidence is tested.

Analysts require information that allows them to accurately research submitted samples and with superfluous information that is unnecessary for their research being eliminated. Prosecutors and law enforcement want tests performed in a manner that examines evidence for information deemed relevant according to case theories which they believe are supported by the evidence. Meanwhile, defense attorneys often desire a process in which analysts examine evidence without identifying information about suspects and without analysts having access to case theories developed by law enforcement. All groups suggest their perspective supports an effort to efficiently seek the truth.

The process of how testing is performed typically begins with the Evidence Submission Form (SBI-5) that is filled out by the law enforcement officer who delivers the sample to the Crime Lab for testing. The form utilized for the submission of evidence should promote the Lab's neutrality while still acknowledging the potential need for additional tests at the request of prosecutors and/or investigators. Cooperation with justice community stakeholders in determining what information to include on the

evidence submission form will only assist the process. *Thus, a review of the Evidence Submission Form is recommended.*

A review may be completed by a group representing all criminal justice stakeholders. However, the Crime Lab would ultimately have the final determination of what, if any, suggestions to apply. For example, a review/ suggestion committee (limited in the total number of members) may resemble the Forms Committees established by the North Carolina Administrative Office of the Courts.

AOC has used the Judicial Forms Committee process for the establishing and reviewing of essentially all forms used within the court system. This committee process was even utilized by AOC in revising the citation form used by the North Carolina State Highway Patrol. Judicial Forms Committees allow for input from representatives of all areas of the Court System.<sup>25</sup> Members of the public or interested groups are also allowed to be present and to make presentations during such meetings. For example, the Department of Correction traditionally has representatives present when forms are reviewed due to changes in sentencing laws. While it is not recommended that the review process extend to allowing public presentation and comment, the Crime Lab may implement a similar process of receiving input from justice community stakeholders. This process would still allow the Crime Lab to choose what, if any, suggestions to adopt.

The SBI-5 form was recently modified as of April 2011.<sup>26</sup> This form was reviewed by Department of Justice attorneys, Lab legal counsel, and Lab management. The current form

- i. indicates on its cover page that laboratory report(s) will be mailed, even though FA is now primarily being utilized to deliver discovery;
- ii. requests a suspect's sex, race, and date of birth;
- iii. uses the description of "the attacker" for sexual assault cases, which avails the lab to criticism that it is only attempting to prove that a suspect committed the crime instead of trying to determine what acts were committed;
- iv. does not allow for the court file number to be included if that information is available when the evidence is submitted for testing; and
- v. requests the statement of the suspect regarding whether the sexual contact was consensual. (There has been prosecutorial concern that testing may cease due to the confession of the suspect. Thus, if the confession is suppressed in court, the prosecution is left without the test that would provide greater information for a jury. The Lab policy is to continue with the testing regardless of whether the suspect indicates that the act was consensual).

All of the information requested may be useful for scientific purposes in some circumstances and of little use in others. For example, it may be concluded that the identification of a suspect's race on the Evidence Submission Form is useful for the analysis of DNA evidence. In fact, the current form reminds the submitter to "[b]e sure to indicate the race of the victim(s) and suspect(s)" in cases of hair fiber analysis. However, race, gender or age would not be necessary for a drug chemistry analysis.

---

<sup>25</sup> Committee members vary depending on the subject of the form being reviewed. Criminal forms typically include representative from Superior Court Judges, District Court Judges, District Attorneys, Public Defenders, Clerks of Superior Court, and Magistrates. Juvenile forms may also include representatives from the Juvenile Defender's Office.

<sup>26</sup> Prior to the recent review of the SBI-5, the form indicated that it was established in January of 2000. Two of the substantive additions were made to the form. The form now requests, 1) "Have the suspect(s) and victim(s) lived at the same residence or shared a common environment?" 2) "If this is a rape case, has consent or common environment been involved?"

A review of the form may determine that it is appropriate to always request such information on the SBI-5 form during the evidence submission process. Utilizing one form may prove to be efficient when there are various tests being performed in one case. This would prevent the necessity of using multiple forms. A collaborative review of the form would consider such issues. A review may also reveal that additional information should be requested as well.

A similar approach was used for selecting a new Crime Lab Director. That committee was formed with members representing various aspects of the justice system. Such a Review Committee would indicate that all necessary measures are being taken to assure that the Evidence Submission Form promotes the Lab's neutrality, accessibility, and endeavors to seek the truth through science.

The inclusion and input of those who have regular, practical experience with the utilization of results in court would aid in identifying potential areas of concern on the Evidence Submission Form. Consideration of the ideas of others promotes that the Crime Lab is accessible, desires cooperation, and invites collaboration. *An approach that utilizes the knowledge and diverse experience of stakeholders and allows for the final decision to rest with the Crime Lab is recommended for a review of the Evidence Submission Form.*

- 2. It is recommended that analysts continue to maintain a log in FA of all communication regarding casework. While this is the current Lab practice, it is recommended that it be implemented into Crime Lab policy.**

Lab analysts have the responsibility of maintaining a record of communication regarding casework. The FA System allows for this information to be documented in order to be shared with the parties involved. *While this is the current practice in the Crime Lab, it is recommended that it be required by Crime Lab policy.*

The current SBI Policy and Procedure Manual provides the following procedure for Communication Logs,

“Any communication which could reasonably be expected to have an impact on the analysis of the evidence must be recorded either electronically in the LIMS “Phone Log” area or by using a section-approved, pre-formatted, case-specific log sheet. Non-electronic pages must be maintained as an administrative document in the case file.”<sup>27</sup>

This procedure allows for the analysts to make a determination as to whether the communication may “have an impact on” their results and testing. However, the procedure does not require the reporting of a phone call that initiates additional testing, yet produces no contrary result. Such tests may be important for the parties to understand for their cases.

Although all tests conducted are required to be reflected in FA, modifying the procedure and requiring the documentation of all communication concerning an analysis may alleviate external concerns that the Lab is engaging in communication that is not being reported. This will also serve to further promote the Lab's neutrality and transparency.

- 3. It is recommended that positions for hire within the Crime Lab no longer indicate a preference that an applicant be sworn or not sworn as a law enforcement officer unless the position specifically necessitates the execution of duties for which the law requires an individual with sworn officer training. It is also recommended that the SBI conduct a review regarding the discretionary**

---

<sup>27</sup> SBI Policy and Procedure Manual, Procedure 35, Laboratory Records/ Case Files. Communication Logs. Page 35-7, May 1, 2008.

**requirement that all Crime Lab analysts reporting to Clandestine Laboratories be sworn law enforcement officers.**

The North Carolina Supreme Court offered in *State of North Carolina v. Ward* that “subjectivity that may unwittingly lead to law enforcement bias is a peril that should be guarded against in the field of forensic science.”<sup>28</sup> Some defense attorneys and members of the public express concern regarding this issue when it regards the employing of sworn officers to work within the Crime Lab. Their critique is that the Crime Lab hires sworn individuals who are trained as law enforcement officers, yet expects analysts not to favor law enforcement when performing analyses regarding those charged and accused by law enforcement officers. It is further believed by some that this practice exemplifies a culture rooted in a philosophy of attempting to prove the theories of prosecutors and fellow law enforcement.

In fact, the number of Lab analysts who are sworn agents has been reduced in recent years. Nearly fifty percent (50%) of all Lab employees are sworn agents. Those who have offered criticism to the Ombudsman acknowledge that a number of new analysts have become employed with the Lab in recent years, but note that new employees are trained and supervised primarily by sworn officer supervisors who were trained during a period now under criticism.<sup>29</sup> They, therefore, express concern that any institutionalized culture and practice favoring law enforcement may continue to exist.

Public statements reporting that analysts are no longer required to be sworn in order to be employed are factual. However, concerns are amplified when other available positions within the Crime Lab are posted indicating that applicants must be sworn officers.

The position qualified as and posted as a position for which only Department of Justice employees should apply. The posting was not for the position of an analyst. The job posting did indicate a requirement that the position be filled by a sworn candidate. Unless the position specifically required the execution of duties by an individual with sworn officer training, as required by law, the job posting did not require indicating such a preference.

This language requiring an applicant to be a sworn officer negatively impacts the efforts to promote the Lab as neutral. Multiple inquiries were made to the Ombudsman following the posting of this position regarding the hiring of sworn employees. Specific positions within the Lab may require an applicant to be a sworn officer. However, indicating a preference for a sworn officer without the position clearly requiring the execution of such duties has reinforced some opinions that the Crime Lab possesses under a law enforcement and prosecutorial bias.

*It is, therefore, recommended that postings/announcements of positions for hire within the Crime Lab no longer indicate a preference for an applicant to be sworn or not sworn as a law enforcement officer unless the position specifically requires for the execution of duties by an individual with sworn officer training as required by law.* Such action should not impact the hiring procedures of the Crime Lab or prevent internal promotions and/or employee movement. For example, job postings for Department of Justice employees only, such as that from February 2011, may indicate that the position is available to only Department of Justice employees.

The removal of such a requirement for any new posting may, at times, provide additional hiring options for the Crime Lab. The requirement that all applicants for certain positions be sworn officers excludes applicants who may have appropriate scientific credentials, and negates their other qualifications and trainings. Alternatively, this recommendation does not suggest that employees should be prevented from

---

<sup>28</sup> State v. Ward, 364 N.C. 133; 694 S.E.2d 738, page 148.

<sup>29</sup> See Footnote 6.

choosing to become sworn officers in order to assist with Clandestine Laboratories or other specific needs.

The General Assembly previously expressed its intent in 2004 N.C. Session Law 124, SECTION 15.2(d) that the Crime Lab only hire non-sworn personnel except for certain duties and compelling reasons. Specifically, the law provided

“It is the intent of the General Assembly that the Department of Justice hire only non-sworn personnel to fill vacant positions in the State Bureau of Investigation laboratory for which the regular duties do not include serving warrants, responding to crimes prior to the crime scene being secured by other law enforcement officers, or entering hazardous situations that may require the use of force, unless there is a compelling reason to employ sworn agents in these positions.”

Five years later, the law was modified to clarify the allowable circumstances that “may” be deemed as appropriate or compelling reasons to hire sworn individuals for positions in which the duties were not specifically law enforcement related. However, it did not mandate that certain positions “must or shall” only be employed by sworn officers. The General Assembly provided in 2009 N.C. ALS 451, SECTION 16.5

“The Department of Justice may hire sworn personnel to fill vacant positions in the State Bureau of Investigation only in the following circumstances: (i) the position's regular responsibilities involve warrant executions, property searches, criminal investigations, or arrest activities that are consistent in frequency with the responsibilities of other sworn agents; (ii) the position is a promotion for a sworn agent who was employed at the State Bureau of Investigation prior to July 1, 2007; (iii) the position is a forensic drug chemist position which requires "responding to clandestine methamphetamine laboratories" as a primary duty; (iv) the position is a forensic impressions analyst position which requires "responding to clandestine methamphetamine laboratories" as a primary duty; or (v) the position primarily involves supervising sworn personnel.”

The General Assembly, therefore, removed the general prohibition of hiring sworn officers for new positions and clarified the Crime Lab’s authority to hire sworn agents in circumstances in which an employee’s primary duty necessitates such trainings. However, it did not statutorily obligate the SBI to only hire sworn officers for these duties.

### **Clandestine Labs**

Of the occasions in which the Crime Lab is given discretion to hire sworn officers, two call for the primary duty to involve “responding to clandestine laboratories.” SBI Policy currently requires that analysts who report to a clandestine laboratory must be sworn agents. This policy is not required by the above Session Law but is standard SBI practice. Becoming a sworn SBI Agent requires nearly 700 hours of training from the SBI Academy.<sup>30</sup> This is in addition to the regular Basic Law Enforcement Training (BLET) which is also received by other law enforcement officers and county deputies.<sup>31</sup> Within this SBI Academy training, there is a two (2) hour class entitled “Clandestine Laboratory.” (Additional classes such as Firearms Training and Defensive Tactics may assist in one’s duties and responsibilities at the

---

<sup>30</sup> NC Department of Justice, State Bureau of Investigation Training Section, 39<sup>th</sup> Special Agent Academy Curricula.

<sup>31</sup> Sworn Lab Agents additionally are required to take state mandated In-Service Training each year, provided through the SBI. Sworn Lab Agents must also complete firearms practice and qualification sessions provided through SBI.

scene of a clandestine laboratory.) Prior to reporting to a clandestine lab, analysts are further required to attend a forty hour minimum training for “Clandestine Drug Laboratory Safety and Certification Training” and three days of actual field training with an experienced on-site supervisor.

The SBI has assumed much responsibility in assisting law enforcement agencies across the state with clandestine labs. In fact, local agencies customarily rely upon the SBI to secure, investigate, and clean such labs. This has resulted in SBI personnel resources being stretched across the entire state of North Carolina in order to address clandestine laboratories. Because of the increased number of clandestine labs to which the SBI reports, having sworn lab analysts available to report to the labs has proven to be resourceful. As sworn agents, analysts are capable of properly securing a lab area prior to examining any substances in their role as the forensic analyst.<sup>32</sup> The securing of an area, at times, may involve the apprehension of a suspect or the use of firearms, which makes training as a sworn agent useful. Disallowing sworn analysts to report to clandestine laboratories may compromise the SBI’s ability to continue assisting agencies across the state. Therefore, it is not recommended that the SBI prevent analysts from assuming the classification of sworn agents for the purpose of covering clandestine laboratories.

*However, because of the challenges in covering Clandestine Laboratories across the state, it is recommended that the SBI review the policy of only allowing analysts who are sworn agents to report to the scene of a Clandestine Lab with sworn field agents, even when only serving as a forensic analyst. (The SBI Clandestine Laboratory Procedure Manual clarifies the separate roles for the entry team, forensic chemist, and processing.)<sup>33</sup> The SBI may determine that the availability of unsworn Crime Lab analysts who are fully trained to report and analyze chemicals may allow for greater coverage of clandestine labs across the state. The training for these analysts would still require all of the additional training required by federal law and by SBI Procedures for those who have become sworn agents. This would still include the forty hour minimum training for “Clandestine Drug Laboratory Safety and Certification Training” and three days of actual field training. If such a change is deemed appropriate, some analysts may volunteer to assist with Clandestine Laboratories without completing BLET and the SBI Academy to become sworn agents.*

A review by the SBI may reveal occasions in which it is beneficial or detrimental to have additional analysts available for substance analysis without needing analysts to secure the clandestine labs. For instance, if a sworn analyst is required to apprehend or is assaulted by a suspect, it may be useful to have another analyst available to perform tests on the alleged illegal substance. Without such availability, the arresting analyst may be subject to criticisms and cross examination that the analysis was persuaded by activities associated with an arrest or assault related activity.

While the Ombudsman has not received any information or complaints concerning incidents in which sworn analysts have arrested or had extensive interactions with suspects, proactive and anticipatory steps regarding such incidents may be prudent. *It is recommended that the Crime Lab establish or review its internal policy regarding communication between analysts who interact with and/or arrest suspects while*

---

<sup>32</sup> The SBI Clandestine Laboratory Procedure Manual identifies the responsibilities of the Entry Team to be Entry Team” as: 1) Securing the Clandestine Laboratory crime scene, 2) Arrest of any suspects present, 3) Removal of suspects and any other occupants to a designated safe area, and 4) Briefing of the assessment team [which includes the Forensic Chemist] as to the conditions inside the Clandestine Laboratory site.

<sup>33</sup> The SBI Clandestine Laboratory Procedure Manual identifies the responsibilities of the “Forensic chemist” at the scene of a lab as including: 1) Deactivation of the Clandestine Laboratory, 2) Ventilation of the Clandestine Laboratory, 3) Appraisal of the potential hazards at the Clandestine Laboratory, 4) Appraisal of the Site Safety Agent of all known chemicals and hazards associated with the Clandestine Laboratory site and 5) Recommend the level of personal protection and safety procedures to be utilized by the processing team.

*reporting to the scene of a clandestine laboratory and analysts who only perform tests on items retrieved from the scene. In such a case, it is recommended that the Crime Lab take steps to prevent any unnecessary sharing of information between the reporting analyst who interacted with the suspect and any analyst performing tests on other non-chemical evidence retrieved from the scene. Information such as that indicated on the evidence submission form would be communicated without a record. However, additional information would be documented in FA as other communication from a charging officer.*

- 4. It is recommended that prior to testifying in court, Lab analysts ascertain if there have been any administrative orders modifying the language used for reporting results when there have been no significant modifications to the testing procedures utilized during a test. This would prepare analysts to provide testimony regarding the current and/or updated standard.**

The adversarial nature of court ultimately relies upon parties presenting or defending themselves against the evidence in each case. Parties are expected to solicit information from witnesses to support their case. The same principal applies when SBI analysts testify in a court of law. Analysts must be prepared to respond to specific questions and to provide additional narrative when called upon to do so.

Court participants generally expect analysts to respond thoroughly and accurately to questions posed by the parties in court. These questions may concern their knowledge, not only of the tests performed, but also of whether there have been any changes in the reporting standards for tests that may concern their testimony. One matter raised by multiple defense attorneys regarding testimony from more than one case, concerns testimonial issues raised due to administrative orders such as the previously mentioned order from July 16, 2008.<sup>34</sup>

Analysts should expect to be questioned regarding changes in reporting language standards. It may be unreasonable to ask analysts to be familiar with all changes in testing procedures. Additionally, it may be unreasonable to expect analysts to be familiar with the reasons the Science Advisory Board, Lab Directors and/ or Supervisors decided to implement changes. *Thus, it is not recommended that analysts review modified testing procedures prior to testifying in court.* Analysts, however, may prepare themselves for questions regarding whether there have been any changes in reporting language standards when the testing procedures have not changed.

If an analyst is not fully abreast and up to date on changes in the standard language currently and formerly used for reporting results, he/she may not be able to effectively testify in court. *In order to prepare for questions concerning former and current reporting standards, it is recommended that analysts ascertain if the standard reporting language has been modified prior to testifying in court.* This will allow analysts to answer questions concerning the most current reporting standards if asked. Such knowledge would be of particular importance when analysts are qualified to testify as experts. An expert analyst who is unfamiliar with the current reporting standard utilized by the Lab would draw into question the merit of the analyst's entire testimony.

In fact, an analyst may notice that the reporting language has been modified upon reviewing the prior test result during the analyst's preparation for testifying in court. An analyst may already be familiar with the current reporting language standard from applying it daily in the analysis of current cases. Thus, it may be readily observable that a former test result used language different than that presently being used by the Lab. The analysts would then only need to discover when the change became effective. Additionally, the analysts would not have to know changes in reporting standards for the entire Lab or for the entire history of that particular test. *It is recommended that the analyst take note of any difference in the former*

---

<sup>34</sup> See Footnote 4.

*language used at the time the test was performed and the current standard that may apply to the test for which he/she has been called to testify.*

Currently, the Lab has accepted the practice of testifying to the reporting language in place at the time of the performed test and offering nothing more, unless specifically asked. An analyst may resultantly provide different testimony for cases prior to an administrative order than for those after the order became effective, even if the cases yielded the exact same test results. The Crime Lab offers that the discovery information the attorneys receive through FA indicates when a procedure began and ended. Thus, parties are on notice of the potential necessity to inquire of the analyst if administrative changes have occurred. The responsibility is, therefore, on the attorney to seek information concerning such modifications or administrative orders. However, because Lab policies, procedures, and section wide administrative orders are not presently available online, attorneys must still request information from the Lab concerning how a procedure was changed or what language was changed in the reporting standard.

The Crime Lab indicates that once the new lab procedures are online, modifications will be tracked in order to notify the reader of the current and former standards. This benefit will only apply to new cases, however, without the publication of the former policies, procedures, and section wide administrative orders that apply to cases currently being litigated. Once the Crime Lab begins operating under the new ISO standards, court cases with evidence analyzed under these new standards will not receive trials until months after the analysis occurred. By then, individuals familiar with the new information online will likely expect to hear analysts testify using the newly posted reporting standards. *Therefore, if this practice continues, it is recommended that along with the placement of the new policies and procedures online, a comment be posted notifying readers that analysts will testify in court using the reporting standard in place at the time the test was performed.*

It is the opinion of the Ombudsman that when the reporting language has been modified with no significant changes to the testing procedure, the most transparent means of addressing changes in reporting standards is for analysts to provide the most current standard during their testimony in court. Testifying to the most recent language when testifying in court supports jury expectations that the most current science is being used by the state's lead forensic crime lab. There should be little scientific hesitation to including the new standard in one's testimony of test reports because it should be reasonable to conclude that the previously utilized language was changed for an appropriate and scientific reason. Thus, testifying to the current language would provide the jury with the most recent conclusion offered by science. This information should not be seen as benefiting the prosecution or the defense (as it may prove advantageous for each at different times), but rather representing accuracy and the truth, based on science.

#### **IV. Procedural Reviews – Internal actions to move forward**

- 1. It is recommended that a review be conducted to determine the feasibility of assigning cases to analysts based on geographic regions or districts within the state to allow for regular and increased accountability and accessibility, court visits, and attorney contact. The size of the districts may be determined based on the resources of each section. This would be similar to the 8 districts to which field agents are assigned.**

Due to *Melendez-Diaz v. Massachusetts*, analysts must now allocate more time to court visits which takes them away from working on cases in the lab.<sup>35</sup> At times, an analyst may be called upon to testify in the

---

<sup>35</sup> *Melendez-Diaz v. Massachusetts*, 129 S. Ct. 2527; 174 L. Ed. 2d 314; 2009

same county or same area of the state multiple times in one week. Travel time may be reduced by assigning analysts to particular areas of the state. Analysts would be assigned to cases within the district where they would regularly report to testify in court. In fact, consideration of this concept has been already been initiated by the Crime Lab Drug Chemistry Section.

Districting would allow analysts to present test results for multiple cases in one or possibly two adjacent counties efficiently in one trip. Districting may also reduce time spent outside of the lab and increase analyst availability for testing within the lab. Without a system of assigning districts, analysts must often travel to various areas of the state instead of routinely reporting to the same area.

There are a number of issues that must be considered as part of a review to determine whether it is feasible for analysts to be assigned to regions or districts. The regularly recorded volume of cases for each section in various areas of the state must be considered. Consideration must be given to assure that Crime Lab districts do not divide the counties within prosecutorial districts. It would also be important to create districts of an appropriate size for travel and time purposes. Other factors that may determine whether districting is feasible include the number of analysts currently available within each section and establishing a process for assigning future analysts.

Some states have more regional labs than North Carolina which allows analysts to testify in localized courtrooms more conveniently. If it is determined that it is feasible to assign analysts to geographic districts, the resources available at North Carolina's three (3) labs may not allow for the districts to directly overlap. For instance, the Western Crime Lab has a Drug Chemistry Section. Analysts in that lab would be responsible for testifying in drug cases in the western part of the state. However, because the Western Crime Lab does not currently have a toxicology lab, a toxicology analyst from the central State Crime Lab would be assigned to toxicology cases for the western region of the state. Additionally, the creation of an Eastern Lab may also serve to address this problem. These additions are already being considered by the SBI, but the costs associated with such endeavors restrict the SBI's ability to immediately move forward.

There are certain steps that may follow implementation of a districted system. One such step may be publishing a map of the districts for each Lab section in order to inform the public and legal community of the districts responsible for submitted samples. This method has been utilized by states such as Alabama, California, Tennessee, and Washington.

Another step that may follow the implementation of a districting system would take place during the evidence submission process. At that time, the appropriate district would be identified and assigned. The evidence sample would subsequently be assigned to an analyst responsible for that geographic district. Because some evidence samples may require tests to be performed by different sections of the Lab, the analyst who performs the subsequent test in a different section would also be assigned to the designated county and district. *While exploration of this concept has been initiated by the Crime Lab Drug Chemistry Section, it is recommended that it be reviewed for all sections.*

- 2. It is recommended that there be a review of the process for notifying District Attorneys of scheduled leave time for analysts in order to provide prosecutors with the maximum notice for scheduling District Court cases.**

Judges and prosecutors traditionally schedule District Court cases one month in advance. The date is typically scheduled on the charging officer's regularly assigned court date, which is on a regularly set day. For example, a NC State Highway Patrolman may have the second and fourth Thursday as his/her assigned court day. There are no regularly set court dates for Crime Lab analysts to report to court to

testify regarding previously examined samples. *It is not recommended that analysts be assigned to regularly scheduled court dates.*

When an analyst is needed to testify in a case, the case is typically continued in order for the analyst to be subpoenaed.<sup>36</sup> This court date is often set by the judge or prosecutor without full knowledge of whether the analyst will be available on that date. For this reason, cases are often continued for two months to provide ample time for the analyst to arrange his/her schedule and to assure the analyst's appearance in court. Meanwhile, the analyst may already have a conflict with the scheduled court date.

Conflict with subpoena dates may be due to analysts being subpoenaed to appear in court for cases in two different counties at the same time. There are also times when the analyst may have requested and secured leave for a particular date, but is later subpoenaed to testify. The court date must then be continued again or the analyst must work during the secured leave time.

Another example occurs when an analyst receives time off for Family Medical Leave following the birth of a child. This leave time from work would be anticipated for months. The current notification procedure, however, does not share an analyst's anticipated absence from work until the analyst has been subpoenaed or until the time of the actual leave taking place. By this time, the court date has already been set for the subpoena to be issued.

The current notification procedure leaves room for additional delays across the state. Notifying court authorities, prosecutors, and clerks of analysts' inability to appear in court prior to the Lab receiving a subpoena for an analyst may serve to reduce these delays. In order to facilitate the notification of scheduling conflicts, two ideas for consideration were offered to the Ombudsman from different district attorney offices.

- A. The Crime Lab may send a monthly schedule that indicates all known scheduling conflicts via email to all prosecutorial districts. This email may include
  - i. the anticipated dates of secured leave (This strategy is employed by the state's Medical Examiner's Office in notifying District Attorney Offices.) and
  - ii. notice of agents who are already scheduled to appear in different courts and are, therefore, not available to testify. (This may actually result in a judge choosing to not schedule an analyst for court in Wilmington the day after an analyst has testified in Asheville.)
- B. The Crime Lab may have a secured web page that informs where and if analysts are scheduled to appear in court so that trials are not scheduled for overlapping days. It has been suggested that FA be upgraded to allow for the sharing of this information.

Such notification systems would also allow for consideration of analysts' schedules in setting court dates for Superior Court. Furthermore, the sharing and publication of this information would assist in scheduling specific analysts for court on days when they are already scheduled to appear in a particular county. Additionally, some jurisdictions would likely allow analysts to provide their testimony for a case even when the remainder of the case will be resolved on a different day. Unfortunately, implementation of these strategies may disadvantage analysts by exposing them to the courts determining their schedules.

**3. It is recommended that a comprehensive evaluation be conducted to consider whether drug toxicology cases submitted to the Lab involving impaired driving should be contracted out**

---

<sup>36</sup> The Melendez-Diaz decision requiring analysts to be present in court also has impacted the scheduling of court cases.

**(indefinitely or temporarily) to reduce the number of pending cases to a waiting period of 4 months or 120 days from receipt.**

Another concern frequently expressed to the Ombudsman regarding the Crime Lab by judges and prosecutors is the issue of delays in toxicology analysis for drugs in impaired driving offenses. The analysis of blood solely for the concentration of alcohol requires a separate process from that of the analysis of blood for the presence of drugs. This process has been reduced to typically taking less than sixty days. Thus, the number of pending cases solely for the analysis of alcohol concentration levels in blood is significantly lower than that for when there is also an analysis for the presence of drugs. However, a test for drugs is often requested by law enforcement to receive additional information available through blood testing.

The Crime Lab section appointed to handle these duties is working to reduce the number of pending cases. However, there have been various challenges to facing this problem. These challenges include: adjusting analyst assignments from testing in order to achieve compliance with ISO standards; unfilled analyst positions due to potential budget cuts; the lack of funding for newer equipment that produce results more swiftly; and as previously stated, the US Supreme Court decision in *Melendez-Diaz* requiring analysts to stop testing in order to leave the lab and attend court.<sup>37</sup>

NC jurisdictions have begun delaying cases for up to one year with hopes that results will be available by that next court date. Delays in results have negative effects on the entire judicial system statewide.

As a result of these delays,

- a. Courtroom clerks must carry heavier dockets full of routinely delayed cases;
- b. Law enforcement officers come to court repeatedly for the same cases because there is no definite date for when the results will be completed;
- c. Defense attorneys must continue to have their clients return to court without knowing whether to prepare for trial, sentencing or another continuance;
- d. Prosecutors face continued pressure from judges and defense attorneys to provide a specific date, without which a case may be dismissed; and
- e. Judges must continue to hold prosecutors responsible for proving their cases while acknowledging that the prosecutor is not responsible for the delay at hand.

The most direct and long lasting solution may require more advanced equipment. The Liquid Chromatography-Mass Spectrometry (LC/MS/MS), for example, would reduce test preparation time for analysts and speed up the testing process. Similarly, it would significantly reduce the number of pending cases and would allow analysts to keep pace with the growing number of samples submitted for DWI cases. This option is being considered by the Lab. However, the instrument costs approximately \$300,000.<sup>38</sup> Thus, the Lab is constrained by costs. In fact, the SBI reports that the Crime Lab's equipment budget has been reduced by ninety-five percent (95%) over the past two years.

Another means of addressing this problem is in the creation of a toxicology unit in the Western Lab or the creation of an Eastern Lab with a toxicology unit. Currently, analysts must travel to the most western and eastern regions of the state to testify in court. Regional toxicology labs are already being considered and would allow analysts to produce quicker results and appear in court more conveniently. These options are being considered by the SBI, but again, there is insufficient funding associated with such endeavors restrict the SBI's ability to moving forward.

---

<sup>37</sup> See Footnote 29.

<sup>38</sup> The Joint Select Study Committee on the Preservation of Biological Evidence recommended the allocation of \$2,144,937 for the replacement of scientific equipment for all of the SBI.

None of these options may be immediately actionable due to present funding limitations. *Therefore, it is recommended that the Crime Lab conduct a comprehensive evaluation to determine the costs of contracting out cases to private labs.* It may be necessary for such efforts to be done temporarily until the Lab is able to process submitted samples in a more timely manner. It may be determined that the Lab should not perform such tests for an indefinite term until the resources are available to handle these cases internally in a more timely manner.

It is suggested that four (4) months or 120 days be considered an appropriate timeline for test results to be made available. A timeline of 4 months would provide adequate time in court for

- a. the defendant have a first court date;
- b. the defendant to be assigned or hire counsel;
- c. the defendant to meet with counsel; and
- d. for counsel to make a decision based on the results that have been reported by the Crime Lab.

An evaluation would consider issues such as

- a. the resources currently utilized by the Crime Lab toward these cases;
- b. the costs per analysis by a private lab for a specified number of cases;
- c. the accreditation, certifications and geographic location of various labs that would respond to requests;
- d. the feasibility and costs of contracting in certain regions of the state versus others; and
- e. the costs a private lab may charge for regular compliance with court issued subpoenas.

Such a cost study was conducted concerning DNA testing and analysis by the North Carolina Office of State Budget and Management and published on March 1, 2006.<sup>39</sup> The review was directed by Sessions law 200-276, Section 15.8. The cost study determined that it was not more cost effective for the SBI to have private laboratories analyze DNA samples at that time.

While such a cost study is recommended for toxicology cases concerning the analysis of drugs for driving while impaired cases, it should be acknowledged that the Lab is unlikely to have the personnel or monetary resources for the full execution of such a study. Removing personnel from cases analysis in order to perform the evaluation may result in more pending analysis and place the Lab further behind schedule. Therefore, it may be appropriate to request the authorization of cost study for drug toxicology cases involving driving while impaired offenses as was previously completed for DNA testing and analysis by the North Carolina Office of State Budget and Management.

**4. It is recommended that the SBI consider creating a Citizens' Academy to enlighten and inform citizens of the SBI's many roles in crime control and law enforcement.**

Aside from what is available in media reports, many citizens are unfamiliar with the role, responsibilities, and jurisdiction of the SBI. Because the SBI is often an assisting agency to local, state and federal agencies, its role is often behind the scenes of an already established law enforcement presence. The creation of a SBI Citizen's Academy was offered to the Ombudsman from within the SBI as an avenue to help to enlighten and inform the public of the SBI's many roles in crime control and law enforcement.

The Academy would allow citizens to learn about the various duties of the SBI and its agents. This academy would be piloted at the central headquarters and provide citizens with an opportunity to gain greater insight into the activities and responsibilities of the entire North Carolina State Bureau of Investigation. Each week would expose participants to a new role of the SBI. Additional Academies

---

<sup>39</sup> The *Cost Study of DNA Testing and Analysis* prepared by NC Office of State Budget and Management was directed by Session Law 2005-276, Section 15.8 and published March 1, 2006.

could be established in the western and eastern areas of the state at SBI facilities. Such programs are already being operated by other state bureaus of investigation in states like Oklahoma<sup>40</sup> and Tennessee<sup>41</sup>, along with the Federal Bureau of Investigation which has a National Citizen's Academy.<sup>42</sup>

**5. It is recommended that District Attorneys be regularly encouraged to complete the Case Disposition Form to assure that cases disposed of in court are removed from the testing cycle.**

There are a number samples awaiting analysis at the Crime Lab. A number of court cases involving untested samples have already been resolved in court and no longer require testing. The Lab has a Case Disposition Notice that has been provided to district attorneys across the state. However, this form is not regularly used by all districts. District Attorneys and clerks should be strongly encouraged to regularly fill out the form to ensure that valuable resources are not expended on cases already disposed of by the District Attorney.

The Ombudsman has updated the form on behalf of the Crime Lab to include the contact information of the current employee who processes the form. This updated form has been mailed to all NC District Attorneys by the Office of the Ombudsman. District Attorneys should be reminded of such at the Conference of District Attorneys and with other regular correspondence from the Lab.

Additionally, one suggested upgrade to FA is for District Attorney Offices to have the ability to inform the Crime Lab electronically of cases that have been resolved in court. The current process requires for prosecutors to fax or email notification to the Crime Lab. However, the delay in notifying the appropriate analyst after receiving the fax may result in the test still being performed. Delayed notification or failure to notify the Lab of disposed cases inefficiently utilizes Crime Lab resources and analysts' time that could otherwise be assigned to testing other samples. The ability to provide this notice through an upgraded FA could instantly notify the Lab that the case has been disposed of in court.

**6. Other matters offered to the Ombudsman for consideration in which the Ombudsman fails to make full recommendations are as follows:**

- a. SBI field officers lack communication equipment such as air cards for laptops and phones with superior email capabilities that may allow them to process information more quickly on par with other law enforcement agencies. However, the lack of funding provided has not allowed for such regular equipment upgrades.
- b. The future implementation of procedures offered in an UCLA Law Review article such as the ability to allow for blind proficiency tests and blind peer review were suggested.<sup>43</sup> All cases at the Crime Lab are subject to peer review. The Forensic Advantage system does not currently allow for the implementation of blind proficiency testing or blind peer reviews.

## V. CONCLUSION

The SBI has voluntarily taken a number of actions to initiate significant progress within the Crime Lab. Steps to become internationally accredited and to become the second lab in the nation to have dual accreditation are examples of the Lab's efforts to move forward. Moreover, these recommendations are

---

<sup>40</sup>[http://www.ok.gov/osbi/documents/Springr2009Source%20\(2\).pdf](http://www.ok.gov/osbi/documents/Springr2009Source%20(2).pdf),  
<http://woodwardnews.net/local/x419263342/OSBI-opens-doors-to-media>

<sup>41</sup> <http://www.tbi.state.tn.us/>

<sup>42</sup> [http://www.fbi.gov/about-us/partnerships\\_and\\_outreach/community\\_outreach/citizens\\_academies](http://www.fbi.gov/about-us/partnerships_and_outreach/community_outreach/citizens_academies)

<sup>43</sup> [The Need for a Research Culture in the Forensic Sciences](#), UCLA Law Review, Vol. 58, No. 3, February 2011 (with Jennifer L. Mnookin et al.)

additional tools that may be utilized to increase transparency and accessibility of the North Carolina State Bureau of Investigation and its Crime Lab.

In order to achieve this goal, the Ombudsman makes these recommendations identified by members of the justice community. Because SBI authorities are unable to have regular, daily contact with the justice system outside of the Lab, the concerns and input of those who act within the court and justice systems daily may serve as a means of identifying specific actions that will allow for further improvement of the overall justice system in North Carolina. Some matters raised may suggest a need for action in areas that have not been previously considered.

Because of the ongoing changes within the Lab and the regular duties of Lab employees, no definitive timeline has been suggested for the implementation of these recommendations. It is recognized that some recommended actions, along with the ongoing changes already in place, have the potential to cause confusion and misunderstanding by Crime Lab employees if implemented too swiftly or without clear direction. Other recommendations may be given full consideration and implemented without severe interruption in the Lab's operations.

Nevertheless, the manner and urgency under which these issues are addressed will likely affect the perspective some will have of the SBI and the Crime Lab. These proposals and observations outlined in this report are offered by the Ombudsman for consideration as means of proactively improving the overall justice system in North Carolina. Upon consideration of matters presently expressed and in addition to steps already completed, the Ombudsman recommends that the NC SBI pursue steps to:

1. further inform both the legal and non-legal community about the SBI and its Crime Lab;
2. promote and ensure the SBI's commitment to maintaining a neutral lab; and
3. assess challenges and consequences that may arise upon the implementation of certain steps.