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Scathing SBI audit says 230 cases tainted by shoddy investigations

RALEIGH -- The North Carolina justice system shook Wednesday as an audit commissioned by Attorney General Roy Cooper revealed that the State Bureau of Investigation withheld or distorted evidence in more than 200 cases at the expense of potentially innocent men and women.

The full impact of the disclosure will reverberate for years to come as prosecutors and defense attorneys re-examine cases as much as two decades old to figure out whether these errors robbed defendants of justice. Some of the injustices can be addressed as attorneys bring old cases back to court. For others, it's too late: Three of the defendants in botched cases have been executed.

"This report is troubling," said Cooper, who oversees the SBI. "It describes a practice that should have been unacceptable then and is not acceptable now."

The revelation came after a five-month review in which two former FBI agents pulled dusty case files from shelves to find the truths that analysts chose to keep to themselves.

Two former FBI agents, Chris Swecker and Mike Wolf, examined more than 15,000 cases at the invitation of Cooper, a Democrat who has been attorney general since 2001. The exoneration of Greg Taylor, a Wake County man imprisoned 17 years for a murder he didn't commit, prompted the review. SBI analyst Duane Deaver admitted in February that he failed to report tests indicating a substance on Taylor's SUV was not blood. Deaver, who was suspended Wednesday, said that his bosses told him to write reports that way.

He was telling the truth. Swecker determined that the practice of not reporting results of more sophisticated blood tests was sanctioned by some analysts. In 1997, it became written policy. That policy remained in effect as recently as 2003.

Swecker said his findings signal potential violations of the U.S. Constitution and North Carolina laws by withholding information favorable to defendants. Swecker stopped short of determining whether the hidden results affected guilt or innocence in the cases he examined; often there was other evidence in the cases that linked defendants to the

crimes. Still, the withheld information could have made a difference in the sentences handed down.

"This is mind-boggling," said veteran Wayne County District Attorney Branny Vickory, a Democrat. "It is really a nightmare for everyone. I don't know how we are going to make this right."

The audit is another black eye for a beleaguered SBI.

The News & Observer reported this month in a series, "Agents' Secrets," that analysts across the laboratory push past the accepted bounds of science to deliver results pleasing to prosecutors. They are out of step with the larger scientific community and have fought defense attorneys' requests for additional information needed to review the SBI's work. Cooper last month dismissed SBI Director Robin Pendergraft after she struggled to answer questions about SBI cases and policies.

"This is such a damning indictment on the SBI," said Staples Hughes, the state appellate defender, whose office oversees appeals of all defendants convicted by juries. "Why didn't they just say 'we lied.' That's what they did. Sadly, I'm not surprised."

Prosecutors and defense attorneys are scrambling to review the 230 problem cases cited in Swecker's report. At least 80 defendants are still in prison, a top priority for Prisoner Legal Services, said executive director Mary Pollard.

No rules, bad science

Swecker's report paints a picture of a renegade unit at the SBI crime lab acting without rules and with misguided notions about the science behind blood analysis.

In serology, police use rudimentary presumptive tests at crime scenes to determine where blood might be. Those tests are fallible, prone to giving false positives. So analysts depend on more sophisticated, confirmatory tests to determine whether a substance is, in fact, blood.

Before 1997, the serology unit operated without report-writing guidelines. Analysts set their own criteria until 1997; that policy sanctioned the practice of not reporting negative or inconclusive results of confirmatory tests.

Swecker found policies and practices out of step with the rules of serology. They were also far afield of fairness, according to the report.

"There was anecdotal evidence that some Analysts were not objective in their mindset," Swecker wrote.

Tests used to confirm the presence of blood never yield "inconclusive results," Swecker noted. Two analysts interviewed for the report told Swecker that despite volumes of warnings about the potential for false positives on presumptive blood tests, they didn't believe it because they had not gotten a positive result when testing plant material and bacteria known to signal false positives. Those two analysts believed that positive presumptive tests were absolute indications of blood.

Eight analysts were involved in these bad practices. Some are dead; a few are retired.

Four still work for the SBI, and another performs contract work for the agency.

Behind the five cases Swecker deemed most problematic: Deaver, a 23-year veteran of the agency.

New SBI Director Greg McLeod suspended Deaver on Wednesday, pending further investigation.

'An abomination'

The cost of these errors was tough for lawyers to comprehend Wednesday.

"This report reveals staggering lack of competence at the lab," said Mike Klinkosum, a Raleigh lawyer who represented Taylor in February and helped discover Deaver's withheld test results. "It's an abomination of the criminal justice system and an affront to all the decent law enforcement officers out there doing their jobs."

Cooper delivered copies of the report and a list of affected cases to district attorneys across the state little more than an hour before announcing his findings to the public.

At least one met the findings with anger.

"We've been out here asserting things as fact that just weren't," said John Snyder, district attorney of Union County. "Now, when I've got jurors coming in, I've got to enter into a whole line of questioning I never should have been forced to do. They won't trust us."

Snyder, a Republican, called for an independent audit of the entire crime lab.

On Wednesday, Cooper promised a more independent review would follow and that McLeod, the new director, would bring in experts.

"The lab cannot accept a lack of thoroughness," Cooper said. "It cannot accept attitudes that are not open to the possibility that a mistake has been made. It cannot ignore criticism and suggestions from the outside."

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