

Daniel Horwitz, Chair
New York Joint Commission on Public Ethics
540 Broadway
Albany, NY 12207

24-June 2015

Dear Mr. Horwitz,

The New York State Commission on Forensic Science meets the definition of a “state agency” under public officers law §74¹, and thus falls under the jurisdiction of the Joint Commission on Public Ethics. In summary, public officers law §74 states that no individual that is covered by public officer’s law §74 may have a financial interest in matters that are before them.

I recently watched a recording of the June 19, 2015 Commission on Forensic Science meeting on the Division of Criminal Justice’s website², and it is clear to me that such a violation is occurring with the Commission on Forensic Science.

The website for the Joint Commission on Public Ethics³ lists two modalities to notify the Joint Commission about violations. A complaint must be sworn and notarized, or a tip can be anonymous. While I would like to swear out a complaint, I am employed by one of the Crime Laboratory’s that fall under the jurisdiction of the Commission on Forensic Science. I have no doubt that I, and my laboratory, will be retaliated against by Commission on Forensic Science members for my complaint. While I know how this sounds, I invite you to watch the entire video of the June 19th meeting and come to a different conclusion.

In just one of many examples, Barry Scheck berated the lab director from Nassau County over a technology that the Nassau County Laboratory does not use (probabilistic genotyping). Ultimately Barry Scheck, Peter Newfeld, and Marvin Schecter all withheld their vote to accredit that laboratory indicating that Nassau County Lab might consider using probabilistic genotyping and that was enough for them to withhold their vote. I wonder if I am the only one aware of the irony of three prominent members of the defense bar penalizing a laboratory for something they didn’t do, but, that might (potentially) do in the future.

As if this meeting couldn’t get more bizarre, Barry Scheck then chose to advocate throughout the meeting against probabilistic genotyping software by citing work done by Dr. Michael Coble of the National Institute of Standards and Technology. The reason that this is bizarre is that Dr. Coble is the strongest advocate for using probabilistic genotyping software. Dr. Coble has frequently cited cases where using this software can prevent significant mistakes that may result from using the combined probability index (CPI). Problems with CPI ultimately shut down the Washington, DC, crime laboratory⁴.

¹ <http://www.jcope.ny.gov/about/ethc/PUBLIC%20OFFICERS%20LAW%2074.pdf>

² <http://www.criminaljustice.ny.gov/pio/openmeetings.htm>

³ <http://www.jcope.ny.gov/complaint/tipsandcomplaints.html>

⁴ <http://dailycaller.com/2015/04/27/dna-testing-shut-down-at-dc-crime-lab-due-to-incompetent-analysts/>

I invite any of the journalists copied on this letter to fact check any of my claims and strongly encourage them to fact check the claims made by Barry Scheck throughout the June 19th meeting or any Commission on Forensic Science meeting. Mr. Scheck enjoys advocating for his position unencumbered by the facts and frequently enjoys assigning his opinion to significant scientists in the field even though Mr. Scheck knows full well that they do not share his opinion.

I apologize for the amount of information contained within this preamble, but I feel it is necessary to understand the stage where these continued violations of public officer's law §74 are occurring. The violations which I wish to bring to your attention are concerning the microscopic hair review that New York is undertaking. Two members of the Commission on Forensic Science are the two cofounders of the New York Based Innocence Project (Barry Scheck and Peter Newfeld). Since these two individuals stand to financially gain, through percentages paid to the "wrongfully accused" both personally, and through the organization they cofounded, it is in their best interests to expand the hair review as broadly as possible and characterize everything as an "error."

They have both already exerted all of their political pressure and influenced the federal approach to the problem with microscopic hair review. The results have been widely published⁵, but not widely understood. In the FBI review, the Innocence Project had successfully convinced then Attorney General Holder that any time an examiner testified 30 years ago differently than testimony would be provided today, it would be considered an error. This is an unrealistic standard and could not be applied to any other profession or discipline. Not surprisingly, it resulted in the FBI identifying errors in 90% of the cases reviewed⁶. Not even the Innocence Project has made the claim that 90% of the cases resulted in wrongful convictions thus validating that the standard they established was artificially high and not related to potential wrongful convictions.

After the FBI began their hair review, the state of Texas also decided to start reviewing microscopic hair cases. The Texas process was described during the June 19th Commission on Forensic Science meeting. Instead of looking at each word in a testimony in isolation, they adopted a team approach where two defense attorneys, two prosecutors, and four hair experts reviewed the testimonies to ensure that the sum and substance of the testimony did not convey misinformation to the jury. While this process has been effective and has not falsely identified cases like the FBI's method, it has been under attack from the New York based Innocence Project even though one of the members of the hair review team is a member of the Texas Innocence Project.

Showing that no one is immune to Mr. Scheck and Newfeld's ire, there have been significant rifts within the national innocence project over the approach to reviewing hair cases. In Texas they are clear that no judge would order a writ based on a single word in an extensive testimony. This goes against Mr. Scheck and Newfeld's campaign to malign forensic science, so they have gone on the attack even within their own organization resulting in high profile resignations (see enclosed letter from Jeff Blackburn). When a Commission on Forensic Science member suggested adopting the Texas model, he was similarly attacked.

At any level, it is wrong to have someone in a position where they can influence a process that they financially gain from. Given the significantly different outcomes from the process being

⁵ http://www.washingtonpost.com/local/crime/fbi-overstated-forensic-hair-matches-in-nearly-all-criminal-trials-for-decades/2015/04/18/39c8d8c6-e515-11e4-b510-962fcfab310_story.html

⁶ <https://www.fbi.gov/news/pressrel/press-releases/fbi-testimony-on-microscopic-hair-analysis-contained-errors-in-at-least-90-percent-of-cases-in-ongoing-review>

conducted by the FBI and the one in Texas, it is also clear that it is not in the public interest, but solely in the interest of the innocence project, to try and create a process that cast forensic science in the worst light.

Both Mr. Scheck and Newfeld are now both in a position to command that laboratories under their jurisdiction commit significant resources to a process that does not benefit the people of New York, but that only benefits the Innocence Project franchise.

I have copied the Chair of the New York Commission on this correspondence. Chair Green, I hope the Commission on Forensic Science will not take any further action regarding New York's microscopic hair comparison until the Joint Commission can investigate this conflict of interest and render a ruling. I also hope that more could be done to mitigate the constant misattributions by Mr. Scheck, Newfeld, and Schechter which are deliberately introduced to confuse issues before the Commission on Forensic Science. No member should be allowed to attribute any facts considered by the Commission on Forensic Science without having the appropriate supporting evidence. The Coble example cited in this letter is a clear case where the facts were deliberately manipulated to suit Mr. Scheck's needs. By not checking these unverified assertions, the Commission on Forensic Science is validating Mr. Scheck's assertions. No deliberative body should rely on hearsay to the extent that the New York Commission on Forensic Science is.

Since I am forced to submit this anonymously, I am also copying a number of journalists that I hope will also look further into these issues. Forensic Scientists want to "get it right," and if there is a problem, we want to correct it. It's hard to do this with New York Commission on Forensic Science members that are entrenched in their politically appointed positions and advancing their own financial agendas over the good of the people of New York.

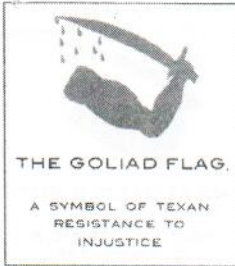
At the recent Prescriptions for Criminal Justice seminar held in New York City⁷, Peter Newfeld was overheard saying "as DNA exonerations were drying up, the Innocence Project had to change its business model to look at hair and then all the forensic disciplines." My hope is that we can come back from this highly polarized precipice and begin a real dialog on how to improve the criminal justice system. This cannot occur until Commission members stop abusing their authority and putting their own financial interests over the interests of the people they are supposed to be serving.

Respectfully Submitted,
a concerned forensic scientist

Cc: Gerard Baker, The Wall Street Journal
David Brooks, New York Times
Michael C. Green, New York Commission on Forensic Science
Joe Palka, National Public Radio
George Will, The Washington Post
Editors, Crime Lab Report

Enclosure: Blackburn resignation letter

⁷http://www.americanbar.org/content/dam/aba/events/criminal_justice/forensics2015_brochure.authcheckdam.pdf



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May 13, 2015

Board of Directors,
Innocence Project of Texas
c/o Gary Udashen, President
Sorrels, Udashen and Anton
2311 Cedar Springs Road, Suite 250
Dallas, Texas 75201

"No legacy is so rich as honesty".
-Shakespeare, *All's Well that Ends Well*

Dear Friends,

Please accept my resignation as Chief Counsel of the Innocence Project of Texas.

This is one of the hardest decisions I have ever made, and I want to explain why I did it.

When we founded this project 10 years ago we were part of a movement. That movement was a loose coalition of groups devoted to freeing the innocent and changing the criminal justice system from state to state.

We did our part. We got people exonerated. We got good legislation passed. We made history with the Tim Cole case. We stayed small, democratic, and focused on reforming the Texas system. We created some great relationships with law enforcement officials and forensic scientists. We built a resilient, authentic, and independent outfit.

While we were doing that, the New York-based Innocence Project went from being a small nonprofit to an organization with a multi-million dollar budget. As its size grew, so did its appetite for money and its need to control the reform movement. What was once a movement has now become a business.

The Innocence Project now thrives on large contributions from the ultra-rich. It is full of Wall Street types and celebrities- this year the organization is even honoring a potentate from Goldman Sachs at an exclusive gathering in New York.

I said over a year ago that the interests of our Texas group and the people in New York would diverge more and more as time passed. I strongly urged us to dissociate from them by declaring our independence, changing our name, and returning to our roots as an independent group.

You all disagreed. I did not fault you for it, my friends – ours was an honest difference of opinion.

JEFF BLACKBURN
Board Certified Criminal Law
Texas Board of Legal Specialization



RYAN BROWN
BRUCE MOSELEY, OF COUNSEL