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WHAT'S THE D.A. WANT FROM THE SHERIFF?

The DNA lab, of course. Or if he can get it, everything.



By Julius (Jay) Wachtel. Orange County (Calif.) District Attorney Tony Rackauckas is a great fan of forensics. So much so, in fact, that he'd like to run a lab. Wouldn't you know it, there's one next door!

In 2005 Rackauckas got the Board of Supervisors to part with a cool \$500,000 so that he could use DNA for property crimes. But rather than going through the Sheriff's lab he contracted with a private forensics firm to do the work. Why? Apparently the Sheriff insisted on controlling the process, something that Rackauckas wasn't willing to give up. Only thing is, CODIS, the FBI's national DNA databank, only accepts profiles from government labs. No problem: Rackauckas entered into an agreement with the Kern County D.A., who runs his own lab, to upload the data.

Two years later, flush with an additional \$875,000 in county funds, Rackauckas set up his very own databank. It's accumulated the DNA profiles of several thousand misdemeanants and gang members served with injunctions. One of a smattering of "rogue" repositories around the country, the standalone database isn't bound by State and Federal rules that limit DNA collection to persons arrested or convicted of felonies.

How does Rackauckas get offenders to contribute? Easy -- he "asks." It's an offer that many can't realistically refuse. And now there's an added inducement: going scot-free! Yes, that's right. In exchange for \$75 and a DNA sample his prosecutors are dismissing non-violent misdemeanors such as petty theft and drug possession. So

what if a few cops get “demoralized”? As long as petty violators keep coming, what happens to them down the road seems to be of little public concern.

Just like his counterparts in Kern, Sacramento and Santa Clara counties, Rackauckas wants his own lab, or if not the whole enchilada, at least the sexy part, the DNA. [His most recent attempt](#) was in June 2008, while the Sheriff’s Department was reeling from the resignation of disgraced former Sheriff Mike Carona. Proclaiming his office as “the only organization capable of harnessing the vast potential of forensic DNA technology for our community,” he urged Supervisors to place DNA under him.

And he nearly succeeded. Rackauckas’ move was temporarily short-circuited, first, by acting Sheriff Jack Anderson, who pointed out that he wasn’t consulted, then by the new Sheriff, Sandra Hutchens, who was appalled -- *appalled* -- at the D.A.’s shameless power grab. A transplant from the far more tightly-wound L.A. County Sheriff’s Department, her [recollection of the experience](#) is almost touchingly naive:

“I have never experienced anything like it in more than 30 years of law enforcement,” recalled Sheriff Sandra Hutchens, who took over the department in the midst of the battle. “I couldn’t get my brain around it, and no one I’ve spoken with could either.”

But the struggle wasn’t over, not by a long shot. By the time that Hutchens’ outrage hit the papers the Supervisors had thrown Rackauckas a consolation prize, appointing him to a newly created Sheriff’s lab oversight panel. Its two other members are Hutchens and the County Administrative Officer, the latter clearly there as a referee. (Hutchens was so put off by the whole experience that she [memorialized it](#) in the official Orange County Sheriff’s Blog.)

Well, why *shouldn’t* the D.A. run a lab? In 2005 Orange County resident [James Ochoa](#) was arrested for carjacking. Ochoa, who had a drug record, was identified by two victims, and a bloodhound also followed a scent from a baseball cap left in the vehicle to his home. But the O.C. Sheriff’s criminalist who processed the cap and other items recovered from the car determined that the DNA wasn’t Ochoa’s. Her report displeased the head of Rackauckas’ DNA program, Deputy D.A. [Carmille Hill](#), who marched into the lab and demanded that Ochoa not be excluded.



Her request was rebuffed. Still, the D.A.’s office wouldn’t drop the charges. Threatened by a judge with a stiff prison term if convicted, Ochoa was unwilling to roll the dice. He pled guilty and got two years. Ten months later the DNA was

positively matched to a suspect in another carjacking. Oops! Ochoa got a \$550,000 settlement from the cops and \$31,700 from the State.

Concerns about such unholy influences prompted a [National Academy of Sciences panel](#) to suggest that labs be independent of law enforcement. To their credit, though, accredited labs subscribe to protocols specifically designed to prevent such pressures. But prosecutors who think they're only there to convict could make enforcing safeguards problematic. Knowing just how unyielding D.A.'s can be when they're convinced they're right -- and the Ochoa case is a perfect example -- that's an uncomfortable prospect.

DNA is also an expensive tool. A [recent study](#) of its use in property crimes estimates the average per-case cost of typing and entering profiles as \$374 in Orange County, which processes DNA in-house, and \$1147 in Los Angeles, which uses an external lab. (Evidence collection costs aren't included). When there's a possible hit DNA costs soar, averaging \$13,000 per arrest in Los Angeles and nearly \$20,000 in Orange County. And that doesn't include the expense of creating and maintaining a DNA facility, nor of training and certifying investigators and examiners.

Supervisors have dumped more than one and a third million bucks into Rackauckas' DNA programs. There's no indication that their generosity was based on a comprehensive review of Orange County's criminal justice needs. Maybe a study would demonstrate that a back-room DNA operation is a good idea. But giving someone money because of their political juice never is.

Ah, your blogger forgot. This is Orange County. *Never mind.*