

Q&A with Wisconsin Attorney General Josh Kaul

The State Bar of Wisconsin recently caught up with Attorney General Josh Kaul to discuss the annual State Crime Lab Report and a multistate lawsuit against Meta, the parent company of Facebook and Instagram.

BY JEFF M. BROWN

What are some of the major highlights from the 2022 Annual Crime Lab Report that was issued in 2023?

Every year, we put out a report on how our crime labs are doing. And we highlighted a few points this year. One is we have changed the schedule that we put our report out on so that we can compare

our data to international data from crime labs around the world. We use something called Project Foresight, which compiles data from a variety of labs. And we're able to use that to see how the labs in Wisconsin are doing as compared to other labs. One of the things that we saw in the data is that in five of the eight disciplines that were recorded, we are doing

better in terms of having faster turn-around times than the average median reported by Project Foresight.

We also talked a bit about some of the work that we've been doing to resolve cold cases through a combination of work done by our crime labs, as well as our Division of Criminal Investigation. One thing that's clear is that we need to keep investing resources in our state crime lab.

There are areas now where we've improved our technology or where more data is being gathered as the labs conduct their analyses. Having the resources to ensure that the data is being processed efficiently and that we're able to get results back to the criminal justice system so that cases can move forward quickly has always been important. But as we keep moving forward with technology, it becomes even more important to continue investing.

You mentioned the work the State Crime Lab does on cold cases. There was a homicide three decades ago in Wood County that the Wisconsin Identity Resolution Team recently helped solve. Can you talk about the agency's work on cold cases more broadly?

One of the things that our team at the crime lab has done is kept up with



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JOSH KAUL INTERVIEW. The full interview with Josh Kaul is available with the January issue online at <https://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Wisconsin-Lawyer.aspx>.

developments in things like forensic investigative genetic genealogy. And one of the capabilities that's available that hasn't always been is that DNA analysts can identify not only who the source of a DNA sample is but whether somebody is a relative of the source of a DNA sample. And so what we've been able to do in certain cases is work with local law enforcement and be a liaison between them and others who are identifying what those connections are.

Even when there's a connection like that identified – say DNA shows that somebody is the second cousin of the person who is the suspect in a crime – there then needs to be a lot of investigative work that follows that. That's where our Division of Criminal Investigation as well as local law enforcement comes in, putting together family trees, following up on them, determining who a potential suspect is from the lead that's developed through the forensic investigative genetic genealogy process. That can lead to cases being solved. We've begun to see cases being resolved that way. I think we're going to see more of that in the future as more cases are assessed using this technology and this method for identifying crime suspects.

So, you might have a DNA sample and you might link it to me, for instance. I'm not the suspect but you know that a second cousin of mine likely is and so now you must find out who my second cousins are, correct?

That's right. Once somebody is identified as being linked, perhaps just as a relative to somebody who is a suspect, then the work of putting together that family tree and following up and identifying relatives is what happens. But we're able to now gather more information using DNA analysis than we were previously, and that means that we can solve more cases and ensure that justice is being done in cold cases as well as more recent cases.

What are some of the other important tests that the State Crime Lab performs?

Well, we perform quite a few of them. One thing that's important to mention is that what make headlines are these cases where there is a cold case that's solved or a suspect who is unidentified. And those are cases we prioritize. But a lot of the work that's done by our DNA analysts is in sort of routine cases where it's an additional piece of evidence that relates to the case. And that's a lot of what the work that the crime lab does is about. We have controlled substances analysis where we confirm what the particular controlled substance is and determine what the weight of that substance is. We also have toxicology analysis. We conduct trace analysis. We do fingerprint analysis and a variety of other types of analysis as well. In criminal cases, there's what has been referred to as the CSI effect, but it's become commonplace now to have forensic evidence presented as part of the presentation of a prosecution and that means that there's a lot of work for our folks in our crime lab to be doing to support ongoing efforts in the criminal justice system.

You mentioned toxicology tests. How much has the opioid crisis added to the State Crime Lab's workload?

Well, first of all, the opioid epidemic has just been devastating for communities around the state and around the country. And it's been a major focus for law enforcement for very good reason, that we need to do what we can to fight this epidemic. Now, at the crime labs, one impact, of course, is that as opioids become very prevalent, that means that there are going to be submissions to the crime lab of cases involving opioids. But there have been a couple of additional complications related to the opioid epidemic that are notable and have had a big impact recently.

One is that opioids can be altered and so there can be different versions of what's a very similar controlled substance. But when those come in, our crime lab analysts need to look and determine exactly what the chemical structure is of the opioid that they're looking at so they can determine if it's something where they know what it is, if it's something that is controlled or if it's something that may not be controlled. So, ensuring that we are identifying those substances correctly is a critical part of what the labs do. And it's often not as simple as it may have been historically when it was simply a particular type of drug.

Second, increasingly we've seen fentanyl playing a major role in the opioid epidemic. Ensuring that we're detecting even small quantities of fentanyl is vitally important because often that small quantity of fentanyl is the most dangerous part of a controlled substance. So, our labs have enhanced the technology that they use. That means that they're able to identify even small quantities of controlled substances. But it also means they're getting more data. There are more demands on their time. And that requires more turnaround time per case that's coming in for a toxicologist. The way that we address that, of course, is by bringing more toxicologists on board and having more resources as well as identifying any ways we can to make our processes as efficient as possible.

Let's pivot to the lawsuit against Meta. You recently joined that lawsuit along with 32 of your state attorney general colleagues, both Republicans and Democrats. Can you give us an overview of the complaint?

This is the result of a multistate investigation that has been conducted nationwide through a bipartisan group of AGs. And we've made a few key allegations in the complaint that has been filed.

Fundamentally, what it boils down to

is an allegation that the products that Meta makes available to consumers, including Facebook and Instagram, have been designed to try to addict users, in particular, young users. That's happened even though we've alleged that Meta is well aware that having young users

what's safe for them to do on social media is critically important. And then also making sure that we've got rules in place that are going to protect young people from mental health-related and other harms that can result from significant social media use is something that

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addicted to its platforms causes significant harms, including harms to the mental health of its users. At the same time, Meta has presented their products as being perfectly fine for young people to use. We believe that there have been misrepresentations made. That's what we've alleged.

Making sure that consumers are getting accurate information so that parents and young people themselves can make appropriate decisions about

is a priority for us. So, this case is in the early stages. It's obviously a very large case and will take time to go through the process. But the allegations we've laid out are about the harm that this has allegedly caused to young people and the need to remedy that harm.

We have a proud history of working together with other AGs in a bipartisan fashion. We did that with respect to the opioid epidemic and continue to do that in that context as well. And likewise

with Meta, we're committed across state lines and across different party affiliations to ensuring that we're doing what we can to protect the public when it comes to the harms from social media platforms.

We are far away from the remedy stage of that case still, but to me, a couple things are at the core of it. One is, as we've been talking about, getting accurate information to users and to parents so that people can make appropriate judgments and ensuring that the people who are, in a lot of ways, best positioned to see that data, which is Meta itself, is providing that information to the public so that consumers can rely on the representations that are being made.

I think it's also really important that as we get greater clarity about what harms are coming from social media use and there's thought given to what policies should be developed around social media use to keep kids safe. I think that goes hand in hand with getting accurate information out there, but ensuring, for example, that private information or personally identifying information about young people isn't being inappropriately collected. That's a type of commonsense step that I want to make sure comes out of this litigation with any resolution that we reach.

Note: The full video interview with Josh Kaul is available at the January *Wisconsin Lawyer* online. Go to WebExtra. <https://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Wisconsin-Lawyer.aspx>. **WL**

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