

Forensic Consultants Association Newsletter

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About the Forensic Consultants Association

The Forensic Consultants Association (FCA) is a group of professionals from a wide variety of disciplines. Our members include scientists, medical doctors, engineers, contractors, accountants, mechanics and a wide variety of other specialties. Despite our diversity in expertise, FCA members all provide support in matters pertaining to legal disputes and the courts. Typically our clients are businesses, individuals, attorneys and insurance companies. While some members work behind the scenes as consultants, many testify in court as expert witnesses. Members of the FCA pledge to the following Code of Ethics:

- To honor all laws pertaining to their profession.
- To perform services only in areas of their competence.
- To be truthful and objective in reports, testimony and statements.
- To pursue each case in a professional and scientific manner.
- To perform all responsibilities agreed upon in an efficient and expeditious way.

The Ultimate Cold Case

By BRYAN R. BURNETT
brburnett@meixatech.com

United States Marine Colonel James E. Sabow was murdered sometime between 0835 and 0900 on January 22, 1991. The murder occurred in the backyard of his home on the El Toro MCAS during the height of Desert Storm. Security on the base was much tighter than usual, yet, somehow the assailant or assailants managed to carry out the homicide. The Department of Defense (DoD), despite overwhelming evidence to the contrary, has maintained that Colonel Sabow committed suicide.

Colonel Sabow flew more than 200 missions in Vietnam. He had a reputation of being a no-nonsense, by the book officer. One would think if there was the slightest possibility he was murdered that the DoD would take every means possible to find the truth. It has been doing quite the opposite for more than sixteen years.

In 2003 Congressman Duncan Hunter then Chairman of the Armed Services Committee, was apprised of the suspicious nature of Colonel Sabow's death by congressional consultant Dr. Anthony Battista, also a close friend of the Congressman. The Congressman amended the Defense Authorization Bill for 2004 to include instruction to the DoD for a reinvestigation of the Sabow death.

A meeting occurred on the matter March 12, 2004 at Hunter's office in the Rayburn Building in Washington. This meeting was attended by Congressman Hunter, Vicki Middleton (Hunter's office manager), Charles Abell (Chief Deputy Assistant to the Secretary of Defense), three assistants to Mr. Abell, Dr. J. David Sabow (brother of the Colonel) and several of Dr. Sabow's associates. It was decided:

1) The analysis of the evidence, both physical and photographic would be performed by forensic scientists at Iowa State University. These scientists would be retained by the Department of Defense. Mr. Abell assured both Congressman Hunter and Dr. Sabow that this would be done within days of the meeting.

2) Mr. Hunter would expect clear proof of the nature of the Colonel's death, homicide or suicide.

3) All consultants that Dr. Sabow had retained during the years since the Colonel's death would participate in the new investigation.

4) Dr. Sabow, a forensic neurologist, would be an active participant in the investigation.

For reasons that are not clear the scientists at Iowa State University backed out after originally agreeing to take the case. The DoD then selected Dr. Jon Nordby of Seattle, Washington to do the analysis without permission from either Congressman Hunter or Dr. Sabow. Dr. Nordby, whose Ph.D. is in Philosophy (he has had no formal scientific training), produced a massive (80+ pages) report (meixatech.com/SABOWREPORT-NORDBY.pdf) in December of 2004. The document was made up almost entirely of pseudo-scientific gibberish. It is apparent that Dr. Nordby also ignored items 3 and 4 of the agreement in that he did not consult with other experts in a meaningful way (if at all) nor did he utilize Dr. Sabow's expertise. In fact, he devoted a portion of his report severely criticizing Dr. Sabow. The Nordby report could never pass formal scientific peer review nor has there been any effort made to



Crime scene photograph of Colonel Sabow in his backyard. The shotgun is in front of him with its stock under his legs. The lack of blood on the Colonel's clothing, his bathrobe straightened out (the body was staged) and the improbable position of the body for being a suicide all support a homicide conclusion — there is absolutely no evidence for suicide.

subject it to peer review.

I was retained on this case by Dr. Sabow to analyze the gunshot residue evidence. I submitted a report (meixatech.com/SABOWREPORT-BURNETT.pdf) to Congressman Duncan Hunter in early March, 2005. My findings based on the gunshot residue and other evidence indicated that Colonel Sabow's death was by homicide.

My report introduced enough uncertainty (if that was possible) into the Nordby report that it caused a reissue of the contract to Dr. Nordby by the DoD. I strongly disagreed with that decision. Dr. Nordby had his say and forensic scientists new to the case were needed. However, in that reissued contract, Dr. Nordby was to allow myself and another forensic scientist to view his analysis of the physical evidence in Seattle. A phone call to me from Dr. Nordby in November, 2005 indicated that he would not be open to such on-site peer review. He stated, in apparent violation of the new contract, which was never released, that our conversation would be the extent of my services. It was at this point that I realized it was now imperative that new forensic scientists be found to provide unbiased input, not only for the review of the reports from myself and Dr. Nordby, but also do their own observations and tests.

With the help of James Abourezk (past US Senator from South Dakota) we were able to retain the services of the South Dakota Department of Criminal Investigation (DCI) Pierre, South Dakota. Mike Braley, Chief Criminal Investigator, assigned four investigators to the case. These investigators verbally concluded during their investigation that Colonel Sabow died by homicide. In fact, I was told by Dr. Sabow that there would be presentations by these investigators of their work at a forensic conference. A week later, I received a call from Dr. Sabow to report that Mike Braley stated to him that "there just was not enough evidence available to make a determination in the manner of death" and their investigation was to be terminated except for the release of the report on gunshot residue.

This action of DCI's Mike Braley indicated that outside interference had come into play. It became obvious to me that Dr. Sabow and I have an adversary with power, resolve and enormous resources.

Additional work was needed for a complete understanding of the evidence in this case. The extensive photographic documentation both of the crime scene and the autopsy needed careful analysis. We embarked on that analysis without informing either Congressman Hunter or the DoD. In addition to the previously examined gunshot residue evidence, I evaluated the bloodstain/blood spatter evidence and performed a crime scene reconstruction. Drs. Sabow and Robert MacLachlan reviewed the pathology evidence. Our report (meixatech.com/COLSABOWHOMICIDE.pdf), which concludes homicide, was delivered to Congressman Hunter in March, 2007.

There is no doubt that Colonel Sabow was murdered. Our interaction with Hunter's office manager, Vicki Middleton, indicated that the Congressman also believed this to be the case. Indeed, Congressman Hunter sent a letter to Attorney General Gonzales on April 19, 2007 (meixatech.com/HuntertoGonzales2007.pdf) which requested that the Department of Justice (DoJ) start an investigation. A support letter for the homicidal death of Colonel Sabow was included from attorney Michael Jacobs, recently retired from the Homicide Trials Division, Orange County District Attorney's Office (meixatech.com/JacobstoHunter2006.pdf). Mr. Hunter received an answer from the DoJ (meixatech.com/DoJtoHunter2007B.pdf) which stated that the death of Colonel Sabow "appears to be a state matter and not within the jurisdiction of the Department of Justice." The murder occurred on a military base likely by an assailant or assailants from within the military and this is a state matter? (Brad Gates, Orange County Sheriff/Coroner during the 1990s and his successor, Mike Corona, both stated that they had no jurisdiction in the case and it was a federal matter.) To add insult to this outrageous letter, it was not even signed by Attorney General Gonzales.

Congressman Hunter started his involvement in this case as a proponent for implementing a proper, unbiased investigation of the Sabow death. He ended his involvement by apparently avoiding all communication concerning the murder. The past Chairman and ranking member of the House Armed Services Committee is defied not only by the DoD, but also the DoJ. What is mystifying and quite disturbing is Congressman Duncan Hunter's abrupt departure from the case and his allowing the DoD and the DoJ to get away with clear defiance of his wishes and instructions.

More than sixteen years have passed since the murder of Colonel Sabow. It appears likely the homicide was perpetrated by one or more other military persons. Evidence obtained by Dr. Sabow indicates treason by persons other than Colonel Sabow occurred prior to his death. The Colonel's expressed intention to report these acts was the motive for his murder. The Department of Defense has made every effort to hide, obfuscate and otherwise circumvent this case from legitimate, unbiased scientific review. Who or what the Department of Defense is hiding must be extraordinary in its potential impact.

Additional information concerning the murder of Colonel James Sabow can be found at meixatech.com/SabowReports.html and a search of the internet with the key words, "Colonel Sabow."

Lessons From The Past

M L PIERSON

Forensic Science CG Laboratory

We interpret the evidence and unravel the clues

While Forensic Science (formally known as Criminalistics) has been in place for decades, the O.J. Simpson trial grabbed public attention with two unforgettable phrases. The first is, "Garbage in Garbage out" and the second, "If it doesn't fit, you must acquit".

"If it doesn't fit, you must acquit" drives forward the need to consult with the Forensic Expert concerning evidence before any question or act affecting that evidence is posed in court ..."

"Garbage in garbage out" addresses the importance of the integrity of the evidence. If a suspected crime has occurred, the items collected to be used as evidence must be cautiously documented and procedurally stored until retrieved for analysis by a well trained and qualified forensic scientist (formally referred to as criminalist).

"If it doesn't fit, you must acquit" drives forward the need to consult with the Forensic Expert concerning evidence before any question or act affecting that evidence is posed in court, regardless how simple or harmless that action may first appear.

Forensic Science CG Laboratory (www.sleuthlab.com) is a full service forensic lab offering private, civil and criminal case review and evidence analysis.

Noise In The Work Environment

By DOUGLAS EILAR
Eilar Associates Inc.

As our society grows both in size and complexity, we become more sensitive to the parts of our environment beyond our immediate control. There are more and more situations where our environment may not be as comfortable as we would like, and we are more likely to feel more stress as a result. Noise is a real dimension of our environment, at home, at work, and sometimes even at play.

Noise is often defined as unwanted sound. It can interfere with human activities including speech, concentration, sleep, or listening to speakers or entertainment. In the work-place, noise can sometimes make it difficult to hear signals, instructions, or other things necessary to carry out one's assignments effectively. When noise is too loud or persistent, or when it is of a nature that is exceedingly unpleasant - such as a screech, it can cause significant interruptions in activities, and even harm. Overexposure can also cause or contribute to hearing loss.

Recent studies have reported that significant populations in developed countries are exposed

to industrial or environmental noise, including equipment and transportation sources. It is also estimated that over 5 million workers in manufacturing and utilities in America are exposed to noise conditions that are hazardous to hearing. Effects on workers can be physical or psychological, or both, and can include diminished performance, job dissatisfaction, and hearing deterioration. When overexposure to noise is constant or frequent, there is an increase chance of hearing loss. Most of us can remember the ringing in our ears after an evening in the vicinity of a loud dance band, but our youth may not fully appreciate that repeated exposure could cause irreversible damage to their hearing.

Since World War II, there has been a gradual increase in awareness of noise and its effects. However, most communities throughout the United States did not develop noise control ordinances and noise planning guidelines until the 1970's. The most significant regulations dealing with noise in the work-place have been instituted since passage of the Occupational Safety & Health Act of 1970.

The Occupational Safety & Health Administration (OSHA) has established a recommended noise exposure limit of 85 decibels (dB), A-weighted, for an 8-hour day. (A-weighting is a scale adjusted to reflect the sensitivity of the human ear.) The current OSHA standard is a limit of 90 dB, TWA (time-weighted average) for a worker's exposure during an 8-hour day. Furthermore, the regulations stipulate that an employer shall develop and implement a hearing conservation program whenever the work environment is such that an employee may be subject to a TWA in excess of 85 dB during an 8-hour day. A hearing conservation plan has several elements, of which the major ones are: 1) noise survey and monitoring, 2) worker education concerning noise, 3) proper use of hearing protector devices, 4) noise control measures, 5) noise exposure reduction through work scheduling, rotation or management, 6) an annual hearing test program conducted by an audiologist. Besides responsible management, there are many possibilities for companies to implement noise reduction strategies, from using quieter

equipment, to installation of suitable noise control technologies. Risks that companies may face if excessive noise is ignored include: fines and civil or criminal sanctions from OSHA, worker's compensation claims, reduction in performance and/or morale, employee illness and lost work time, and civil lawsuits.

As an employee, be aware of the risks and rights with respect to noise. If a frequent noise source in your work-place seems too loud, bring it to the attention of a supervisor, or to the human resources department. You should also be able to read on posters required by law at your work-place what additional remedies or sources you may seek if you do not obtain a satisfactory resolution from your employer. Employers are not legally allowed to fire or discipline an employee who reasonably requests a review of safety-related issues in the work-place.

The author, Douglas Eilar, is an acoustical and environmental consultant based in Encinitas. He can be reached at 760/753-1865, or E-mail at deilar@eilarassociates.com.

