

The below article written by Barry Fisher appeared in this month's AAFS bimonthly Academy News.

## **Legislative Corner**

In the last issue of the Academy News I reported that much has been made on Capitol Hill of the soon to be released National Academy of Science's study Identifying the Needs of the Forensic Sciences Community. Legislators tell us that this report will be the basis of comprehensive legislation for forensic science – a forensic science master plan. The report and any legislation is months off. However, we can consider what some of the elements of a forensic science master plan might be. The following are some thoughts I've had about what comprehensive legislation might consist of. These ideas are my own and don't reflect the Academy's views. But it's time to confront some of these issues.

### **10,000 More Forensic Scientists**

We need more forensic scientists and other forensic personnel to handle cases in a timely fashion. These cases go well beyond DNA cases. They include firearms cases, fingerprint cases, toxicology cases, death investigation cases, drug cases, DUI cases, and all the other classifications of physical evidence handled every day. What is timely service? We can quibble that it means completing cases in 30 days, 60 days or 90 days. It doesn't mean that evidence is stored in evidence lockers without any real expectation that the case will ever be examined. There are real consequences to these backlogs. Criminals will continue to commit crimes unless they are apprehended. What do you say to the next rape victim or the family of a murder victim? 'Sorry, we had the evidence to identify the criminal but we never got around to doing the case?' That is a sad commentary of the value we place on the justice system we claim to serve. It is also distressing that we have the technology to enhance the justice system, but do not have the wherewithal to do the task at hand. Of course we are not really talking about vast sums of money to solve this problem. We are not trying to send a man into space or fight a war in some far off land. I guess you could just say that we are trying to put bad people in jail while keeping innocent people out. What is the most important task government performs? Government's primary function is to insure the peace through public safety and its criminal justice system. Forensic science is a critical element of public safety and a relatively inexpensive component at that. During the Clinton administration, Congress passed legislation to add 100,000 cops to improve public safety. Why not provide funding for 10,000 forensic specialists over a five year period? That would make a huge impact to the delivery of forensic services to public safety agencies, the courts and to the public. The 10,000 personnel increase would include forensic scientists, forensic pathologists, crime scene investigators, forensic technicians, support personnel and the like. Funding would include the new positions as well as training to get to get new personnel ready to perform case work. All this is possible if there is the political will to make this a reality.

### **Quality Forensic Science**

Quality forensic science is inextricably tied to timely service. How is quality measured? Over the years crime laboratory accreditation has become a bench mark of quality. Like hospital

accreditation, it does not guarantee perfection, but it demonstrates organizations have taken steps in the right direction. Certification is another measure of quality. Today, there are a number of high quality certification programs that have been developed by practitioners to demonstrate competence. Both accreditation and certification programs are largely voluntary. Forensic science is a strange profession in some ways. Unlike almost every other professional endeavor, there is almost no public oversight.

Doctors, dentists, accountants, lawyers, teachers, and yes, even barbers have some sort of public oversight. Why not forensic science? The argument that juries, judges, and lawyers will be able to determine what is good scientific practice is not realistic. Some form of public oversight which requires that crime labs be accredited and practitioners be accredited is long overdue.

### **Research and Development**

After Daubert and the other cases which dealt with experienced based evidence, it seemed like only a matter of time before courts would be holding that pattern evidence and might have trouble meeting the burden of reliability. So far courts have not taken that tact; however, it is unlikely that the defense bar will give up that easily. To resolve the issues that pattern evidence such as fingerprint, footwear, tire impression, handwriting, firearms evidence, etc., are truly reliable, funding for research will be needed. Thus far those funds have been minimal; however, it is necessary to prove, once and for all, that these types of evidence meet the criteria set forth by FRE 702.

### **Feedback**

Major change to any system requires feedback. Are adjustments to forensic science having the desired affect? Are additional modifications needed? Is this a State or Federal role? Should, for example, the U.S. Department of Justice or perhaps the National Academy of Sciences have an advisor function? Which element of State government is most appropriate to oversee crime labs and medical examiner/coroner offices? Should other providers not part of crime labs and coroner offices be held to the same standards? As you can readily see, there are numerous questions to be addressed.

These are significant issues. Stakeholders should have a place at the table to debate these and others issues