

**California Crime Laboratory Review Task Force**  
Minutes, February 4, 2010  
Hertzberg-Davis Forensic Science Center  
1800 Paseo Rancho Castilla, Los Angeles, CA 90032

Members Present: Dane Gillette (Chair), Barry Fisher (Vice Chair), Jennifer Mihalovich, Robert Jarzen, Kevin Davis, Jeff Rodzen, Charlotte Wacker, Arturo Castro, Jennifer Friedman, Dean Gialamas, Greg Matheson

Staff Present: Mike Chamberlain (DOJ - Staff Counsel)

Members of the Public: Mary Hong (Orange County SO Crime Lab), Adam Dutra (San Diego PD Crime Lab), Laura Jane Kessner (LADA's Office), George Pomonik (Pomonik Consulting, Inc.)

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Meeting called to order at 10:40 a.m. by Chair Gillette. The Chair welcomed attendees and outlined the work to be accomplished in the next nine months. Kevin Davis has been sworn in as a Task Force member, replacing Jim McLaughlin, who has retired from the CHP. Chair Gillette offered congratulations to Dean Gialamas, recently appointed as Director of the LASO Crime Laboratory.

Minutes

The December 3, 2009, meeting minutes were approved by motion and vote.

Feedback On 2009 Report

Senator Price's office has expressed interest in the Task Force report, as has the California Association of Criminalists. Dean Gialamas suggested that hard copies be provided to the U.S. Senate Judiciary Committee via Senators Leahy and Feinstein, as well as to the US Attorney General via Ken Melson. Jennifer Friedman suggested providing a copy to the conference on indigent defendants.

Schedule

April 2010: Reports on out-of-state commissions completed or nearing completion; each team will give presentation.

June 2010: Team reports drafted and an appropriate model is in development.

August 2010: The Task Force to have a draft of the oversight report.

October 2010: Final report to printer.

No later than December 2010: Report released.

Research on Existing Oversight Commissions

Based on preliminary research, Chair Gillette selected five out-of-state oversight commissions worthy of additional investigation. While the approaches vary, each may contain elements potentially applicable in California. Notably, Virginia was not selected, in part because it has a unified state laboratory system very unlike the jurisdictionally fragmented lab structure in California. It was suggested, however, that Virginia may be useful to examine as well.

The Commissions selected for further study, and corresponding assignments, are:  
Arizona (Jarzen & Gillette)  
Illinois (Mihalovich & Davis)  
Minnesota (Castro & Wacker)  
New York (Friedman & Fisher)  
Texas (Matheson & Rodzen)

The two-member teams will determine how best to conduct their research. By limiting teams to two members, the Bagley-Keene Act is satisfied. At a minimum, teams will contact and interview the executive director as well as commission members from both prosecution and defense law practices.

The analogy to current oversight (or licensing) bodies for other professions in California was discussed. One commonality is that oversight is conducted largely by other members of the profession at issue, although it is still important to have the perspective and input of stakeholders. On the other hand, the Scientific Advisory Committee in Virginia is perceived as a “roadblock” to positive change in that state’s laboratory system.

In New York, the oversight commission is viewed as a key influence in obtaining funding for lab mandates, and as such is perceived positively. Similar to Cal-EMA, federal grant money is routed through the NY commission (e.g., funding to pursue accreditation). The lesson is that a commission must have guaranteed funding to pass along to laboratories if it maintains a regulatory posture.

Any oversight body should not duplicate efforts of current accreditation entities by imposing overlapping mandates. At present, accredited labs undergo multiple levels of internal and external review in a 5-year accreditation cycle, some of which occurs annually.

The BFS Bureau Chief reported back that BFS cannot provide copies of its ISO accreditation standards to the Task Force due to copyright restrictions. The group agreed that, in the alternative, a presentation from an ASCLD/LAB representative about its accreditation standards would be helpful. In particular, a speaker could discuss whether and how ISO standards address areas of concern identified in the 2009 NAS report. By 2014, all accredited labs will adhere to ISO standards. Fresno SO, the sole exception, is FQS-accredited in two disciplines.

John Neuner and Mike Grubb were suggested as speakers. Mike Chamberlain will coordinate a presentation for the April meeting of the Task Force. If a speaker cannot attend in person, a video-conference might be arranged. Dean Gialamas could serve as a backup speaker given his expertise in and involvement with ASCLD/LAB.

It was noted that some out-of-state oversight bodies (e.g., Texas) have authority over private as well as public labs. The NAS report applied to all laboratories, and suggested limitations on permissible testimony without respect to public/private orientation. The

question remains whether non-laboratory forensic science units, such as latent fingerprint teams examiners in local police departments, would be similarly subject to oversight.

#### Out-of-State Commission Research

Member Dolores Carr prepared an outline of areas of inquiry, which the Task Force reviewed. While the questionnaire is thorough, several additional topics were suggested:

- ✓ How/where the commission is positioned in state government;
- ✓ How the commission is funded;
- ✓ Commission staffing;
- ✓ Payment of commissioners;
- ✓ Liability insurance for commission members;
- ✓ Whether the commission acts as the Coverdell investigating agency, and how investigations work;
- ✓ Factors and/or obstacles considered or faced in forming commission;
- ✓ How long it took to establish the commission;
- ✓ How and why the commission was established – was there a triggering event;
- ✓ What is the source of the commission's authority (e.g., enforcement mechanism? Incentives?);
- ✓ What is the number and jurisdictional breakdown of federal and state labs overseen;
- ✓ Is there a formal mission statement;
- ✓ If the establishment of a commission were to happen again, how would it be done differently;

In addition, Task Force members will conduct internet searches about commissions. Chair Gillette will provide copies of existing research on the five selected states to Task Force members.

Mike Chamberlain will edit the existing questionnaire accordingly, and distribute it to the Task Force next week.

#### Public Suggestions on Creation of Commission

George Pomonik suggested a management-based approach to setting up a commission. The key considerations are as follows:

- (1) Establish mission/values/charter (i.e., why is this being created), including core values
- (2) Define specific goals (must be measurable, and include functions)
- (3) Identify success factors (necessary to achieve goals)
- (4) List strategies and tactics

The "Executive Oversight" model was also described:

- (1) Are we delivering (results, quality)?

- (2) On budget?
- (3) On time?
- (4) Are the customers happy?

Mr. Pomonic further proposed that the Task Force solicit legislative interest/support in advance of the commission's creation. Perhaps high-ranking individuals could be identified, and targeted presentations given.

#### Possible Functions of Oversight Body

The group discussed potential functions of an oversight body. Placement in state government was considered, and it was generally agreed that the executive branch is a logical location. The group will consider existing agencies that could house an oversight body, but DOJ may not be a good fit. The judicial branch may have a conflict regulating the source of evidence that would then be evaluated in the courtroom. Some opined that the entity should be freestanding. All agreed that a repeat of the designation of the Department of Health Services to regulate alcohol testing should be avoided. One possible resource to explore is the California Council on Criminal Justice, currently chaired by DA Scully and authorized pursuant to Penal Code sections 13810-13813.

A driving force is funding. The Legislature should have appointment power, and should receive an annual report from the oversight body.

The body needs to include people who practice forensic science and are aware of the strengths, weaknesses, and needs of the community.

The final report on oversight should include draft/model language for authorizing legislation. The Task Force will solicit the assistance of an expert in the legislative process, potentially from DOJ.

Five key components of an oversight body should be considered:

- (1) Training / Education / Research
- (2) Allocation of resources (e.g., consolidation of lab functions) in an advisory capacity; includes advocacy for funding
- (3) Communication / coordination between laboratories and stakeholders
- (4) Investigation of alleged malfeasance, and administration of Coverdell grant funding; clearinghouse model
- (5) Forum for protecting the independence of laboratories in response to exertion of undue pressure by client agencies

The Task Force report could define what the oversight body could not do. For example, the body could be prohibited from issuing mandatory regulations.

Concerns were voiced about the scope of the investigative function, and how much authority the oversight body itself would be granted to open and pursue an investigation. The current investigation protocol administered by Cal-EMA in response to allegations of wrongdoing was discussed. The "clearinghouse" model was generally met with

approval, where laboratory directors from other jurisdictions would have responsibility, on a rotating basis, for conducting investigations. Final reports would be filed with the oversight agency following the investigation. ASCLD/LAB does not investigate to the same degree, e.g., looking to the root cause of the problem.

#### April Meeting

April 1, 2010. The agenda will include the ASCLD/LAB presentation, preliminary team reports, discussion of the Cal-EMA investigative model, expanded discussion of the five key possible components of a commission model, and input from legislative expert(s) concerning model legislation.

Chair Gillette adjourned the meeting at 2:30 p.m.