

California Crime Laboratory Review Task Force

Minutes, June 3, 2010

Hertzberg-Davis Forensic Science Center
California State University, Los Angeles
1800 Paseo Rancho Castilla
Los Angeles, CA 90032

Members Present: Dane Gillette (Chair), Jennifer Mihalovich, Bob Jarzen, Jeff Rodzen, Jennifer Friedman, Greg Matheson, David Lynch (by telephone), Bill Thompson, Dean Gialamas, Arturo Castro, Charlotte Wacker, Barry Fisher

Staff Present: Michael Chamberlain (DOJ – Legal Counsel), Colleen Higgins (DOJ – Admin.)

Members of the Public: Mike Grubb (San Diego Police Department Crime Laboratory), Mary Gibbons (Oakland Police Department Crime Laboratory), Tom Nasser (Orange County Crime Laboratory), Robert W. Taylor (Los Angeles Sheriff's Department Crime Laboratory), Wayne Plumtree (Los Angeles Sheriff's Department Crime Laboratory), Erin Morris (Los Angeles Public Defender's Office), Wesley Grose (Los Angeles Sheriff's Department Crime Laboratory), Adam Dutra (San Diego Police Department Crime Laboratory), George M. Pomonik

Meeting called to order at 10:40 a.m. by Chair Gillette. The Chair welcomed attendees.

Minutes

The April 1, 2010, meeting minutes were approved as written by motion and vote.

CAC and CACLD Position Statements

Chair Gillette facilitated a group discussion of position statements submitted by the California Association of Criminalists (CAC) and California Association of Crime Laboratory Directors (CACLD). The central issue is whether to continue current Task Force discussions of state-level forensic science oversight, or to postpone issuing a report on this topic until Congress has either taken action on a national level, or declined to do so. A third option would be to disband the Task Force altogether. A key question is whether California can be more productive than the federal government on oversight issues.

In its initial report, the Task Force committed to continuing discussions of oversight issues, and stated that it would recommend some type of coordinating/oversight body in California. There has been no consensus to date on the scope, authority, or composition of that body. On the other hand, the Task Force's initial report published in 2009 satisfied its legislative mandate fully, and no formal expectations exist at this point concerning oversight policy recommendations.

Some Task Force members observed that while the federal government may take action on forensic science issues, nothing is imminent. At this time, there is a legislative proposal from the Senate Judiciary Committee that has not been formalized. Nor has a funding source been identified for the proposed Forensic Science Commission that would be housed in the United States Department of Justice. There is also an executive branch effort underway, involving the National Science and Technology Council's Subcommittee on Forensic Science. There is also the potential that the federal approach would be circular, e.g., delegation of the enforcement of accreditation standards to ASCLD/LAB would be no different from ASCLD/LAB accreditation to begin with.

On behalf of CAC Jennifer Mihalovich pointed out that it would be prudent to defer Task Force activities until a federal approach to forensic science reform is apparent. She noted that there is increasing federal-level activity on this issue, because in addition to the legislative proposal the White House is in the process of establishing and staffing a Subcommittee on Forensic Science, with various topical working groups, as part of the Office of Science and Technology Policy. Other members observed that this executive branch effort is still taking shape, and has no definitive timeline. Nor is it clear what impact its work will have on federal efforts to improve forensic science.

It was suggested that state-level discussion of forensic science issues could be conducted at CACLD meetings (possibly in concert with CAC) in a more formalized and open public format. CACLD already performs advisory and policy functions and has, for example, a history of legislative advocacy. A broader field of stakeholders could participate in these activities, negating the need—at least to some extent—for the creation of a new statewide body. CACLD bylaws could be expanded and ex officio members added. Whereas issuance of a supplemental Task Force report could be a non-starter like many other commission reports, the forensic science and criminal justice communities could look to CACLD and CAC as existing forums in which to advance reform agendas.

Some Task Force members advocated the continuation of Task Force efforts to produce a supplemental report on oversight, especially because the challenges to forensic science in California were set forth in detail in the 2009 Task Force report. Even if there is no clear consensus on an oversight model, putting ideas into report form is a good idea and would give policymakers a menu of options for future consideration. In addition, the Task Force has a defined membership and procedural momentum at this point, which may be lost if proceedings are suspended. Moreover, significant effort has been expended on researching other states' approaches to oversight, and it would be inefficient to try and recreate that work at a later date. The 2009 NAS Report could be used as a vehicle for setting forth policy options to state lawmakers.

It was suggested that a supplemental report be generated that sets forth consensus recommendations on oversight from the Task Force, accompanied by supplemental reports outlining arguments for and against more rigorous and detailed oversight models for which no consensus exists. Chair Gillette pointed out that the Task Force is

under no legislative obligation to agree on specifics if consensus is unattainable, but there would be value in presenting divergent views as a menu of options for policymakers. This would include suggestions about what may or may not work in California, accompanied by an assessment of the application of other states' approaches.

On behalf of CACLD, Bob Jarzen opined that any regulatory function granted to a new state-level oversight entity would be improperly duplicative of ASCLD/LAB and ISO programs currently in place. Overregulation at the expense of productivity is a major concern to lab management. Further, the existing process of laboratory investigations being run by parent agencies is functional, and produces credible findings and remedial action where necessary. CACLD is concerned that any state recommendations made would be redundant with, or overridden by, federal efforts, and should not be pursued at this point. There is also a greater likelihood of increased funding for crime laboratories coming from federal sources rather than state sources. Overall, CACLD recommends suspending Task Force proceedings until it is clear what federal action, if any, will be taken.

It was noted that other states' coordinated approaches are experiencing varying degrees of success. Illinois's forensic science commission is on the verge of dissolving, for example, due to lack of interest. A local California analogy is Orange County's effort to coordinate forensic science policy, which failed for similar reasons.

On the other hand, interest in the efforts in Arizona remains high. Arizona's forensic science policy body is a voluntary collaboration, which may help explain levels of participation. It is a model that may have merit for application in California. By way of contrast, very few stakeholders have expressed interest in this Task Force's activities to date.

The New York commission presents a different model. It has encouraged transparency and attracted a high level of interest in that state. But, it is the only state body that has a reliable funding stream. There is a separate inspector general for conducting investigations in New York. It was noted that the statewide investigatory function was not working very well in Texas.

One benefit of federal oversight would be the fiscal leverage. If federal grant money were available only to accredited laboratories, an incentive would exist for smaller unaccredited labs (such as municipal police departments with a limited forensic science unit) to pursue accreditation. ASCLD is currently conducting a survey to collect data on the practice of forensic science outside the setting of large accredited full-service laboratories.

A public attendee suggested that the Attorney General assume "ownership" of these issues because nobody else has, and should appoint an advisory group and structure to address them. This would ensure that the ideas go somewhere, as opposed to being set forth in an unread report. He opined that it was too soon to end this effort, and the

Task Force needed to hash out the components of an oversight model. The questions of “What are we creating?” and “Why?” remain unanswered. It was proposed that the Task Force draft oversight legislation that includes funding. The model could include public discussions and executive sessions such as occurs in New York. The Task Force would have to engage in a “teaching and selling” campaign to get funding for an oversight body, and would have to prioritize its plan’s top points.

The Task Force is well-positioned to discuss issues like the San Francisco Police Department Crime Lab situation and *Brady* issues raised by misconduct. One Task Force member opined that, had a statewide body existed at the time, the formalized communications between labs and stakeholders may have prevented the San Francisco scandal. The group should be pursuing discussions such as these. On the other hand, no oversight model could have prevented the situation in San Francisco, and effective quality assurance protocols are already in place in labs statewide. ASCLD/LAB inspections require inspectors with scientific backgrounds and training, and ASCLD/LAB has procedures in place to compel labs to remediate problems. Revocation of accreditation is a potential consequence if problems continue. But, accreditation reviews are conducted “in-house,” are not transparent, and the results are not available to the public.

In response, it was suggested that the Virginia model of a diverse oversight group advised by a scientific advisory board could work in California. This could result in even more regulation, however, consuming more of lab management’s time at the expense of casework productivity.

A latent print manager with the Los Angeles Sheriff’s Office expressed the concerns of that unit’s examiners; namely, that California may not have adequate influence on the federal efforts to reform forensic science, and state-level discussions should occur on issues such as standardizing latent print reports.

Motions and Votes

Bob Jarzen moved to (1) temporarily suspend future Task Force meetings and activities, and (2) request legislative authority to reconvene in 2011 to assess the state of federal activity on these issues. Jennifer Friedman moved to amend the motion to state that members who want to submit written proposals for oversight models should do so, and the Task Force would meet as scheduled in August 2010 to discuss those proposals and options. All motions were seconded.

A vote was held on the amendment to the motion. The amendment was defeated 5-4.

A vote was then held on the initial motion to temporarily suspend proceedings. The motion carried 6-3.

[Note that Task Force members Fisher and Castro left the meeting before the motions were made, thus explaining the nine-vote totals.]

Concluding Comments

Chair Gillette stated that he would prepare a report to the Legislature summarizing the Task Force's decision to temporarily suspend proceedings, and describing the rationale and the Task Force's work to date on the forensic science oversight issue. The report will set forth the Task Force's intent to reconvene in 2011. Individual positions from Task Force members are welcome and will be included in the report.

It will recommend that, in addition, CAC and CACLD formalize new procedures to address issues raised today, such as convening a public discussion forum involving stakeholders from various sectors of the criminal justice system.

The Task Force acknowledged and thanked Chair Dane Gillette for his leadership thus far, and Chair Gillette acknowledged the contributions of DOJ staff members Colleen Higgins and Michael Chamberlain.

Chair Gillette adjourned the meeting at 3:00 p.m.