

Dane Gillette and DOJ staff will meet with DOJ's printing office in July concerning preparation of the master document. Details will be provided at the August meeting.

Release of the final report by the end of October remains the goal.

Final Report Format

The group discussed the appropriate positioning of the accreditation discussion in the final report, as a number of chapters touch on it. The same is true for the state oversight topic. On the accreditation topic, it was decided to defer the decision until the balance of the report exists in draft form, permitting better evaluation of content. The members agreed that the oversight discussion should be placed at the end of the report, and should incorporate recommendations and discussion from other chapters as appropriate.

Certification Chapter

The group reviewed and discussed the draft chapter on certification, and made a number of edits. The distinction between a certification mandate and an incentive-based system were debated. It would not be feasible to condition testimony on certification given the Evidence Code and other controlling state law evidentiary principles. Certification should be viewed as an enhancement, not a credential. It is important to define terms, such as "practitioner" and "examiner." For example, an ASCLD/LAB "examiner" performs casework and issues reports containing opinions. A distinction between those who offer opinions and those who offer opinions as a result of benchwork (examiner-analyst) was proposed. A statement could be made that recommendations on certification may not apply to non-laboratory personnel. On the other hand, the recommendation(s) should flow from the definitions and not spell out exemptions. Accordingly, a definitional section should be included. Dane Gillette and Mike Chamberlain will work on a proposed list of terminology for this and other sections of the report.

More details on potential incentives should be included. Acceptable certifying bodies should be discussed, beyond the FSAB. Other similar bodies must meet minimum requirements, however. Ultimately, it will be the responsibility of the individual criminalist to seek certification, but all laboratories should formally encourage and incentivize that pursuit.

It was noted that lab directors underreported molecular biology certifications. Other potential discrepancies in data collection exist, such as certification versus specialization in a particular discipline. BFS laboratory data will be updated. All modifications to this and other reports are due by June 26, 2009.

Workload Report

Jennifer Friedman and Dolores Carr presented their draft report on workload issues. Dean Gialamas will draft a discussion on the Orange County Lab's overtime program and other innovations. The pros and cons of municipalities "buying" a dedicated criminalist will be a topic of further study, but should merit a "sidebar" reference in the report. The discussion of NIBIN database inefficiencies should be moved to a "catchall" or miscellaneous section. Metrics should be used when discussing "some labs." Recommendations should be more concrete, e.g., labs should explore the efficiency of NIBIN participation. And laboratory-level review and study of

workload issues may be more appropriate than reserving the question for a future oversight commission. The regionalization of NIBIN entries should be considered.

The group discussed standardization of discovery procedures and made several suggestions for that portion of the report. A possible conflict exists on recommendation 8, because a population-to-criminalist ratio may not be the best calculus to use. That issue will be revisited. Additional edits to recommendations were suggested, including consideration of judges being trained in forensic science at the local level instead of by the Judicial Council.

Education Report

The language regarding the NAS report will be modified, with the reference to “subjective” interpretation eliminated. A footnote to the NAS report will be added.

Oversight Commission Draft

The role of a commission would be as a conduit for Coverdell investigations. Bob Jarzen described the current grant structure in California, where Cal-EMA acts as the grantee and investigations are conducted by a lab’s parent law enforcement agency (e.g., internal affairs), without involvement of lab management. The parent agency is free to contract out for scientific expertise. This system meets the approval of NIJ. Of course, Congress could alter the requirements for grant recipients.

It was proposed that a CACLD expert team be available for conducting investigations on a rotating basis. A distinction was noted between a Coverdell investigation of the incident and follow-up research and corrective actions taken by the lab itself, as mandated by ASCLD/LAB. Internal versus external investigations were debated. On the one hand, the Innocence Project and Senator Leahy call for a truly external investigating agency to satisfy Coverdell requirements, while lab directors maintain that internal affairs investigations and lab follow-up is a better protocol. In California, agency employees are required to participate in I.A. investigations. An alternative may be legislation giving the Attorney General authority to conduct investigations.

Creation of a commission could be envisioned as a means of facilitating, tracking, and reporting on external investigations, as opposed to an advisory body. An “inspector general” approach was viewed as too unwieldy and unnecessarily bureaucratic. Although all the issues raised in the draft report have been considered by CACLD, that group is composed solely of lab managers. In addition, other reports in California have called for the creation of an independent, external entity. One issue to be resolved is whether CAC’s (representing criminalists) and CACLD’s (representing management) existing mechanisms meet perceived needs, and whether they can be improved. Before moving forward with a recommendation on a statewide entity, the needs must be examined and agreed upon. Concern was expressed that CACLD is not receiving outside perspectives, such as that of the criminal defense community. Any oversight body needs to be inclusive and representative of all stakeholders.

Funding is a major issue. One approach may be to present a menu of needs and a menu of responsive options to policymakers. Then, the best choices can be made in light of fiscal

realities. For example, the entity could be designed to facilitate efficiency instead of being a source of money up front.

Placement in government is another issue. It needs to be high enough so that it doesn't spin its wheels. It is unrealistic to think that an oversight body would be productive without a concrete, detailed plan. Therefore, proposals will be prepared that may compete with each other, but offer real substantive detail. Three broad options are:

1. Do nothing, and maintain the current status quo.
2. Create an oversight body that collects data from laboratories and local jurisdictions and provides corresponding recommendations to the Legislature. The entity would be a repository of information and give laboratories a voice in Sacramento.
3. Create an actual investigative body.

Other considerations:

1. An oversight entity would seek to improve allocation of resources and reduce inefficiency. A needs study should be conducted, but need not be long-term. It would recommend the ways and means of funding at the local level.
2. An oversight body could facilitate crime labs' independence from police and prosecutor influence by means of performing its investigative function.
3. Examination of best practices, designating research priorities, promotion of voluntary standards (e.g., ASTM-30) all may be part of an oversight body's charge. The entity should avoid determination of actual protocols, however.

Chair Gillette adjourned the meeting at 3:20 p.m.