

CALIFORNIA CRIME LABORATORY REVIEW TASK FORCE

Minutes: November 6, 2008

**Hertzberg-Davis Forensic Science Center
1800 Paseo Rancho Castilla, Los Angeles, CA 90032**

Members Present: Dane Gillette (Chair), Greg Matheson (Host), William Thompson, Sam Lucia, Jennifer Friedman, Jeff Rodzen, Jennifer Mihalovich, Dean Gialamas, James McLaughlin, Arturo Castro, Jennifer Mihalovich, Dolores Carr

Staff Present: Mike Chamberlain, Colleen Higgins

Members of the Public: Yvette Sanchez-Owens (Commander, LAPD Crime Lab, Scientific Investigation Division); Kevin Davis (CHP – with Jim McLaughlin); Bill Phillips (DOJ, Bureau of Forensic Science, Sacramento); Jill Spriggs (DOJ, BFS-HQ); Joe Harrigan; Mary Hong; Tanya Beede (DOJ, BFS)

Chair Dane Gillette called the meeting to order at 10:35 a.m. Chair Gillette thanked the Los Angeles Police Department for hosting the meeting, and introduced Yvette Sanchez-Owens, commanding officer of the Scientific Investigations Division, who welcomed Task Force members and other guests.

Minutes

The minutes of the October 2, 2008, meeting were approved by motion and vote.

Survey Data and Interviews

All laboratory surveys have been received, except for the San Francisco Medical Examiner's. Laboratory interview reports continue to be submitted. Variations in format are fine, as long as the information is clearly presented. The deadline for receipt of the interview reports will be mid-December, 2008.

Colleen Higgins conducted a demonstration of the data CDs compiled by DOJ staff, containing organized and indexed survey data. They use Excel format, and can be arranged in spreadsheet form by survey topic. DOJ intern Leah Barrows is available to answer further questions.

LAPD Fingerprint Unit Issues

Greg Matheson and Yvette Sanchez-Owens discussed the recent press concerning mistakes made during latent print analyses at the Los Angeles Police Department. An internal audit is taking place, but is not finalized and no conclusions have been reached. Two latent print misidentifications were cited. As an immediate response, the LAPD shifted managerial oversight of the unit, is considering accreditation, and has named a task force to review the events at issue, including the criminal cases that may be implicated. An outside expert review of latent print procedures was considered but did not take place for lack of sufficient funding. The in-house audit division lacks the technical expertise to conduct a comprehensive review.

Bill Thompson raised the possibility of less expensive outside expert consultation by drawing from U.C. and C.S.U. subject matter experts.

The Task Force briefly discussed the historical roots of fingerprint comparison teams being located in operational police departments rather than in laboratories. Greg Matheson explained that the LAPD Scientific Investigations Division will be relocated to the detective bureau. Advantages will include more efficient communications with clients and resource savings. It is anticipated that the abilities and limitations of the laboratory will be more apparent and appreciated by detectives, while the laboratory will maintain its independent status on internal policies.

Dean Gialamas pointed out how the LAPD latent print unit situation highlights the call for accreditation requirements. The events also illustrate the validity of concerns regarding standardized procedures related to *Brady* evidence, and may be an example of situations preventable with statewide forensic science oversight. Moreover, ISO accreditation would account for and correct potential conflicts of interest created by a laboratory's position on the police department organizational chart.

In sum, the LAPD latent print unit events, and other case-specific examples, may be appropriate as the context in which to discuss (1) the role of universities in improving crime laboratory function and integrity, (2) the best means of encouraging compliance with *Brady* disclosure rules, and (3) the possibility of state-level forensic science oversight.

Brady Issues

The Task Force considered and debated various approaches to compliance with *Brady v. Maryland* in crime laboratory settings. Jennifer Friedman proposed a bright-line rule that all crime laboratory "mistakes" be disclosed to prosecutors for evaluation under *Brady*. Others pointed out that "mistakes" may clearly fall outside *Brady*'s parameters given the facts of the case, and noted that a "disclose everything" approach may be unworkable from a practical standpoint. The concept of "*Brady* lists" of laboratory personnel maintained by district attorneys' offices was described, and viewpoints support and criticizing the practice were expressed. Greg Matheson expressed concern that the message conveyed to lab directors is if a lab analyst ends up on a *Brady* list, the DA does not want that person testifying.

Presentation by Jill Spriggs

DOJ's Bureau of Forensic Services Bureau Chief Jill Spriggs spoke about fee-for-service considerations. Recently, DOJ put together a fee-for-service model in light of state budget deficits. DOJ concluded that its \$32 million/year expenses would be offset by a \$170/hour fee to client agencies. DOJ has always maintained a fee-for-service model in blood alcohol cases.

Although DOJ has not had to adopt this fee-for-service model, it did instate a three items/case policy applicable to DNA services. DOJ will screen only three items initially,

not including reference samples, in sexual assault and homicide cases. One item will be subjected to screening in burglary and robbery cases. Following the initial screening process, additional items may be examined following discussions between the criminalist and the law enforcement agency. This program will result in more concise reports from the laboratory, and has eased the burden of physical property management and transfer. The immediate evaluation of incoming cases now takes laboratory resources into account, to the benefit of all.

Greg Matheson discussed the current backlog of unexamined rape kits in Los Angeles, and explained that a recent policy will require the analysis of all such kits even if the case has already been prosecuted, or will not be pursued for prosecution.

Dean Gialamas suggested that, at a minimum, laboratories attempt to determine whether cases have already been adjudicated before analyzing a backlogged rape kit.

Other laboratories employ an initial case evaluation dialog approach, without enforcing a strict evidence item limit.

All agreed that training law enforcement to identify and prioritize probative evidence is a crucial component to reducing casework backlogs.

Defense Retesting of Evidence

Jennifer Friedman reported that fewer criminal defense attorneys are likely to elect to pursue retesting of evidence in light of the following recent case law:

People v. Varghese (2008) 162 Cal.App.4th 1084 [defendant's right to counsel did not entitle him to conduct a DNA test on the blood sample without reporting its results to the prosecution, given that sample would be consumed]

People v. Zamudio (2008) 43 Cal.4th 327, 354-56 [defense work product privilege cannot prevent testimony that a prosecution witness provided physical evidence to a defense laboratory for analysis]

Upcoming Schedule

December 4, 2008	Sacramento (will focus on forensic oversight commission topic and other broad topic areas)
January 8, 2009	Sacramento
February 5, 2009	Los Angeles (will include presentation by Prof. Joe Peterson's group, as well as discussion of U.C./C.S.U./C.C.I. programs and potential for increased contributions)
March 5, 2009	Richmond (hosted by DOJ at Jan Bashinski DNA Laboratory)
April 2, 2009	Los Angeles
May 7, 2009	Sacramento, or possibly San Jose TBD
June 4, 2009	Los Angeles
July 2, 2009	Sacramento

A final meeting may be scheduled for late July to correspond to the release of the Task Force's final report.

Format/Contents of Final Report

Mike Chamberlain will compose an e-mail containing a list of all legislatively mandated information in the final report.

One possible approach to subject areas will be to recommend ongoing study and evaluation of data collected thus far.

The meeting was adjourned at 2:45 p.m.