

# CALIFORNIA CRIME LABORATORY REVIEW TASK FORCE

Minutes, December 4, 2008  
1300 - I Street  
Sacramento, California

Member Present: Dane Gillette (Chair) Barry Fisher (Vice Chair), Greg Matheson, Jennifer Friedman, Jennifer Mihalovich, Jim McLaughlin, Robert Jarzen, William Thompson, Jeff Rodzen, Charlotte Wacker

Staff Present: Mike Chamberlain (DOJ - Staff Counsel), Colleen Higgins (DOJ-Admin)

Members of the Public: Paul Holes (Director, Contra Costa Sheriff's Office Crime Lab); Bill Canepa (OES); Mary Gibbons (Director, Oakland Police Department Crime Lab); Joe Fabiny (Santa Clara County Crime Lab); Bill Phillips (Criminalist Manager, DOJ, BFS HQ); Kevin Davis (CHP); Eva Steinberger (DOJ, BFS-HQ)

---

Chair Dane Gillette called the meeting to order at 10:35 a.m.

## Minutes

The minutes of the November 2008 meeting were approved by motion and vote.

## Surveys

All lab surveys have been received except the Los Angeles Coroner's. Mike Chamberlain will follow up. The San Francisco Medical Examiner completed its survey.

Leah Barros will continue her data review and compilation efforts. She and Colleen Higgins will distribute a supplemental cd containing additional survey results.

## NAS Report

Early in 2009, the National Academy of Sciences will release a comprehensive report on the Future of Forensic Science. Copies will be made available to the Task Force membership as soon as possible. In addition, several conferences have been announced to discuss the Report and its implications. Task Force members will receive notices with details when they become available.

## Final Report Format

The final report will be organized according to topics identified in the Task Force's authorizing legislation. An additional section addressing issues for further/future study may be added. The two-person subcommittee narratives, containing findings and recommendations, will be inserted where appropriate. DOJ staff will work on editing and harmonizing the various sections, and will prepare an Executive Summary and appendices.

### Oversight Commissions

Thus far, the Task Force has received information on oversight commissions from Barry Scheck and Frank Dolesji, and has access to statutory solutions created by other states as follows:

Alabama Coroner's Training Commission  
Code of Ala. § 11-5-31

Connecticut Advisory Commission to Review Wrongful Convictions  
Conn. Gen. Stat. § 54-102pp

Indiana Commission on Forensic Sciences  
Burns Ind. Code Ann. § 4-23-6-1 et seq.

Maryland Forensic Laboratory Advisory Committee  
Md. HEALTH-GENERAL Code Ann. § 17-2A-12  
Md. HEALTH-GENERAL Code Ann. § 17-2A-01 et seq. [providing for state forensic laboratory licensing standards]

New York Commission on Forensic Science  
NY CLS Exec § 995 et seq.

Texas Forensic Science Commission  
Tex. Code Crim. Proc. art. 38.01

Virginia Forensic Science Board  
Va. Code Ann. § 9.1-1109 et seq.

Virginia Scientific Advisory Committee  
Va. Code Ann. § 9.1-1111

Washington State Forensic Investigations Council  
Rev. Code Wash. § 43.103.010 et seq.

Three general approaches exist on the question of statewide oversight:

(1) Consolidate laboratories on a statewide or regional basis under the umbrella of a state agency, in order to resolve disparities in services provided across jurisdictions.

There is no strong support for consolidating all state forensic functions into one state entity, and in any case it would be difficult to preclude the creation of other government labs. Local jurisdictions would be unwilling to give up control of laboratories, particularly when an effective and influential agency head has a proven record of obtaining funding and advocating for the laboratory. On the other hand, it may be productive to designate a state or local laboratory for all instances of rarely-used forensic science examinations, such as forensic anthropology, trace evidence, or entomology. Sacramento County's

trace evidence service is an example of centralizing a lesser-used discipline. In addition, unified state access to large databases, including federal compilations, would be valuable. If unified state services are provided, a fee-for-service model should be considered given the cost associated with training and maintaining specialized disciplines.

A research and development institute, perhaps in collaboration with a university, could be another component of a statewide resource. The European model was cited, which combines research with casework. Grant funding could be available. On the other hand, applied research in forensic science is often more effective in a laboratory setting.

Any recommendation will require funding allocations. Federal funding may be available if a state forensic science entity is able to provide necessary services in the event of a natural disaster or terrorist act.

(2) Legislatively mandate accreditation / licensing / standardization / certification for laboratories, and/or scientific procedures, and/or criminalists.

(3) Adopt an oversight model. The newly formed commission would set standards and facilitate funding. It may also have investigative powers. A more limited option would be the creation of an investigative agency similar to New York's Inspector General, which could investigate allegations of malfeasance in crime labs. Another version of a limited advisory body could simply monitor laboratory operations, collect information, and report to the State with recommendations.

(4) Recommend continuing study of the issue by a successor body to this Task Force. This group would collect information and make further recommendations to the Legislature.

The Task Force discussed whether it is necessary to articulate a particular problem with the current state of California forensic science as a condition of recommending establishment of an oversight body, or whether the establishment of an oversight body would be preventative/proactive in nature. No agreement was reached, although it was noted that if a forensic science "train wreck" scenario such as occurred in Houston took place in California, no state agency exists to address it.

Lack of adequate funding was identified as a root source of shortcomings in public laboratories. Inadequate funding leads to backlog and workload problems, which in turn impacts services. Whether funding is distributed in an equitable manner is not only a county-specific issue, but may appropriately be addressed by a statewide oversight body.

Jennifer Friedman suggested that a central concern should be the laboratory function following issuance of a report, up to and including courtroom testimony. Although ASCLD/LAB requires some courtroom testimony observation, the standards and means are vague. Courtroom training for criminalists is already occurring via CCI, and should be a topic of further study for the Task Force.

The New York and Virginia forensic commissions review particular issues brought before them, such as courtroom testimony, and have the power to investigate and issue findings concerning best practices. Such findings would apply to any laboratory employee appearing in court.

Barry Fisher suggested that when the focus is on best practices, a helpful source of information is the stakeholders and users of laboratory services. Their opinions regarding timeliness of service, types of cases, and other issues provide key data.

Eva Steinberger stated that a statewide advisory commission would be a positive force, and would be helpful in the areas of fair funding, the advancement of technology, best practices, and protecting the independence of forensic scientists. She opined that an advisory body should not concern itself with accreditation standards, and for practical reasons should not attempt to approve validation and scientific methodologies because of the diversity of labs in the state. Investigation of misconduct allegations should not be a major focus of an advisory commission, because misconduct is not a problem in California.

Other participants observed that, in California, demanding procedural uniformity is not practical, and micromanagement of laboratory operations by a state commission should not be the goal. Laboratory personnel, however, are not always in the best position to make broader public policy decisions regarding laboratory operations.

A state commission would be better suited to explore stable and continuing funding for laboratories, and perhaps scrutinize non-accredited areas such as latent print units. Of course, entities already exist that could accredit latent print operations. Accordingly, several questions exist:

- (1) Are ISO accreditation standards sufficient to address perceived or potential deficiencies in California forensic science? Certification? It was suggested that accreditation and certification requirements would not satisfy all goals of an advisory body, which would also facilitate funding, etc.
- (2) Does ISO accreditation adequately address the areas of best practices?
- (3) Would a commission holding hearings on best practices waste time on non-issues, while requiring lab management and personnel to spend time justifying practices in front of a commission of non-scientists?

Another way to look at the overall issue is to ask whether forensic science as a profession should be allowed to regulate itself, or whether an overarching government entity should exist to act as an advocate for users of forensic science services.

#### Education & Training

Barry Fisher pointed out options existing short of actual consolidation of laboratories. For example, establish a joint training center (e.g., Forensic DNA Academy, or a training program modeled on the ATF Firearms Academy) run through CCI, with a

corresponding increase in CCI funding. This would be a better approach to ensuring adequate training.

Bob Jarzen echoed the idea, and advocated fully funding CCI with a stable revenue source as a key Task Force recommendation. Currently, CCI is funded with Bureau of Forensic Services' General Fund money, which is an unreliable source in difficult economic times. One option may be to subsidize CCI through additional POST funding to reimburse students. Currently, POST is funded by penalty assessments. Coverdell grants may be an additional CCI funding source, but they do not provide significant amounts.

CCI, with its curriculum and practitioner instructors, is geared toward a practical education in forensic science, as opposed to what is often a less pragmatic and more theoretical approach in university settings. One idea is to require all practicing criminalists to dedicate 5% of their time to teaching.

CCI could also be expanded to provide training for attorneys and judges. On the other hand, state and local bar associations could, and have begun to, provide training in the forensic sciences.

Currently, ABC certification requires minimum continuing education credits for certified criminalists, but ABC certification is not mandatory. ASCLD/LAB requires continuing education, but sets forth no specific standards. POST continuing education requirements (80 hours/2-year cycle) may be a worthy model for forensic science.

#### Future Meetings

Further discussions regarding education will take place at the February meeting in Los Angeles.

Certification will be addressed in more detail at the March meeting.

The January meeting will be held in Sacramento, and will involve continued discussion of oversight options. An additional topic will be the underutilization of computerized forensic databases, for example, insufficient staff for uploading data into system.

Chair Dane Gillette adjourned the meeting at 2:00 p.m.