

**AB-1079 AND THE CALIFORNIA CRIME LABORATORY SYSTEM:  
STATEWIDE FORENSIC SCIENCE OVERSIGHT**

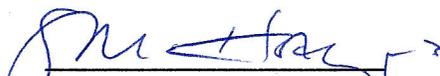
**POINT OF VIEW FROM**

**CALIFORNIA ASSOCIATION OF CRIMINALISTS**



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## Executive Summary

Since completing its original mandate and issuing its recommendations in November 2009, the California Crime Laboratory Review Task Force has been studying the merits of a statewide forensic oversight entity. At the June 2010 Task Force meeting, the California Association of Crime Laboratory Directors (CACLD) representative, with support of the California Association of Criminalists (CAC), introduced a motion to suspend this discussion until 2011, since the federal government is actively investigating the creation of a similar entity at a national level. The motion passed by a 6-3 vote.

After this meeting, defense advocates on the Task Force have made public statements that the crime laboratory representatives “disbanded” the Task Force and are essentially fearful of a statewide regulatory agency. We discuss herein that our opposition is not based in fear, but on the fact that sufficient oversight of forensic science already exists.

We discuss ways in which forensic science in California is already regulated. We discuss this from the perspectives of overall laboratory management, as well as required, documented commitments to quality, monitoring and testing of analysts’ work. Herein we also present the existing mechanisms for handling complaints of misconduct, both at the laboratory level and for individual analysts.

The National Academy of Sciences (NAS) issued a report, “Strengthening Forensic Science in the United States: A Path Forward,” in February 2009, which was critical of forensic science across the United States. This report prompted responses from virtually all of the professional organizations that accredit crime laboratories, certify individuals in forensic disciplines, and enforce codes of ethics against individual analysts. These responses are reviewed in the following pages.

Implementing a vast majority of the recommendations made by the NAS report and the California Crime Laboratory Review Task Force’s report requires a dependable and long-term commitment of significant funding. At a time when state and local budgets are strained to the maximum, the creation of a new state bureaucracy that would need its own operating budget would be fiscally irresponsible, especially when the laboratories themselves currently cannot obtain the additional funding necessary to implement many of the recommendations and needed improvements.

The Task Force’s 2009 report identified several key areas for laboratory improvement. We provide documentation herein indicating the active efforts and support of the CAC and CACLD to address or incorporate those areas.

Lastly, we present a plan for going forward. We propose extending invitations to participate in our semiannual meetings to other stakeholders in forensic science. While this open invitation has always existed, it is time to proactively renew the invitation. We are genuinely interested in hearing their factual concerns and issues for improvement in the forensic sciences, as everyone involved in the criminal justice system wants the best and most reliable crime laboratory system possible.

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## 1. Introduction

The California Association of Criminalists (CAC) and the California Association of Crime Laboratory Directors (CACLD) have been providing guidance to California crime laboratories for more than 40 years. They have always promoted the highest professional and ethical standards, an open exchange of information with the criminal justice community, and advised state legislators in the development of policies and legislation affecting forensic science. Several of our organizations' members were privileged to serve on the California Crime Laboratory Review Task Force (Task Force). The Task Force's report that was issued in November of 2009 resulted from the efforts and commitment of crime laboratory personnel, as well as district attorneys, representatives from the criminal defense community, academicians, law enforcement personnel, and others. This report genuinely reflected the state of forensic science in California and pointed out the need for significantly increasing resources for California crime laboratories.

While both the CAC and the CACLD have expressed appreciation for the thoughtful approach and efforts of the Task Force members in the completion of their mandated goal as defined by Penal Code 11062, both organizations expressed concern with the Task Force's efforts to extend itself beyond its mandated function by continuing to convene in an effort to examine and define the functions of a statewide forensic oversight committee. Defining the role of such an oversight committee was never mandated by the legislation which established the Task Force. Additionally, the Task Force's efforts toward these ends have since been superseded by various efforts at the federal level.

The CAC and CACLD issued individual position statements concerning statewide oversight of crime laboratories, which were distributed to the Task Force members prior to the June 2010 meeting. Both statements recommended that the Task Force temporarily suspend its investigation into whether a new state-level regulatory or advisory body is needed and what the structure and function of such a body would be. CACLD Task Force representative Bob Jarzen made a motion to suspend future Task Force meetings and to request authorization from the state legislature to reconvene the Task Force in 2011 to allow time to evaluate progress currently underway at the federal level regarding forensic science oversight. California Public Defenders Association representative Jennifer Friedman offered an amendment to the motion to have an August 2010 meeting prior to suspending the Task Force. This amendment was defeated by a vote of 5-4. The unamended motion to suspend was then voted on and passed 6-3.

It must be made clear that the vote to suspend was *not* a vote to disband the Task Force, despite the defense advocates' public statements to the contrary. Suspension of the California Crime Laboratory Review Task Force has resulted in inaccurate criticisms from a minority of Task Force members who have published, or contributed to, opinion pieces in the press mischaracterizing the motion which was put forth by the CACLD as a "disbanding" of the Task Force. These misleading public statements characterized crime laboratory directors as wanting to completely regulate themselves with no oversight

whatsoever, while omitting important facts about the extensive oversight which already exists for the crime laboratories in California.

Oversight and advisory bodies such as the American Society of Crime Laboratory Directors / Laboratory Accreditation Board (ASCLD-LAB), Forensic Quality Services International, the California Department of Public Health Forensic Alcohol Analysis Regulatory Program, and the Quality Assurance Standards for Forensic DNA Testing Laboratories, as mandated by the federal government for laboratories utilizing CODIS, all play significant roles in the manner in which crime laboratories of California operate. These programs hold crime laboratories accountable through external proficiency testing, education and training requirements, quality assurance programs, audits and inspection processes, and ongoing compliance monitoring requirements that help to ensure that the quality of work is of the highest order. In addition, the very nature of the criminal justice system provides its own informal, yet powerful, oversight of crime laboratories' performance through the discovery process, review of crime laboratory work by defense experts, and court "gate-keeper" decisions (*e.g. Daubert and Frye*).

Even with these existing oversights, CAC and CACLD have worked diligently to advance the profession of forensic science through various means such as the development of a certification program, which ultimately was adopted by the American Board of Criminalistics for testing and certifying criminalists in various forensic disciplines. CAC and CACLD members are also active on various national and international scientific and technical working groups (SWGs and TWGs) which publish well-recognized and peer reviewed documents on best scientific practices and standards for forensic science practitioners.

Each of these mechanisms for oversight of forensic science activities plays a key role in the quality of crime laboratories in the state of California. Our state has a unique forensic delivery system which relies upon independent city, county, and state crime laboratories. There are also many forensic units operating within various police agencies and sheriff's offices which perform limited forensic services such as crime scene documentation, latent print processing, and latent print comparisons. Though operationally independent, these forensic laboratories and technical units all share the common goals of high quality scientific work and adherence to professional and ethical standards.

All public full-service crime laboratories (and several private crime laboratories) in California are accredited by nationally accepted accreditation bodies. However, as noted above, smaller unaccredited "forensic units" exist within various law enforcement agencies. Analysts in these units typically perform limited forensic services such as latent print examinations and some firearms examinations, and they testify to their results in court. It is our opinion that these analysts should be held to the same professional and ethical standards as those working in accredited labs. In this regard, the American Society of Crime Laboratory Directors has already begun a concerted effort to identify these entities nationwide and to encourage them to pursue accreditation. ASCLD is currently conducting a requisite survey at the request of ASCLD/LAB and the Consortium of Forensic Science Organizations.

Through the leadership of organizations such as the CAC and CACLD, California crime laboratories are among the very best in the nation. Studies such as those completed by the California Crime Laboratory Review Task Force have been supportive by pointing out the need for additional resources for California crime laboratories to make them even better in terms of delivery of service, providing adequate staffing and equipment, and enhancing educational opportunities for forensic practitioners. This paper is intended to discuss the ramifications of the Task Force study, address concerns of stakeholders who may feel that a strong statewide forensic oversight committee is necessary for California crime laboratories, and look at future models as to how California crime laboratories can be best supported and funded to efficiently deliver the highest quality forensic services.

## 2. Oversight

The general mandate of the California Crime Laboratory Review Task Force (Task Force) is to “make recommendations as to how best to configure, fund, and improve the delivery of state and local crime laboratory services in the future.” One of the Task Force discussion items related to this mandate focused on the establishment of an oversight commission or advisory type body. This question of forensic services oversight has been a contentious issue within the Task Force with those in the defense community advocating aggressively for the creation of a State level regulatory body, while those representing California crime laboratories believe that creation of such an entity is unnecessary. We discuss herein that the creation of such an entity at this point in time is not needed and would be an unjustified use of scarce public dollars.

While defense advocates have routinely claimed their “vision” of a state body is not “regulatory,” their intended mission of such a body clearly indicates otherwise. The Task Force report stated that some suggested functions of a state body include: *improving allocation of resources and reduce inefficiency; standardizing terminology and improving communication of forensic science findings; evaluating the education and training needs of forensic scientists and coordinating delivery of continuing education programs; and investigations of serious negligence and misconduct.*<sup>1</sup> While these are the intentions stated in the formal report, the defense community has also advocated for mandatory laboratory accreditation (which, in practice, already exists), mandatory certification of forensic analysts that work in public crime laboratories, and standardization of best practices. As defined previously, these roles are clearly not “advisory” in nature, but are strongly “regulatory.” It should be noted here that advocates from the defense community simultaneously seek to exempt themselves and private forensic practitioners from these same requirements.<sup>2</sup>

Much of the crime laboratories’ experience with state-level regulation has come from the regulation of forensic alcohol testing. The general concern of forensic science practitioners is summarized on page 85 of the Task Force’s 2009 report:

“Other members of the Task Force had strong reservations about the idea [of a statewide oversight/regulatory body], questioning both the need for and the desirability of such a statewide body, particularly if it were empowered to micro-manage local crime laboratory operations. The California Department of Public Health’s regulation of public forensic alcohol testing was cited as an example to be avoided. Some believe that the Department of Public Health exercised its regulatory authority in an obtuse and arbitrary manner, forcing laboratories to

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<sup>1</sup> Task Force report at pages 77-81

<sup>2</sup>One example of this is the Innocence Project’s proposed legislation for oversight of forensic science (see <http://www.cacnews.org/policies/OFSISLegislativeOutline.pdf>), which states in Title V, Paragraph five, “Nothing in this Act will preclude a non-certified practitioner from testifying to the relative strengths or weaknesses of a given forensic assay, device, technique, or technology, either in general or as applied to the specific case”

comply with rules in a manner that was cumbersome, inefficient, and discouraged innovation.”

Applying the Department of Public Health model of oversight to other forensic disciplines would place excessively burdensome requirements on laboratories already operating under multiple layers of guidelines, standards, and requirements.

In making the determination as to whether a forensic oversight commission is necessary, the core questions that the Task Force and public members have wrestled with, and have still not produced answers to, are “*what are the problems we are trying to fix?*” and “*what are the improvements we are trying to achieve?*” Many Task Force meetings were spent trying to get oversight advocates to answer these questions. While many issues were addressed in the Task Force’s 2009 report, the vast majority stem simply from insufficient funding by the laboratories’ parent agencies. It remains unclear how a new state body, especially one that costs money to operate, will alleviate this problem. Instead, the proponents of an oversight commission have steered it towards “oversight” of best practices, accreditation, certification and surveillance of laboratory personnel and management; away from the original mandate of the Task Force. The creation of a state level regulatory body is truly a solution in search of a problem.

A review of other states’ approaches to advisory / oversight bodies was conducted by the Task Force and is presented in summary in the 2009 report. The New York and Virginia models can be characterized as strongly regulatory, while others such as Illinois and Minnesota are largely advisory. Virginia operates one state laboratory system, making management much easier than California’s diverse mix of state, county, and city laboratories. The New York commission is regulatory in that it also accredits laboratories, although it essentially rubber-stamps existing accreditations, such as those administered by the American Society of Crime Laboratory Directors / Laboratory Accreditation Board (ASCLD/LAB). It also reviews and approves new laboratory techniques and conducts investigations of misconduct. The Texas commission is another state level body that was originally intended to be regulatory. However, the authorizing legislation was so poorly written that it essentially left the commission powerless and unfunded, although it is slowly evolving into a proactive body under a new chairman.

A common complaint about various state level bodies that was observed by the Task Force is the issue of politicization. In several states, the open, public meetings of these various bodies quickly degenerated from a proactive entity to a collection of advocates with a larger forum to express their opinions. We are concerned that the same thing would occur in California, distracting an oversight body from achieving its tasks.

Before considering the value or need for an oversight committee or advisory body in California, the unique nature of the delivery of forensic science services in California and the many factors already in place to ensure a quality product, need to be taken into consideration. California is unique in the way forensic science services are delivered in that there are roughly 30 crime laboratories under various unrelated government jurisdictions across the state. Because of this lack of central control, the Task Force must

approach the discussion of the value or need for a California oversight commission or advisory type body from the perspective that existing commissions and/or advisory type bodies in other states are not directly applicable to the delivery of forensic science services in California.

Regardless of the merits of the variety of state level bodies in existence, substantial effort is being made at the federal level to implement many of the suggestions put forth in the National Academy of Sciences (NAS) report, “Strengthening Forensic Science in the United States.” Current drafts of federal legislation propose some degree of federal oversight of accreditation, certification, research, standards and best practices. Existing efforts by the President’s Office of Science and Technology Programs (OSTP) Subcommittee on Forensic Science have already created five Interagency Working Groups (IWGs) to also address these issues at the federal level. It should be noted that the IWGs and much of the current legislative efforts at the federal level did not exist when the Task Force began its work over two years ago. Creation of a new entity in California to address issues raised in the NAS report would likely either duplicate, or perhaps be in conflict with, current federal efforts.

### 3. Funding

#### 3.1. Funding of an oversight entity

In order to properly execute its role of statewide oversight, a commission or body would require a full time staff and appropriate budget. This was observed in nearly all the interviews that Task Force members conducted with commissioners in other states. The New York commission has an annual budget of \$500K - \$1M and a staff of 12, and covers only 20 labs. The Texas commission has only one full time employee and a meager budget of \$200K. Considering that the state of California has, by far, the largest number of forensic laboratories, it may easily require a staff of 20 and a budget of \$1.5M, if the New York regulatory model is to be considered.

Where would this money come from? The State has faced chronic deficits from several years and this trend is likely going to continue for several more. Likewise, the economic downturn has hit county and city budgets hard, and many of their crime laboratories have faced budget and staffing reductions. Thus, local agencies will be unable to contribute funds to a state-level body.

#### 3.2. Statewide laboratory improvements cost money

The Task Force's 2009 report identified many issues hindering the delivery of timely forensic science services in California. It identified, in detail, issues with the following areas and the complicating factors in remedying them: *recruitment and retention, improving education, individual certification, workload, staffing, facilities, lab accreditation, and funding*. Their many findings and recommendations are discussed in detail in the 2009 report and will not be repeated here.

Essentially the main root cause of California's laboratory system problems (real or perceived) is lack of funding by the parent agency: *"All the California crime laboratories surveyed reported they lack predictable and stable funding. Further, there is clear, overwhelming evidence that this lack of stable funding prevents laboratories from planning for future growth or technological advancement... California crime laboratories are under-resourced in many respects. All laboratory needs identified in the surveys...stem from the root problem of inadequate funding."*<sup>3</sup>

It remains unclear how the creation of a new state regulatory body, which would *cost* money to operate, will result in better funding for the laboratories. Aside from redistributing federal and/or state funds that laboratories already receive, no ideas to find *new* resources have been proffered by those advocating for the creation of an oversight body. Given the wide mix of funding sources, such as the various federal, state, county and city funds, it is unclear how a new state level body could possibly dictate the allocation of resources to laboratories not funded and controlled by the State.

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<sup>3</sup> Task Force report at page 48

#### **4. Investigations of misconduct and ethics violations within California**

Recent incidents of employee misconduct at the San Francisco Police Department (SFPD) and CA Department of Justice (DOJ) Ripon labs have become the rallying cry for a new state regulatory body by the defense advocacy community. Seeking to justify an oversight commission by exploiting isolated allegations of misconduct by two forensic science professionals is disingenuous and overshadows the high level of skill and dedication of California's forensic science community. While their arguments in favor of additional state regulation may be appealing to the lay person, a new regulatory or oversight body cannot prevent occasional misconduct.

It is a sad fact of human nature that a few unethical individuals find their way into every profession. We often hear of the crooked cop, unethical doctor, dishonest attorney, intoxicated airline pilot, and so on. All of these professions have a few things in common: oversight and regulation, both by professional organizations and government entities. Human nature cannot simply be regulated out of existence, despite claims to the contrary.

Allegations of misconduct can be reported many different ways. It is standard practice for a laboratory's parent agency to conduct its own internal affairs investigations of reported employee misconduct. It is in the agency's best interest to investigate reports and either vindicate or punish the individual appropriately, since any appearance of "institutional corruption" for a public agency can result in years of serious problems and public relations issues for its upper management.

The main accrediting bodies, the American Society of Crime Laboratory Directors / Laboratory Accreditation Board (ASCLD/LAB) and Forensic Quality Services International (FQS-I) also investigate complaints of negligence or misconduct that affect the integrity of a laboratory's forensic results or noncompliance with accreditation standards, and do so diligently. ASCLD/LAB and FQS-I are themselves accredited by another entity and failing to investigate allegations of misconduct in one of their accredited laboratories jeopardizes their own legitimacy. Maintaining accreditation is a major incentive for laboratories to properly handle employee misconduct or analytical errors.

While some may argue that California does not have mandatory accreditation, in practicality it does mandate it. In order for the forensic biology unit of any crime laboratory to search a DNA profile in the CODIS database, it must be accredited. This is stated specifically in sections 295-300 of the CA Penal Code. Additionally, crime laboratories must be accredited in order to be eligible for most federally funded, forensic-related grant programs,

Laboratories receiving federal funds via the National Institute of Justice (NIJ) need to have an external clearinghouse for investigations of misconduct per the Coverdell Program reporting requirements. Within the state, the CA Emergency Management Agency (CAL-EMA) has been designated as this entity and is approved and endorsed by

the NIJ. If a laboratory does not specify a designated outside agency or entity for investigating misconduct, it cannot receive federal funds under the Coverdell Program.

An individual analyst can also be censured by the CAC for violating its code of ethics, which effectively eliminates him/her as an expert witness. The CAC has censured unethical analysts in the past. The American Board of Criminalistics (ABC), which administers national certification examinations, can also revoke an individual's certification if it finds that person violated its code of ethics. Several other professional groups with codes of ethics include ASCLD, American Academy of Forensic Science (AAFS), International Association for Identification (IAI), Association of Firearm and Toolmark Examiners (AFTE), American Board of Forensic Toxicology (ABFT), Society of Forensic Toxicologists (SOFT), and the California Association of Toxicologists (CAT).

Analysts also take required proficiency tests either annually or semiannually, depending on their discipline. Results of proficiency tests, successful or not, are required to be reported to the accrediting body in order to maintain the laboratory's accreditation. A failed proficiency test warrants a review by the accrediting body's proficiency review committee and creation of a documented corrective action plan, which is also subject to review during accreditation inspections. Failure to comply will jeopardize a laboratory's accreditation status.

Results of these investigations and actions, whether they apply to a laboratory or an individual, are also discoverable documents, as are an individual analyst's proficiency test results. The results of these investigations can be used by the laboratory's controlling agency during a disciplinary hearing. An analyst could be censured by one of several professional organizations, which would severely compromise his/her usefulness as an expert witness.

The creation of a new state regulatory body for investigating misconduct would merely be bureaucratic duplication of existing mechanisms described above. Furthermore, and especially in California, nearly all analysts belong to one of several different unions. An independent regulatory body would, in all likelihood, not be able to terminate an analyst. This would need to be performed by the analyst's employing agency.

## 5. Forensic science community responses to the NAS report

A common argument for new state regulations stems from the National Academy of Sciences (NAS) report.<sup>4,5</sup> This report does not state that forensic science is “bad science,” but rather states that several areas of forensic science need additional research. It also recommends mandatory accreditation of laboratories, individual certification, and the promulgation of standards and best practices. These points are well taken by the forensic science practitioners, but the major impediment is a lack of funding at the state and national levels.

The responses of various professional forensic organizations have been largely supportive of the recommendations put forth in the NAS report. However, the creation of yet another regulatory federal entity was discouraged by most forensic professional organizations. This was largely out of concerns for micromanagement, lack of responsiveness to local judicial culture, and concerns that a federal body composed of appointees could make drastic changes of direction with each change in administration. This occurs in virtually all federal agencies.

In a letter dated 28 August 2009, the CACLD expressed its views relating to the NAS findings.<sup>6</sup> *“It is the genuine desire of our members and their laboratories that CACLD play an active role in developing and implementing the policies that will be considered in the years to come for the continuous improvement and development of quality and integrity in our profession.”* Many of the CACLD’s arguments supporting California laboratories’ support for the NAS recommendations are phrased in respect to the ISO/IEC 17025 standards, which together with ASCLD/LAB’s supplemental requirements, govern how an accredited laboratory operates a quality system. The ISO standards are very rigorous and comprise over 400 separate criteria for laboratory management and address many of the issues raised in the NAS report. These include continuous improvement of the laboratory management system and technical procedures, robust quality assurance, adherence to “customer” requests and customer service, monitoring of analyst court testimony, and being free from undue influences. CACLD also strongly believes that academic preparation of new analysts, and continuing education for existing ones, is important and critical to maintaining a high level of competency and professionalism in the field.

The CAC issued a response to the NAS report as well, dated 15 Aug 2009.<sup>7</sup> One of the largest contributions CAC has made to the profession at the national level was the creation, development and validation of certification examinations, which are now administered through the American Board of Criminalistics. These exams are very

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<sup>4</sup> The National Academy of Sciences is one of the National Academies. The research arm of the National Academies is the National Research Council (NRC). The report is referred to as the NAS Report and the NRC report. For the purpose of this document, it will be referred to as the NAS report.

<sup>5</sup> The National Academies Press, [www.nap.edu](http://www.nap.edu)

<sup>6</sup> The CACLD response to the NAS report can be found on their website at <http://www.caclld.net/Files/News%20of%20Interest/nrc%20caclld%20reply.pdf>

<sup>7</sup> The CAC response to the NAS report can be found on their website at [http://www.cacnews.org/policies/NAS\\_Response.pdf](http://www.cacnews.org/policies/NAS_Response.pdf)

rigorous and require thorough knowledge of general criminalistics and a practitioner's area of expertise. Participants must also abide by a Code of Ethics to remain certified and to remain members of the CAC. The CAC's Code of Ethics is one of the strongest professional codes of ethics in the profession and sciences and has been used as a model by many other organizations. Additionally, the CAC recognized the need for working standards many years ago. It formed the first DNA advisory committee in 1989, whose standards eventually became the foundation for national guidelines in use today. Furthermore, many national working groups and advisory committees are staffed in part by CAC members. Lastly, the CAC thanks the NAS for identifying these national issues and welcomes any assistance it can provide in identifying sources of funding to help advance the field.

The American Society of Crime Laboratory Directors (ASCLD) in its December 2008 Position Statement<sup>8</sup> to the NAS prior to the issuance of their report strongly stated that the first and foremost priority of its members must be ethics and objectivity in forensic science: *“Laboratory managers must strive to ensure that forensic science examinations are conducted in accordance with sound scientific principles and within the framework of the statutory requirements to which forensic professionals are responsible.”*

After the release of the NAS report, ASCLD issued a letter to Senator Leahy, Chair of the Senate Judiciary committee, dated 17 March 2009.<sup>9</sup> ASCLD stated that it supports mandatory accreditation for all crime laboratories. It recommends that Congress provide substantial and consistent funding for all forensic science disciplines, not just DNA, to produce timely, accurate, and meaningful results. Congress should also provide funding to crime laboratories and education institutions for improved validation research studies of these other methods. ASCLD remains opposed to the creation of a new national oversight entity, stating that new funding should be directed to the existing laboratory systems and their wide range of science, education, and policy collaborators.

The American Society of Crime Laboratory Directors / Laboratory Accreditation Board (ASCLD/LAB), the world's largest forensic science accrediting body, issued a separate statement regarding the NAS report. This document related the NAS suggestions to the current ISO-17025 and supplemental standards for accreditation. While all public laboratories in California are accredited, this is not true on a national level. In that regard, ASCLD/LAB recommends mandatory accreditation. Its document also discusses certification of individual analysts, again from the perspective of the ISO standards. These standards, in ASCLD/LAB's opinion, satisfy nearly all the requirements of individual certification: *“It is easily argued that an evaluation of education, training, competency testing, proficiency testing and casework is much more rigorous than relying on the results of a single written test.”* Documentation clearly showing successful completion of these items for each working analyst must be produced during an external assessment that is part of the accreditation process. ASCLD/LAB will most likely be mandating professional responsibility and ethics training for analysts, and laboratories will need to document successful completion for each analyst. Inclusion of

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<sup>8</sup> see <http://www.asclcd.org/files/releases/ASCLD%20Position%20Statements%202008.pdf>

<sup>9</sup> see <http://www.asclcd.org/files/releases/090317%20ASCLD%20Letter%20to%20Congress%20FINAL.pdf>

ASCLD/LAB's own code of ethics (*ASCLD/LAB Guiding Principles of Professional Responsibility for Crime Laboratories and Forensic Scientists*) in each laboratory's quality management document is also very likely in the near future.

The International Association for Identification (IAI) issued a response to the NAS report on 18 March 2009. This organization represents several thousand analysts in fifteen different forensic disciplines. It demonstrates that many forensic techniques are not new methods developed for the convenience of law enforcement, but in fact date back over 100 years in some instances and are based on solid principles of science. The IAI is generally supportive of efforts to improve funding for the further study of various forensics methods and supportive of a national guiding or advisory body to help enhance and promote the science. The IAI currently has in place a Code of Professional Conduct and Code of Ethics for its members and persons certified by the IAI in one of the forensic disciplines. The IAI also has an enforcement mechanism which provides due process and penalties, if appropriate, and would therefore support any measure to establish a national code of ethics for forensic practitioners.

The American Board of Forensic Toxicology (ABFT) issued a press release on 23 Feb 2009 addressing concerns raised in the NAS report. The ABFT has already developed and implemented the standards identified in the NAS report in the field of forensic toxicology. The ABFT administers an individual certification program with over 300 certified members. Regarding accreditation, the ABFT has been accrediting forensic toxicology labs since 1996. The main obstacle to advancement of the forensic toxicology field has been a lack of funding. The future research and validation of toxicological methods and education, training and certification of toxicologists requires a commitment of new resources.

The Society of Forensic Toxicologists (SOFT) likewise issued a response to the NAS report dated 23 Feb 2009. SOFT supports many of the NAS report's recommendations. It sponsors toxicological research via competitive awards to graduate and postgraduate students. It also provides continuing education to toxicologists through workshops and presentations. SOFT assisted in drafting the original toxicology laboratory guidelines, which are the bases for the current American Board of Forensic Toxicology (ABFT) accreditation program. Additionally, it supports the establishment of uniform requirements for certification of individual toxicologists.

At the state level, the California Association of Toxicologists (CAT) does provide enforcement of professional ethics and standards. Members must be professionally competent and have good moral character and integrity. If it is reported to the CAT that one of its members is acting unethically, it can, upon review, terminate that person's membership. The CAT did not write a response to the NAS report.

It is obvious that forensic science organizations are well aware of the concerns raised in the NAS report. They are generally supportive of the recommendations and are eager to collaborate with a new guiding advisory body to implement meaningful changes. However, the results will depend largely on the availability of new funding to develop

and implement changes in management and analytical techniques. It is in the best interest of both sides of our adversarial justice system to help forensic science acquire the much needed funding to make improvements and move forward.

## **6. CAC and CACLD’s Response to Suggested Functions of a Statewide Forensic Science Oversight Body as Described in the Crime Laboratory Review Task Force Report**

The California Crime Laboratory Review Task Force (Task Force) was established in 2007 as a result of the passage of AB1079. The functions of the Task Force as outlined in AB1079 were to review and make recommendations in four key areas: organization and management of crime laboratory services, staff and training, funding, and performance standards and equipment.<sup>10</sup> Representatives of the California Association of Criminalists (CAC), the California Association of Crime Laboratory Directors (CACLD) and various stakeholders in forensic science were selected for the Task Force. After nearly two years of gathering data and meeting, they issued a thorough report of their findings and recommendations in November 2009 entitled “An Examination of Forensic Science in California” (Task Force report).<sup>11</sup> This report detailed the Task Force’s examination of these four areas, but also covered a fifth area, neither requested by the legislature nor expressed in the Mission Statement of the Task Force: statewide forensic science oversight.<sup>12</sup>

Concurrent with the meeting of the Task Force, the National Academy of Sciences (NAS) established a committee to conduct their own review of forensic science in response to the Science, State, Justice, Commerce and Related Agencies Appropriations Act of 2006. The NAS published their report “Strengthening Forensic Science in the United States: A Path Forward” in February 2009.<sup>13</sup> In the report, they recommended that “Congress should establish and appropriate funds for an independent federal entity, the National Institute of Forensic Science (NIFS)” to oversee forensic science on a national level. The report made additional recommendations in the areas of standardizing terminology and reporting; increasing the amount and quality of research; establishing best practices and standards; establishing routine quality control, assurance and improvement, including mandating laboratory accreditation and analyst certification; establishing a national code of ethics; improving education and training; improving the quality of the medico-legal death investigation system; improving interoperability of AFIS databases; and preparing forensic scientists and crime scene investigators for their roles in managing and analyzing evidence from events that affect homeland security.

In response to the NAS report, the Senate Judiciary Committee issued a Preliminary Outline of Draft Forensic Reform Legislation (Draft Legislation) for comment by the forensic community, dated 5 May 2010.<sup>14</sup> This legislation would create a national Forensic Science Commission (FSC) to enact recommendations of the NAS report in five main areas: Accreditation, Certification, Research, Standards/Best Practices, and Oversight and Coordination.

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<sup>10</sup> See Penal Code Section 11062(c)

<sup>11</sup> See [http://ag.ca.gov/publications/crime\\_labs\\_report.pdf](http://ag.ca.gov/publications/crime_labs_report.pdf)

<sup>12</sup> See [http://ag.ca.gov/meetings/tf/pdf/Vision\\_Mission\\_Statement.pdf](http://ag.ca.gov/meetings/tf/pdf/Vision_Mission_Statement.pdf)

<sup>13</sup> The National Academies Press, [www.nap.edu](http://www.nap.edu)

<sup>14</sup> A copy of the Draft Legislation is available on the CAC website at [http://www.cacnews.org/policies/Draft\\_Outline\\_of\\_Forensic\\_Reform\\_Legislation\\_5-5-2010.pdf](http://www.cacnews.org/policies/Draft_Outline_of_Forensic_Reform_Legislation_5-5-2010.pdf)

The Draft Legislation outline specifies that members of the FSC would be appointed by the President, but President Obama already has acted in absence of a legislative mandate. On 7 June 2009, the White House established the Subcommittee on Forensic Science (SoFS) within the Office of Science and Technology Policy, National Science and Technology Council, Committee on Science “to assess the practical challenges of implementing recommendations in the 2009 [NAS] report...and to advise the White House on how best to achieve the goals outlined in that report.”<sup>15</sup> The SoFS has Interagency Working Groups (IWGs) that focus on five areas: Education, Ethics, and Terminology; Accreditation and Certification; Outreach and Communications; Research, Development, Testing, and Evaluation; and Standards, Practices, and Protocols. Several CAC and CACLD members have received appointments to these IWGs.

Although the SoFS has recently selected members for the IWGs and the Senate Judiciary Committee has released their Draft Legislation outline, little movement at the federal level had begun when the Task Force members chose in late 2009 to meet for up to an additional year to “review and evaluate the various oversight models used by other states, as well as solicit further input from lab directors, controlling agencies, stakeholders and relevant professional organizations” and recommended that “California should establish a statewide body to consider issues related to forensic science.”<sup>16</sup> Both the Draft Legislation and the documents available from the SoFS imply that some sort of federal oversight of forensic science is likely in the near future. Largely in response to the prospect of federal oversight and concerns that any state oversight body would not be sufficiently funded, the CAC and the CACLD each submitted position statements recommending that further work by the Task Force toward statewide forensic science oversight be suspended.<sup>17</sup> On 3 June 2010, the Task Force voted to discontinue their work until 2011 in order to assess progress made at the federal level and determine how that progress would affect a potential statewide forensic oversight commission.

Chapter six of the Task Force’s report, “Statewide Forensic Science Oversight” listed a number of possible functions that a statewide oversight body could have. Additional suggestions of the role of an oversight body were made during discussions of the Task Force. Although only a few of these areas shared wide support from the Task Force, the CAC and CACLD believe that it is worthwhile to address each of the proposed functions of a statewide forensic oversight body and indicate why we believe that all of these fit into one of three categories:

- Areas that will be addressed by the pending federal Draft Legislation and/or the SoFS and its IWGs.
- Areas that cannot be or would not effectively be achieved by a statewide oversight body.

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<sup>15</sup> See [www.forensicscience.gov](http://www.forensicscience.gov)

<sup>16</sup> Task Force report at page 91

<sup>17</sup> The CAC position paper can be found on the CAC website at <http://www.cacnews.org/policies/CAC%20Position%20Statement%20on%20Oversight.pdf>

- Areas that are already addressed or can be addressed by accreditation and certification programs, the CAC, the CACLD, and/or other existing groups in the absence of a statewide oversight body.

### **6.1. Improving the Allocation of Forensic Science Resources and Reducing Inefficiency<sup>18</sup>**

The Task Force devoted the largest section of their chapter on statewide forensic science oversight to the topic of allocation of resources and reducing inefficiency. It noted that crime laboratory funding is limited, uneven, unpredictable, and unstable. Many California laboratories face furloughs, lost or frozen positions, obsolete instrumentation, and deferred facility maintenance. Several crime laboratories are in the same outdated facilities as when the Hertzberg-Polanco Crime Laboratories Construction Bond Act of 1999 failed at the ballot box a decade ago.<sup>19</sup> The CAC and the CACLD welcome ideas for additional funding of crime laboratories and would like to ensure that their funding sources are predictable and stable; however, a statewide oversight body would not be able to create more predictable or stable funding of crime laboratories, nor would it effectively ensure that each laboratory gets the appropriate funding it needs.

The Task Force report indicated that a state-level advisory body could conduct or commission studies to determine the appropriate staffing and support levels for laboratories with a particular population and crime rate. A model for such studies already exists. The CAC annually publishes a survey of salaries and benefits of criminalists and related crime laboratory staff each year.<sup>20</sup> These salary surveys have been used to advocate for greater parity in pay by laboratory staff who receive lower compensation than those of surrounding laboratories. Although studies on appropriate staffing and support levels for laboratories would be beneficial in that they would create benchmarks for funding of crime laboratories to be used by their parent government agencies, these studies would not by themselves increase the limited funds to laboratories, and these studies could easily be commissioned by the legislature and conducted in the absence of a statewide oversight body.

The Task Force report continued by stating that the advisory body could “educate the Legislature about the benefits of forensic science and [offer] guidance on funding priorities.” The presence of an advisory body to educate the Legislature would not have any real effect on the budgets of a majority of crime laboratories in California. Most funding for laboratories comes from their parent agency and from the federal government. A number of sources of state funding, such as the DNA Cold Hit Project, have expired or have been reduced. Many laboratories receive funds from the state as a result of Proposition 69, and disbursement of these funds is in accordance with formulae that are statutorily defined.<sup>21</sup> Because amendments to this statute by the legislature must further the measure and be consistent with its purposes, it is unlikely that reallocation of

<sup>18</sup> Task Force report at pages 86-87

<sup>19</sup> See <http://primary2000.sos.ca.gov/VoterGuide/pdf/15.pdf>

<sup>20</sup> CAC salary surveys for the past decade can be found at <http://www.cacnews.org/survey/survey.shtml>

<sup>21</sup> See [http://www.ag.ca.gov/bfs/pdf/sec\\_state\\_full\\_version\\_prop69.pdf](http://www.ag.ca.gov/bfs/pdf/sec_state_full_version_prop69.pdf), esp. sections IV and V

these funds would be possible at the suggestion of an oversight body without the passage of a new initiative. Although the state has influence over the general funds of local governments, it is unlikely that the legislature would be willing to withhold taxes or other funds to local governments in exchange for increasing or reallocating greater money to crime laboratories. If they were to do so, it is likely that this action would result in numerous lawsuits from local governments. This limits the control that the state has over local crime laboratory budgets and the uneven funding of crime laboratories. It is unlikely that local government agencies would be willing to provide more equitable funding of crime laboratories by voluntarily giving up a portion of their funds to another agency that the advisory body feels is more deserving.

The federal government is able to encourage change because they have the ultimate form of encouragement: money in the form of federal grants and contracts. Two of the main National Institute of Justice (NIJ) grants available to California crime laboratories are through the Paul Coverdell Forensic Science Improvement Program (Coverdell Grants) and the Forensic DNA Backlog Reduction Program (DNA Grants). The California Emergency Management Agency (Cal-EMA) disburses money from the Coverdell Grants to each laboratory in proportion with the number of proficiency tested laboratory analysts. The CACLD decides the formula for disbursement of the DNA Grants using specified factors such as crime rates and population. A state grant, the DNA Cold Hit Project, was administered by the Office of Criminal Justice Planning.<sup>22</sup> Administration and disbursement of state and federal grant money has occurred over the years in the absence of an oversight body and will continue in a manner that has been equitable.

The Task Force report suggested that a statewide oversight body could make recommendations on ways to reduce inefficiency by streamlining funding needs. These may include prioritization of certain laboratory functions or prioritization of funding for the construction of new laboratories. Because the oversight body will not have power to do more than make recommendations, the body will be ineffective in creating real change in this area.

## **6.2. Standardizing Terminology and Improving Communication of Findings<sup>23</sup>**

The Task Force report recommended “moving toward standardization of terminology and reporting of results.” These are common goals of both the CAC and the CACLD. The efforts of the various Scientific Working Groups (SWGs) in forensic science have generated standardization of terminology and reporting guidelines for many forensic science subdivisions. A number of documents exist that include defined lists of terminology and standards for reporting of crime laboratory results, such as those of the FBI Quality Assurance Standards for DNA Analysis, ASTM Committee E30 on Forensic

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<sup>22</sup>The Office of Criminal Justice Planning was abolished in 2003 and incorporated into the Office of Emergency Services (OES). This later became Cal-EMA. A report on the DNA Cold Hit Project can be found on the Cal-EMA website:  
[http://www.oes.ca.gov/WebPage/oeswebsite.nsf/PDF/Process%20Evaluation%20of%20the%20California%20DNA%20Cold%20Hit%20Program%20/\\$file/DNAfinrt.pdf](http://www.oes.ca.gov/WebPage/oeswebsite.nsf/PDF/Process%20Evaluation%20of%20the%20California%20DNA%20Cold%20Hit%20Program%20/$file/DNAfinrt.pdf)

<sup>23</sup> Task Force report at page 87

Sciences, and the AFTE Training Manual. All public laboratories in California have been accredited by the American Society of Crime Laboratory Directors / Laboratory Accreditation Board (ASCLD/LAB) or by Forensic Quality Services International (FQS-I). Because both ASCLD/LAB and FQS-I have incorporated ISO Standard 17025 as part of their requirements, all public laboratories in California will meet stringent international reporting standards and will be using defined terms approved by ISO for their next reaccreditation, which must occur within the next five years.

The NAS report recommended the creation of a federal agency that would standardize terminology and reporting. The Task Force report indicated that they were unclear whether a federal agency would be created toward this goal. However, the Draft Legislation in the Senate would indeed create such a federal agency, with standards and reporting terminology as two of its key goals. The White House's SoFS has two Interagency Working Groups covering these areas: the IWG for Education, Ethics and Terminology and the IWG for Standards, Practices and Protocols. The creation of a statewide oversight body to independently create standards and terminology would be duplicative and may conflict with existing standards and the upcoming standards that may result from the work of the federal government.

The Task Force expressed concern about inconsistency in laboratories' practices regarding disclosure of information to attorneys and suggested that a statewide advisory body might be useful to establish best practices. The CAC and CACLD will gladly assist the courts by increasing communication and providing our recommendations for best practices. However, these are legal requirements that are not specific to forensic scientists, and we believe that these will be decided by court rulings, not by professional organizations or a statewide forensic science commission.

Task Force members have suggested that a statewide advisory body could study ways to improve communication between laboratories and stakeholders. Poor communication with stakeholders can lead to inefficient and ineffective use of crime laboratory resources. The ISO 17025 standards to be met by crime laboratories have requirements for communication, including assessment of "customer" feedback and monitoring of testimony. Improving communication between forensic scientists and stakeholders is also a goal of the White House's Outreach and Communication IWG.

### **6.3. Evaluating the Education and Training Needs of Forensic Scientists<sup>24</sup>**

The Task Force report recommended establishing priorities for education, training and research and noted that "although California is fortunate to possess substantial educational and training resources, it is clear that the needs of forensic laboratories are not being fully met." California has several public and private universities that offer undergraduate and/or graduate degrees in forensic science. The Task Force report noted that the Forensic Sciences Education Program Accreditation Commission (FEPAC) offers accreditation of forensic programs at universities and colleges. The Task Force recommended all California colleges and universities with forensic science programs

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<sup>24</sup> Task Force report at page 88

seek FEPAC accreditation. Faculty and Staff of most of these programs are members of the CAC and CACLD, and we are committed to ensuring the quality of forensic science education in California by encouraging them to seek and maintain accreditation from FEPAC. The federal IWG for Education, Ethics, and Terminology charter states that it will “identify formal degree programs and continuing education programs for forensic science examiners, prosecutors, defenders and judges” and “identify accreditation organizations for formal science degree programs.” It is likely that the SoFS, in combination with organizations like FEPAC, will be able to effectively evaluate forensic science programs at California universities and set standards for curricula and faculty.

CAC and CACLD members in academia encourage students at these universities to become affiliate members of the CAC. Through their involvement with the CAC, they make contacts that often lead to internships. Internship programs are formalized in many laboratories in California, providing hands-on training to the interns and better preparing them to enter the workforce. This benefits the laboratories by creating a more experienced pool of applicants. The CAC and CACLD offer scholarships to students in forensic science programs at California universities. We will continue to support these university programs and their students.

Another major training resource for forensic scientists in the state is the California Criminalistics Institute (CCI) of the state’s Bureau of Forensic Services. CCI offers training classes to forensic scientists and other stakeholders, but the funding for CCI has been reduced as the state deals with continuing budget shortfalls. Funds are available to some public laboratory employees from the California Commission on Peace Officer Standards and Training (POST) to attend certain classes on their course list. Unfortunately, some public laboratories do not have access to POST funds, and communication between POST and the forensic science community has been poor. As with CCI, POST funding has been cut by the state, and fewer training opportunities through POST exist for forensic scientists. With POST funding cut to law enforcement agencies, some forensic scientists have lost access to funds because their agency prioritizes sworn officers over civilian laboratory employees. The CAC and CACLD believe that the state should fully fund CCI and POST and that POST funding opportunities should be made more available to laboratory staff.

The CAC administers an endowment that typically funds one or more CCI courses every year and also pays for training classes organized by its members. The CAC offers workshops at each semi-annual seminar, providing continuing education and training on new techniques. The CAC will continue to supplement the training offerings provided by the state. The CCI Users Advisory Board, in which the CAC and CACLD each have a role, allows input and feedback on their past, current and future offerings. Similarly, the CAC has committees that poll crime laboratory staff to determine what needs exist for training, to evaluate proposals for training, and to review the course offerings after completion to determine how effectively the needs are being met. As laboratory supervisors, CACLD members regularly evaluate and set priorities for training forensic scientists in California.

Several Task Force members suggested that a statewide advisory body could assess and make recommendations regarding the training of stakeholders. Although state crime laboratory employees receive priority for CCI courses, these are not limited to public laboratory employees. Private laboratory employees and other stakeholders, such as evidence technicians, detectives, and crime scene investigators are students in CCI classes. The CAC and CACLD have several members from private crime labs, some of whom primarily work for the defense. Most CAC meetings have presentations from prosecutors, defense criminalists, defense attorneys, and occasionally judges. While we have an opportunity to learn from them, they also benefit from the scientific papers we present. But more can be done to provide training to stakeholders. One previously expressed idea to improve outreach and education is the plan for CACLD to extend their meetings and allow for greater stakeholder interaction. The CAC and CACLD are committed to improving stakeholder training in the absence of a statewide oversight committee and will make a concerted effort to ensure that the stakeholders are invited to attend and present at our conferences and that members will feel free to attend and present at stakeholder conferences.

It has been proposed that a statewide body could establish a model training program for criminalists in the area of *Brady* and discovery compliance and to adopt best practices in this area. The CAC is in discussion with future seminar planners to express their desire to hold a workshop or panel discussion to address this issue. This topic can also be covered at CACLD conferences or one of the proposed CACLD stakeholder sessions. Both organizations intend to improve their communication with the prosecution and defense communities in an effort to develop better training and education on *Brady* and discovery issues.

#### **6.4. Evaluating Priorities for Research<sup>25</sup>**

Although research is conducted at CCI and state crime laboratories, most local laboratories do not receive significant money from the state for research. As a practical matter, most crime laboratories must commit their limited resources to managing casework backlogs and expected turnaround times, and simply do not have the resources to devote to formal research. The CAC endowment does fund some research projects for forensic scientists and students. The endowment committee evaluates proposals for funding and prioritizes them, taking into account the perceived benefit the research will have on the field, the design of the research, and the cost. The amount of money for research in forensic science provided by the CAC is dwarfed by the funds from the NIJ and, to a lesser extent, the National Science Foundation. Because the federal government is the source of the largest share of funds, they have the power to prioritize research in the forensic sciences. In addition, both the federal Draft Legislation and the SoFS have research funding and prioritization as key components. Much of the research in forensic science is driven by evidence and attempts to develop more rapid, reliable, and reproducible casework analysis. Often research includes development of new methods in response to or in combination with research at commercial laboratories. Because the

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<sup>25</sup> Task Force report at page 85

state has little influence on funding research, a statewide advisory committee will not have much influence in prioritizing research in the forensic sciences.

### **6.5. Establishing and Promoting Best Practices<sup>26</sup>**

Some Task Force members believe that a statewide oversight body could play a crucial role in establishing and promoting best practices. A number of SWGs have established best practices for their respective fields, and best practices are also encouraged through the standards set by the FBI Quality Assurance Standards for DNA Analysis, ASTM Committee E30 on Forensic Sciences, and the AFTE Training Manual. Accreditation by ASCLD/LAB and FQS-I requires adherence to established standards enforced through regular external inspections and required self-evaluation. In fact the Task Force report states, “Best practices for forensic disciplines...are elements of accreditation.”<sup>27</sup> The federal Draft Legislation has an entire section devoted to the creation and promotion of best practices, and this is one of the goals of the IWG for Standards Practices and Protocols. Best practices should be consistent from state to state and a set of federal standards is more desirable than a collection of differing state standards. The promotion of best practices is a main function of the CAC and the CACLD, and we believe that efforts at the federal level, in combination with accreditation, existing standards, and the efforts of the SWGs will continue to establish and to promote best practices without the need for a statewide oversight commission.

### **6.6. Investigating Allegations of Serious Negligence and Misconduct<sup>28</sup>**

The Task Force report suggests that a statewide oversight body could “act as a clearinghouse for complaints and allegations of serious misconduct or negligence” and “could ensure that investigations are...conducted in a manner that satisfies federal grant requirements.” As was previously stated, this clearinghouse function is performed by Cal-EMA and it has met the requirements for the administration of federal grants. In addition, many crime laboratory parent agencies have codes of ethics, standards of professional conduct or formalized disciplinary procedures that allow for investigation of negligence and misconduct. Lastly, the professional associations in forensic science have codes of ethics that also serve this function. More detailed discussion of this issue is described in Section 4 of this report.

### **6.7. Protecting the Independence of Laboratories<sup>29</sup>**

A number of Task Force members expressed their desire that the statewide oversight body provide a forum for laboratory employees to address issues concerning policies and/or procedures of the laboratory or parent agency that affect their ability to perform their job in an ethical and scientific manner, which are not being addressed by the laboratory and to provide a forum for issues that may arise between laboratories and their

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<sup>26</sup> Task Force report at page 85

<sup>27</sup> Task Force report at page 81

<sup>28</sup> Task Force report at page 88

<sup>29</sup> Task Force report at page 85

parent agencies. Crime laboratories should be independent of influence to obtain results beneficial to the law enforcement agencies or the DA's offices that are their parent agencies. The Task Force report notes that "accreditation requirements protect the 'independence' of laboratories."<sup>30</sup> Most agencies have an independent investigative unit, such as Internal Affairs, that can serve as an outlet for complaints of undue influence. The CAC and CACLD support attempts to eliminate pressure and bias in the laboratory. The CAC Code of Ethics states, "The scientific mind is unbiased and refuses to be swayed by evidence or matters outside the specific materials under consideration. It is immune to suggestion, pressures, and coercions inconsistent with the evidence at hand, being interested only in ascertaining facts."<sup>31</sup> The SoFS also will work to protect the independence of laboratories, stating in its charter that one of their main functions is "assuring that forensic laboratories have an appropriate degree of independence from prosecutors and law enforcement agencies."

### **6.8. Accreditation of Laboratories and Certification of Laboratory Analysts<sup>32</sup>**

California leads the way in both laboratory accreditation and the certification of criminalists. All public laboratories and some private laboratories in California are accredited by ASCLD/LAB or FQS-I. Part of this is required by law because access to CODIS requires accreditation and analysts performing DNA analysis must meet rigorous requirements for proficiency testing, education and training in order for the laboratory to be able to enter their DNA profiles into CODIS. The CAC established the first certification program in criminalistics and continues to promote certification by the American Board of Criminalistics. The Forensic Specialties Accreditation Board was created with assistance of NIJ to accredit certification bodies and ensures that the certification of forensic scientists meets national standards. The federal Draft Legislation has sections on accreditation and certification and makes both mandatory for laboratories and their staff to receive federal funds. But the Draft Legislation states "Generally, the FSC will delegate the determining of standards for accreditation to a qualified professional organization." and "Where a Subcommittee determines that one or more qualified professional certifying organizations exist for a particular discipline, the Subcommittees will generally delegate the determining of standards for certification to those organizations."

The IWG for Accreditation and Certification indicates that it will recommend processes to assist laboratories to become accredited and to assist forensic scientists to become certified. Although they mandate or encourage accreditation and certification, neither the Draft Legislation nor the work of the SoFS suggest that substantial changes will be made to existing accreditation or certification standards. The Task Force report stated "Should the federal government adopt or enact new certification or accreditation requirements for crime laboratories, a California advisory body would be in the best position to advise state leaders on how to address such changes." The incorporation of ISO 17025

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<sup>30</sup> Task Force report at page 81

<sup>31</sup> The CAC Code of ethics can be found on their website at:  
<http://www.cacnews.org/membership/handbook.shtml>

<sup>32</sup> Task Force report at page 88

standards to ASCLD/LAB and FQS-I accreditation did not require a state advisory body, nor did the adoption of the FBI Quality Assurance Standards for DNA Analysis. Changes to certification testing and adoption of new disciplines have not required a state advisory body. The CAC and CACLD believe that if changes are made at the federal level affecting accreditation and certification, they will be incorporated into existing accreditation and certification bodies without the need for a state advisory body.

Some have suggested that the state create its own standards for accreditation and certification. The CAC and CACLD do not believe this will be effective, nor do we believe that it will be an improvement on existing standards.

The Task Force report suggested that “in the future, the state should consider making certification mandatory for government experts who testify in court.” Although many criminalists in public and private laboratories in California are currently certified, the CAC and CACLD are concerned that this will create an unnecessary division between analysts from public and private laboratories. The federal Draft Legislation recommends changing the rules of evidence to only allow certified forensic scientists to testify in federal courts. Although the CAC and CACLD support certification of analysts, we do not believe that either would be a reasonable approach. This can create situations where an analyst may have their certification lapse due to a technicality or due to retirement and cannot present their work in court. We prefer providing incentive to analysts to attain and maintain their certification. Some laboratories provide a pay differential to certified employees, and we believe this will encourage a much larger portion of analysts to become certified.

## **6.9. Establish and Provide Enforcement of a California Code of Ethics for Criminalists**

Although not present in the Task Force report, suggestions have been made for the need of a California Code of Ethics for Criminalists. The CAC and CACLD are committed to ensuring that all criminalists in California behave in an ethical manner, and the CAC code of ethics has been a standard for professional conduct in the forensic sciences for over fifty years. The code is thorough, but it also has detailed enforcement procedures.<sup>33</sup> Most other professional organizations have codes of ethics, many of which are modeled upon the CAC code of ethics. Certification bodies also have codes of ethics that must be followed. Providing incentives for certification and participation in professional organizations will bring most, if not all analysts under one or more of these codes of ethics. The federal Draft Legislation and the IWG for Education, Ethics and Terminology recommend the creation of a national code of ethics. The presence of a national code of ethics for criminalists would make the establishment of a state code of ethics unnecessary.

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<sup>33</sup> The CAC Code of Ethics Enforcement Procedure can be found on the CAC website at: <http://www.cacnews.org/membership/handbook.shtml>

## **6.10. Conclusions**

It is likely that many or all of the proposed functions of a statewide forensic oversight commission will be covered by the final product of the Senate or the White House. The SoFS charter states that “Unless renewed by the Committee on Science prior to its expiration, the Subcommittee shall terminate no later than September 31, 2011.” The CAC and CACLD believe that waiting until 2011 will give the Task Force a better idea of the appropriate steps, if any, to take toward statewide forensic science oversight. In the interim, we are committed to improving our communication with stakeholders to ensure that we are aware of and can address issues that affect forensic science in California.

## **7. Future plans to improve outreach and education**

CACLD and the CAC have a long history of successful education of its members and outreach to stakeholders. Both associations are in the process of evaluating and incorporating several new concepts into their semi-annual meetings which will serve to reach out to all forensic science stakeholders and provide educational opportunities.

The first proposal is to host a roundtable discussion with stakeholders at the CACLD meetings. This could consist of an afternoon session before the meeting where various stakeholders in forensic science could present and discuss their views and concerns with laboratory management staff.

The various stakeholders need to be notified of upcoming meetings of the CAC and CACLD with invitations to present forensic science related topics or express concerns about the state of forensic science in California. Examples of attorney associations that should be notified include the CA District Attorneys Association and the CA Public Defenders Association. Criminal investigators should also be invited, including those that are active in investigation of major crimes such as homicides, sexual assaults, and narcotics. Victim advocacy groups need to be invited as well.

Presentations given at the CAC’s semiannual conferences in the past have included talks by many different people who are critics of forensic science, defense advocates, or individuals who just seek to encourage criminalists to think critically and skeptically when analyzing evidence. One well known critic of forensic science, William Thompson, has given two presentations at the CAC meetings (2005 and 2007). Gabe Overfield (The Innocence Project) and forensic scientists working primarily for the defense (including Ed Blake, Keith Inman, Norah Rudin, and Peter Barnett) have also sat on discussion panels or given presentations to the membership. While there is a documented history of the CAC inviting defense advocates to give presentations, perhaps a renewed outreach effort to these various groups is in order.

There is movement within various professional organizations such as ASCLD/LAB to bring the smaller, more specialized laboratories and forensic science entities into the mainstream. Examples of these include the ID and CSI units that operate within a law enforcement agency, medical examiners’ labs, and others. Inviting their representatives

to the CAC and CACLD meetings or holding joint meetings has been suggested by our membership.

Additional legal issues training for analysts could be promoted by the CAC and CACLD. The California Criminalistics Institute (CCI) could perhaps be guided in developing a course that would address the various legal issues faced by forensic practitioners, such as *Brady, Melendez-Diaz* and subsequent decisions, discovery issues, and further development of analysts into forensic science experts. This could be done via a CCI course or by workshops held at the CAC meetings and study groups.

There are indeed many ways that the CAC and CACLD can improve education of their members and outreach to stakeholders. We will make a concerted effort to reach out to the various stakeholder groups and extend the invitation to attend and present at our frequent meetings and conferences. We acknowledge the need to better understand their concerns and devise ways to more effectively address them. Communication between all the various stakeholders in the criminal justice system is the key to a fair, honest, and efficient system.