

June 25, 2010

The undersigned members of the California Crime Laboratory Review Task Force object strongly to the decision to suspend and/or terminate the work of the Task Force and to the process by which that decision was reached. We write to explain our position and to urge the legislature to enact laws creating meaningful oversight of forensic science in California.

There are serious problems in the field of forensic science. Over the past few years, scandals involving shoddy work, error, and employee misconduct have erupted at forensic laboratories throughout the United States, including several in California—the most recent examples being the San Francisco Crime Laboratory and the California Department of Justice Drug Laboratory at Ripon. Last year a National Academy of Sciences (NAS) panel issued a scathing report calling for the overhaul of forensic science in the United States (*Strengthening Forensic Science in the United States: A Path Forward* 2009, hereafter NAS report). The NAS report found that entire disciplines of forensic science rest on deficient scientific foundations, that procedures routinely used for interpretation are lacking in rigor, that analysts routinely take inadequate measures to avoid error and bias and that they testify with unwarranted certainty. The NAS report found that these problems are systemic—rooted in the institutional structure of forensic science—and therefore called for sweeping changes in the way in which forensic science is administered. The NAS report cited growing evidence that forensic science has contributed to wrongful arrests and convictions. There is no question that crime laboratories in California routinely engage in the very practices that the NAS has challenged and that forensic analysts or technicians in California routinely testify in ways that the NAS has condemned.

Recognizing the need for a state-level review of forensic science, the California legislature, in 2007, created the California Crime Laboratory Review Task Force, which was charged to review and make recommendations about how to improve the delivery of state and local crime laboratory services in California (Penal Code Section 11062). Last November the Task Force issued an initial report that called for the creation of a state oversight or advisory body to review forensic science issues. The Task Force thereafter received authorization to continue deliberations up to one year (commencing in February 2010) regarding what type of advisory body would best meet the state's needs. But on June 3, 2010, having neither completed this review nor issued any recommendations, the Task Force, by majority vote, effectively terminated itself a full 8 months early.

The vote to suspend operation of the Task Force came as a complete surprise to many Task Force members, including ourselves. The agenda for the June 3, 2010 Task Force meeting gave no notice that there would be a vote on whether the task force should be suspended or disbanded. Hence the vote may have violated the Bagley-Keene Open Meeting Act of 2004 that is codified in Government Code Sections 11120 et seq. Furthermore, two members of the task force who were present for most of the meeting left shortly before the vote was taken, completely unaware that such a vote was imminent. Five of the six votes to terminate the task

force were cast by managers of California crime laboratories. Four of the six were appointed by crime lab or law enforcement organizations; the remaining two were appointed by the Governor.

In its November report, the California Crime Laboratory Review Task Force identified a number of state level problems in the delivery of forensic services in California (California Crime Laboratory Review Task Force: *An Examination of Forensic Science in California*, November 2009, hereafter Task Force Report). The report identified instances in which taxpayer funds are arguably being wasted and are not effectively and efficiently serving the needs of Californians. For example, the Task Force noted that the City of Glendale and the Los Angeles County Coroner have both committed substantial sums of money to create their own separate DNA testing laboratories when DNA testing could be performed more cheaply and effectively by existing crime laboratories in the county. According to the report, funding levels are uneven and funds are not always allocated in a way that makes efficient use of taxpayer funds for solving crime. In its report, the task force noted the advantage of a statewide advisory body that “could take a systemic view to determine what forensic science services are most needed and what mechanisms for delivering those services will be most cost-effective.” (See Chapter 6 of the Task Force Report) We believe the modest cost to taxpayers of establishing a state-level oversight body would be more than offset by the ability of such a body to identify wasteful practices and promote more cost-effective forensic operations.

According to the Task Force Report, a state-wide advisory or oversight body could also “act as a clearinghouse for complaints and allegations concerning serious misconduct or negligence in the California laboratories.” At present such allegations are investigated at a local level by parent agencies with clear conflicts of interest. Problems that arose in the Santa Clara District Attorney Crime Laboratory were investigated by the Santa Clara District Attorney. Current problems in the San Francisco Police Department Crime Laboratory are being investigated by the San Francisco Police Department. Under the current system there are powerful incentives to minimize and whitewash problems. And because each problem is addressed in isolation by local authorities, and the results of investigations are often confidential, it is difficult to assess the pervasiveness of problems and to identify systemic and institutional factors that may need correction. Consequently, it is rare that these investigations lead to improvements in crime labs other than the lab that in which the misconduct or negligence occurred. Other states, including New York, Virginia, and Texas, have created state-wide oversight bodies to review such problems. We urge the California legislature to consider doing likewise.

It is unfortunate that the membership of the Task Force was dominated by laboratory managers and representatives of organizations that operate crime laboratories. It is not surprising that these crime laboratory managers would oppose independent oversight of labs. Even so, as evidenced by the report issued in November, these individuals recognized a need for some type of state-wide effort to address problems in forensic science in California. According to the November report, the task force “unanimously determined to continue deliberation for up to one

additional year specifically on this issue.” The real problem arose after the issuance of the November report, when the forensic scientists on the task force presented the report to their constituent organizations. At that point, their constituents—the very people who might be subject to oversight—rebelled and issued strong position statements opposing the continuing efforts of the task force.

The forensic organizations (the California Association of Crime Laboratory Directors and California Association of Criminalists) argued that existing methods of industry self-regulation through organizations like the American Society of Crime Laboratory Directors Laboratory Accreditation Board (ASCLD-LAB) and professional organizations like the California Association of Crime Laboratory Directors (CACLD) are adequate. They also argued that efforts currently under way to create some type of federal oversight of forensic science will preclude the need for state level oversight. Both arguments had been presented and discussed during Task Force deliberations that led to the November report and were found to be unpersuasive.

The Task Force Report found that existing accreditation programs, although desirable, do not adequately address the problems that create a need for state-level oversight, such as the misallocation of resources. Moreover, the accreditation programs apply only to accredited laboratories. The Task Force Report found that many forensic science services in California are provided outside of laboratories and therefore are virtually unregulated. Although the professional organizations have been in existence for some time, they have not dealt in any meaningful way with the issues that give rise to the need for state-level oversight, nor are they well-positioned to do so in the future.

With regard to federal initiatives, while we agree they are greatly needed and hope they will begin to address the serious concerns raised in the NAS report, the proposed federal legislation is not intended to address the issues outlined in the Task Force Report. None of the proposed federal legislation is designed to address state specific issues such as the proper allocation of resources within the State of California, or the investigation and tracking of negligence or misconduct by California criminalists and crime labs. Moreover, if and when federal legislation is enacted, California will still need to address these issues and will also need to determine how best to meet any new federal standards.

Another argument is that state level oversight is unnecessary because forensic science findings are reviewed in the courts. Unfortunately judicial review has rarely uncovered forensic science problems. Serious problems regarding questionable procedures and the misleading presentation of results have in some instances persisted for years without being detected or exposed by prosecutors or defense attorneys (See e.g. *Duncan v. Ornoski* (2008) 528 F.3d 1222). Crime laboratories have been protected from adequate scrutiny by the courts, which have too often failed to enforce crime labs’ legal obligations to disclose information. Moreover, only a small percentage of cases are tried in court while the vast majority of cases are resolved without any scrutiny of the underlying forensic science evidence. As the NAS report stated, “judicial

review, by itself, will not cure the infirmities of the forensic science community.” (NAS Report, p. 110). The NAS report correctly explains: “the undeniable reality is that the community of forensic science professionals has not done nearly as much as it reasonably could have done to establish either the validity of its approach or the accuracy of its practitioners’ conclusions, and the courts have been utterly ineffective in addressing this problem” (p. 108-09).

Forensic scientists should not be left to regulate themselves. The problems identified in the November 2009 Task Force Report and the 2009 NAS Report are not strictly issues of science but of how science is conducted and used in the justice system. These problems need to be addressed at the state level by a body of experts that includes scientists, lawyers, police officials and forensic science administrators. We urge the legislature to give careful consideration to the need for oversight of public crime labs in the state of California.

Sincerely,

William Thompson (Representative Office of the Speaker of the Assembly)

Jennifer Friedman (Representative California Public Defender’s Association)

David Lynch (Representative of President pro Tempore of the Senate)

Michael Burt (Representative California Attorneys for Criminal Justice)