

CALIFORNIA COMMISSION ON THE FAIR ADMINISTRATION OF JUSTICE
HEARING ON FORENSIC SCIENCE ISSUES

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I am the Director of the Rape Treatment Center at Santa Monica-UCLA Medical Center, one of the most comprehensive rape treatment programs in the country. We see 2-3 new victims a day, ranging in age from 4 months old to 95.

I bring a different perspective on forensic issues and the Fair Administration of Justice.

We now have a fair and accurate tool that can help us solve many sexual assault cases, and prevent many future sexual assault crimes – namely, DNA forensic technology.

However, in California, we are not using this technology to its fullest potential, with sometimes tragic consequences:

Lori is 43-years-old. She is a legal secretary in a large law firm. She lives with her 15-year-old son. She was awakened at midnight by a stranger. He yanked her to her knees in bed, raped her from behind, sodomized her, and forced her to orally copulate him – repeatedly. Thankfully, her child remained asleep. When it was over, Lori was brought to the Rape Treatment Center. Like all rape victims, her body was one of the crime scenes. We collected evidence.

The detective was told by the crime lab that it would take 8 months to analyze Lori's rape kit. The detective "knew" from the "MO" in this crime that Lori's rapist was a repeat offender. 8 months was too long to wait. He personally drove the kit to the state lab – where the kit still sat for months. When it was processed, they got a "cold hit." Lori's rapist was identified. He was in the offender database.

During the months Lori's kit sat on a shelf, unopened – the same rapist attacked at least two other victims – one was a child.

Literally, every day, there are citizens in our state – like the two additional victims of Lori's rapist - who are being sexually assaulted - and otherwise victimized – when they don't have to be.

This is happening because our state and local laboratories lack the resources they need to utilize the forensic science of DNA effectively.

As a result, we - the public - remain at risk for harm by recidivist offenders who could otherwise be identified and apprehended before they commit more crimes.

My comments today respond primarily to Question # 6 on your agenda – and address the adequacy of our forensic delivery system at both the state and local levels.

First: The State Crime Lab

I know that a part of today – as it should be - is devoted to an examination of the critical staffing shortages that our state DOJ lab is grappling with – they do not have enough DNA criminalists to process and upload into the offender database the huge backlog of offender samples that has been widely publicized.

The primary reason for their acute staffing shortage is that the state salaries for these professionals are much lower than the salaries paid by other labs throughout the state for the very same positions - despite public pressure to remedy this.

State/DOJ: \$3,100/month (starting salary)
LAPD: \$4,600/month (starting salary)

Temporary stopgap remedies have been implemented – such as incentives to work overtime and excessive overtime hours – and this is helping to diminish the backlog – but it does not - and will not – ever solve the fundamental problem.

State salaries for these professionals should be increased – immediately.

This is a true public safety emergency that should be addressed at the highest level of our state government.

But, it would be shortsighted today to only look at the severe capacity problem we have at the state level - the lack of adequate DNA resources is just as severe in many local communities, and the consequences just as dire – as the case I cited demonstrates.

Local Crime Labs

The state has responsibility for processing offender samples.

Our local crime labs throughout the state - are responsible for processing evidence collected from the bodies of victims and from other crime scenes.

Like our state lab, many of these labs are also understaffed and under-resourced, overloaded and overwhelmed.

As a result, evidence collected from many crime scenes - and victims - sits in crime lab freezers – unopened - and crimes that could be solved or prevented are not.

Let's just look at the implications of this for the crime of rape - the victims I see on a daily basis.

Because local crime labs are not given the resources they need - many rape kits are never opened:

- Oakland reports that it processes less than half of the rape kits collected in that city.
- In Los Angeles, one of our crime labs has a backlog of 5,000 unopened rape kits.

And, it's worse than just unopened rape kits.

The rape kit evidence that is analyzed is subject to lengthy delays.

In many rape cases, it takes 6-8 months to get rape kit evidence analyzed, sometimes longer.

These delays are not unusual – they are the norm.

Some of the consequences:

- Detectives do not have critical information in the early stages of their investigations.
- Rapists who could be identified quickly through DNA, and apprehended, instead remain at large where they can harm others.
- Suspects that could be rapidly excluded may remain under suspicion.
- Victims have no closure.
- Some cases ready to go to trial have to be postponed or continued.
- Others have to be dismissed and re-filed because the deadlines for certain proceedings cannot be met.

This happened in one of our cases involving 2 child victims. DNA evidence requested in July 2005 had still not been completed in March 2006 –because the lab does not have the resources required to keep up with all of their cases – even those scheduled for court.

Delays in processing evidence can also result in other serious injustices - suspects wrongly accused may remain incarcerated – when the immediate – timely processing of DNA evidence could exclude or clear them –

In a Rancho Cucamonga case, a man accused of raping a 4-year-old girl was in jail for 7 months awaiting trial – facing life in prison if he was convicted. The child’s underpants were collected as evidence. The crime lab did not process the evidence during the seven months he was in jail. When the kit was finally opened, it did not include his DNA. Meanwhile, for these 7 months, no one was looking for the “guilty” person. He remained at large.

The DA noted that a 6-month delay in analyzing rape kit evidence is “normal” in this community.

Another consequence of failure to open rape kits, and long delays in processing them, is that we are failing to fulfill our legal obligations to sexual assault victims.

Penal Code Section 680 contains the Sexual Assault Victims’ DNA Bill of Rights.

It states that law enforcement agencies have an obligation to victims to conduct timely DNA testing of rape kit and other crime scene evidence.

The law also states: “If the law enforcement agency elects not to analyze DNA evidence within the time limits established by law (in Section 803 of the Penal Code), when the identity of the perpetrator is an issue, the victim must be informed of this fact.” I have never known of a case where a victim was informed that her evidence was not processed, even though there are thousands of unopened kits in crime lab freezers.

Another California law (Section 803g of the Penal Code) provides that if sexual assault evidence is processed within 2 years of the crime - and a DNA profile is obtained - there will be no statute of limitations on the prosecution of that case. This means that all of the rape victims in California whose evidence remains unprocessed, stored in a freezer -- may be denied access to the justice system if their rapists’ are identified in the future when the existing statute of limitations expires.

As you can see, the failure to give our labs the resources they need to complete timely analysis of rape kit evidence impedes justice in multiple ways.

Fast Track Forensics Program

To find remedies for these deficiencies, and to demonstrate the benefits of immediate DNA results, the Rape Treatment Center and the DOJ lab are collaborating on an innovative, model program called “Fast Track Forensics” – which enables us to send some rape kit evidence to the state lab on a “fast track.” Instead of waiting months for results, we get the answer in days – it is so rare in California to get DNA results from a rape kit in a matter of days, even in a “high priority” case – when it happens in this fast track program, it feels like a miracle –

But, this is one project - in one city - in this huge state.... when it should be the norm.

Clearly, we have a huge problem in California – and the answer to Question # 6 on your agenda is “No” – *The forensic delivery system in California is NOT supported at an adequate level to provide.... timely testing results.*

Most of our crime labs cannot meet current demands for DNA forensic technology.

And, the demands are accelerating at a rapid rate – for many reasons. To cite a few:

- For the state lab, the full implementation of Proposition 69 means more offender samples are going into the database.
- For our local labs, the applications of DNA forensics are increasing (for example, we now know that putting burglars in the DNA database has a significant impact on solving violent felonies like rape, so increasingly citizens and police agencies will want their labs to analyze burglary crime scene evidence, when these labs can't even keep up with rape and homicide evidence.

We must also recognize that crime labs are not the only part of the criminal justice system affected.

As the DOJ lab eliminates its backlog, and the offender database grows, there will be many more cold hits –

Law enforcement agencies will need more investigative resources – and, already, many police departments already lack enough detectives to follow up on the current volume of cold hits - what will happen as they increase?

In an Oakland Case, a registered sex offender was identified through a cold hit as a suspect in the sexual assault of a child. The police department did not follow up on the cold hit until one year later – after he had molested at least one more child.

District Attorneys will also need more resources to prosecute these cases.

Clearly, we need to address the DNA related capacity problems in every part of the criminal justice system - crime labs, law enforcement agencies, and prosecutors' offices.

Other states, as well as other countries, are far ahead of California in using the science of DNA in forensic work to its fullest advantage – in England, the Forensic Science Service can analyze a swab for DNA evidence in 8 hours – imagine the revolutionary impact this would have on police investigations, and the impact it could have on public safety, if we had this capacity in our crime labs.

And, how can we not? Just think about this in terms of the crime of rape...

We have a public safety emergency in California – and, worse, we have NO plan for addressing it.

This state of affairs is bad public policy.

California should be at the forefront of using this advancing forensic technology.

To get there, we need a comprehensive, strategic plan for our entire state – one that addresses both state and local issues.

Your Commission Can Help Pave the Way for Achieving This Goal

Recommend that a State DNA Forensic Technology Commission be established - charged with responsibility for developing a comprehensive plan for California - to ensure that the state has adequate resources, facilities, equipment, trained personnel, and systems to support the effective utilization of DNA forensic technology - in all of its applications - to meet current and future needs of the criminal justice system and to enhance public safety.

I am submitting a list of specific recommendations for this Commission's agenda for your consideration:

The Commission should be charged with the following responsibilities:

- Thoroughly assess and document the state's current DNA forensic technology resources. Identify the nature and scope of current capacity problems, backlogs of unprocessed evidence, and systems issues in the state and local (public) crime labs throughout the state that impede the utilization of DNA forensic technology to its fullest potential.
- Review model programs in California as well as in other states and other countries. Identify best practices that enhance collection and timely processing of DNA evidence (offender samples and crime scene evidence, including rape kit evidence) to meet the needs of the criminal justice system.
- Make recommendations for eliminating current backlogs, and preventing future backlogs, of unprocessed evidence in the DOJ DNA lab and in local public crime labs throughout the state, including backlogs of offender samples, crime scene evidence, and rape kit evidence.

- Evaluate the efficiency and effectiveness of the current organization of the state's resources to determine whether existing systems and strategies are the most effective for serving the needs of the state.
- Evaluate the relative costs and benefits of (1) centralization vs. decentralization of forensic DNA lab resources; (2) local vs. regional or state laboratories; (3) specialized facilities (crime laboratories dedicated solely to DNA) vs. multi-use crime labs; (4) utilization of public vs. private vs. a combination of private/public resources to meet identified needs;
- Recommend the best approaches for capacity building in our state – facilities, trained personnel, equipment, systems, etc.;
- Recommend strategies for developing training and educational programs to bring college students into careers in this exciting and growing field and to address our acute shortages of trained personnel to meet the staffing needs of crime labs throughout the state; and
- Recommend legislative and public policy reforms to address these public safety issues.

The costs of devoting more resources to DNA forensic technology may seem great.

But, the cost savings in many other areas will also be enormous - we will be reducing the staggering costs of crime – this is the way to take the most active recidivist criminals - who commit the most serious violent and property crimes – off of our streets.