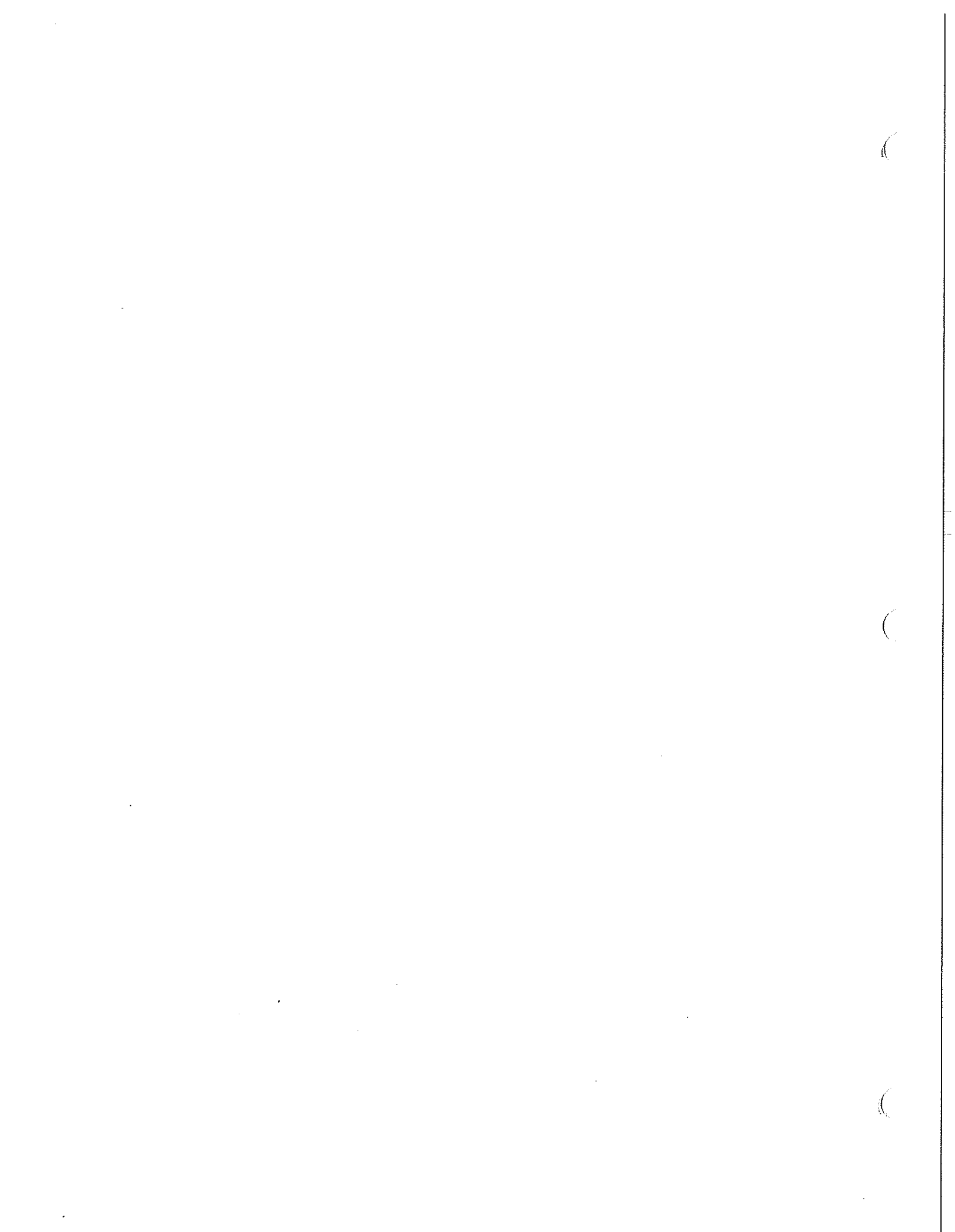


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November 30, 2007

John Van De Kamp, Chair
California Commission on the Fair Administration of Justice
900 Lafayette Street, Suite 608
Santa Clara, California 95050 A

**Re: Comments for the California Commission on the Fair Administration of Justice
Meeting Scheduled for January 10, 2007**

Dear Mr. Van De Kamp:

I would like to make some comments for your consideration at the January 10, 2006 meeting of your committee.

Accreditation Issues:

I highly advise that the State of California does not pursue a separate accreditation standard for the crime labs in this state. Frankly, the crime laboratories in the state do not need that headache. Most all California crime labs have undergone external accreditation and inspections by the American Society of Crime Lab Directors under ASCLD/LAB (<http://www.ascl-d-lab.org/>), a separate national organization dedicated to accreditation. Furthermore, these standards are in the process of being expanded to meet the requirements of the international ISO accreditation standards. These are the most competent organizations capable of responding to the changing needs of the scientific community and the accreditation process. In addition, the DNA sections of the crime labs undergo an additional inspection every year that is controlled at the federal level.

If the committee insists on state wide accreditation, it will only serve to substantially reduce case output and the primary concern of the crime labs will be a plethora of inspections every year such as :

- ASCLD/Lab Inspections
- DNA Inspections
- Agency Administrative Inspections
- State Accredited Inspections

One has only to look at the history of this State in implementing a very narrow area of forensic analysis under the Department of Health Services (DOHS) whereby the State regulated alcohol analysis under Title 17. In 1972 the DOHS set up regulations that were not changed for 30 years, requiring the labs to use archaic methodology and procedures while technology changed. They were unresponsive to the requests of the crime labs and if a regulation could be changed, it required a 2+ year effort. The Title 17 group at DOHS was known for their bureaucratic intransigency and as a direct consequence, the State Senate approved legislation last year that removed DOHS oversight authority.

Certification Comments

As for certification of the criminalist or forensic scientists, we do have a national organization that provides that service. The American Board of Criminalistics (ABC) has been successfully doing this for some time (<http://www.criminalistics.com/>). The most convenient mechanism would be for the crime labs to require such certification of their staff as a condition of promotion to the journeyman level. Alternatively, on a more positive note, require the agency to properly compensate the criminalist/forensic scientist who has achieved such certification. There is no need to develop another state organization, which by the required provisions of the rule making process, makes it difficult to change and update standards.

Access to Crime Labs

I agree that the defendants have a difficult time obtaining access to crime labs. The different crime labs have their own priority depending on their reporting authority i.e. the Chief of Police, District Attorney, or Sheriff.

During my 30+ years with the State Department of Justice (retiring as a crime lab manager), I found that we were much more independent in dealing with the criminal justice system and if a defense attorney had a reasonable request that made sense, I would make sure it was included in my case analysis. However, most single agency focused crime labs are not even allowed to receive analytical requests from other agencies in that county. The agency controlling the lab mandates priority for its own needs. A state-wide lab system is not necessarily the answer because state funding for the CAL DOJ crime labs has been abysmal. One needs only to look at the Sacramento County District Attorney lab and the DOJ lab in Sacramento. Both serve similar population levels and crime rates but the staffing level is dramatically different.

An independent lab system under the purview of the courts or directly under a county could be a solution. As time has gone on, I have come to believe that the labs need to be removed from law enforcement control and have a semblance of independence assuming adequate funding and staffing levels can be maintained. However, I still support separate labs in that they are good for the forensic science system. They facilitate competitiveness and keep the crime labs modern in their analytical techniques. A one-system lab would have the propensity to become archaic in its methodology and become non-responsive to the needs of the criminal justice system.

Defense Access

The defendant in the criminal justice system does not have and does need access to a fully staffed crime lab that allows for defense attorney confidentiality. This capability does not exist in California. There are some private labs that can conduct focused analysis in select areas, but none are as well equipped as a typical crime lab. Having conducted a few cases for the defense, I find that the basic resources are not readily available and the legal controls on drug or firearms related evidence makes it difficult to conduct such independent analysis.

Perhaps one solution would be an independent lab for the defense community, sponsored by the state but operated by a competent a neutral agency that is capable of peer review. In other states, such labs have been operated by the public university system of that state. At a typical UC campus, most of the instrumental resources are available for reasonable costs along with the routine cutting edge technical research. What is lacking are dedicated staff and facilities that could conduct such analysis.

Should you desire my testimony, I would be more than willing to meet with your commission to clarify any issues from my perspective as a past practitioner, laboratory manager and currently a forensic science educator.

Sincerely Yours,

FREDERIC A. TULLENERS, Director
Forensic Science Graduate Program