

*Forensic Science Consultancy*

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California Commission on the Fair Administration of Justice  
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Gentlemen:

The following comments are offered as a personal perspective, NOT the official position of my employer or any of the forensic organizations of which I am a member.

**Proposition 69 Database**

The State if anything, is the victim of success, in receiving Proposition 69 samples. I believe that the number of samples being submitted by local law enforcement agencies, primarily sheriff's booking and detention facilities, for the database is exceeding the expectations of the Department of Justice's Bureau of Forensic Services (DoJ BFS) and that the funding is under performing their expectations. That said, DOJ BFS set the division of funds to change over time to reflect that initially the funding should favor the data basing operation, an overwhelmingly DoJ BFS operation, and later shift toward casework laboratories. As I am sure you are aware, casework laboratories, especially in Southern California are overwhelmingly county operations that receive NO direct state funding. This, I might add, is very much unlike most states. If additional funding sources are found to underpin the state's data basing efforts, it should NOT be at the expense of the casework laboratories, be they state, county or city.

The state has chosen to locate its databasing laboratory in an area of relatively expensive cost of living; housing costs undoubtedly contribute to the turnover in personnel, aggravated by DoJ BFS' outdated pay scale. The FBI requirement that only public laboratories add to the database is reasonable.

**Innocence Project**

My personal experience with requests for tracking old evidence has been very disappointing. The requesters often do so by telephone even though the case on which they are making requests are years and sometimes decades old. Rarely am I able to make any response, even vaguely complete at the time of the call. Furthermore many of the callers are law students who are unable even to say that they represent a defendant. It is inappropriate to release information about evidence on a case to what is in effect a third party caller. Often the callers have a court or District Attorney's case file number and those numbers are meaningless in our local tracking system. Often the cases are so old that we must consult the lab's archives and for many laboratories, the evidence has been returned to submitting law enforcement agencies when such records are eventually run to ground. There is, in short, little uniformity to the requests and this makes all the more difficult tracking these superannuated records.

**Accreditation of Forensic Science Laboratories / Certification of Criminalists**

Accreditation is but one of two edges of the sword; good labs need well-trained, certified personnel as well as adequate facilities and funding.

The American Society of Crime Laboratory Directors Laboratory Accreditation Board (ASCLD/LAB) is already the de facto accrediting body for crime laboratories nationally<sup>1</sup> and

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<sup>1</sup> There are 36 ASCLD/LAB accredited laboratories in California, including three Federal laboratories, the DoJ BFS system, county/city laboratories administered by law enforcement and prosecutorial agencies, as well as private laboratories.

acknowledged in California law<sup>2</sup>. I have participated in inspections of laboratories in New York State for the purpose of the state's accreditation and the inspection was no different than an inspection for ASCLD/LAB accreditation. There is simply no need to reinvent an accreditation system for crime laboratories where one already exists. Laboratories performing blood/breath alcohol analyses were for years regulated by the California Department of Health Services whose byzantine operations were so burdensome and so stood in the way of technological progress that their role was severely curtailed by SB 1623 of the 2003-2004 legislative session. Medical examiners' offices are not so well regulated as crime laboratories, although some are ASCLD/LAB accredited<sup>3</sup>. Michael Grubb of the San Diego Police Department Criminalistics Laboratory currently serves on the ASCLD/LAB Board of Directors<sup>4</sup> and P. Michael Kellett, William Smith, and Rod Andrus, Californians all, serve as ASCLD/LAB staff inspectors<sup>5</sup>.

The California Association of Criminalists<sup>6</sup> (CAC) established, validated, and wholly funded a voluntary certification program for criminalists in the 1980s<sup>7</sup>. The CAC contacted the State Department of Consumer Affairs (DCA), through which licensure is available in California for everything from medical professionals to embalmers to security guards to geophysicists, and was told DCA was not interested as there were an insufficient number of criminalists for a program to be financially viable. The CAC's program was later expanded nationally and responsibility transferred to the American Board of Criminalistics (ABC), where it remains to this day<sup>8</sup>. In short there already is certification available to California criminalists, a program that was developed here and in which the State took NO interest and provided NO support. Stephen Schliebe<sup>9</sup> and Slavco Arsovski<sup>10</sup> represent CAC on the ABC Board of Directors and David Stockwell<sup>11</sup> represents CAC on the ABC Examination Committee.

POST considered setting minimum standards for forensic scientists in 1990, but the issue was not pursued.<sup>12</sup>

#### **Legal Practitioners adequately trained.**

Personal experience tells me that lawyers, regardless of the role within the system, prosecution, defense, or bench, are NOT adequately trained in the use (and mis-use) of forensic sciences, generally. The California District Attorney's Association (CDAA) has, to my knowledge, made available to its members training specifically in the use of DNA evidence. For DNA, written

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<sup>2</sup> 297 PC

<sup>3</sup> Los Angeles County Office of the Chief Medical Examiner is ASCLD/LAB accredited.

<sup>4</sup> Michael Grubb, San Diego Police Department, 1401 Broadway MS 725, San Diego, Ca 92101; (619) 531-2950.

<sup>5</sup> [www.ascl-d-lab.org/dual/aslabdualstaff.html](http://www.ascl-d-lab.org/dual/aslabdualstaff.html)

<sup>6</sup> Jon Simms, President, San Diego Police Department, 1401 Broadway MS 725, San Diego, CA 92101; (619) 531-2950.

<sup>7</sup> For a history and timeline of criminalistics certification, see [www.criminalistics.com/history.cfm](http://www.criminalistics.com/history.cfm) and [www.criminalistics.com/timeline.cfm](http://www.criminalistics.com/timeline.cfm), respectively.

<sup>8</sup> CAC is a member organization of ABC, as are forensic science organizations representing the Northeast, Mid-Atlantic, Midwestern, and Southern regions, the American Academy of Forensic Sciences (AAFS), ASTM Committee E-30 on the Forensic Sciences, and ASCLD/LAB

<sup>9</sup> Stephen Schliebe, Los Angeles Co. Sheriff's Department Criminalistics Laboratory, 2020 W. Beverly Blvd., Los Angeles, CA, (213) 989-2166.

<sup>10</sup> Slavco Arsovski, Orange Co. Sheriff-Coroner's Department, Forensic Science Services, 320 N. Flower Street, Santa Ana, CA 92703; (714) 834-4520.

<sup>11</sup> David Stockwell, Contra Costa County Sheriff's Department Laboratory, 1122 Escobar Street, Martinez, CA; (925) 646-2913

<sup>12</sup> . In some counties, criminalists are (Contra Costa Co.) or were (San Bernardino Co. et al.) peace officers. POST considered minimum training standards for forensic scientists and in December 1990 recommended they be undertaken in cooperation with CACLD, CAC and the international Association of Identification (IAI). The recommendation was not pursued.

materials and interactive training are available for free<sup>13</sup> and training sessions are available<sup>14, 15</sup>. The San Bernardino County Sheriff's laboratory, for example, currently provides training specifically for Deputy District Attorneys and has done so for both Public Defenders and Deputy District Attorneys in the past. Based upon the questions asked of me as a working forensic scientist by members of the bar, training does not appear to have been widely utilized<sup>16</sup> even when available.

#### **Criminal defendants given sufficient access**

This question presupposes that forensic science laboratories are inherently part of one side or the other of the criminal justice system, which, while perhaps true administratively, makes some serious assumptions. Criminalists who are members of the CAC, as most are, regardless of their employer, are bound by the Code of Ethics of the CAC, which states in part, "It is the duty of any person practicing the profession of criminalistics to serve the interests of justice to the best of his ability at all times."<sup>17</sup>

The bulk of California's criminalists do indeed work for a public agency, generally housed administratively within a law enforcement agency (police or sheriff's department) or prosecutorial agency [District Attorney's Office (e.g. Santa Clara or Kern Co.) or Attorney General's Office (e.g. DoJ BFS)], but their role, like that of science generally, is neutral. My latest lengthy conversation about physical evidence was with a defense attorney and the 'consultation' was not about evidence which my employing laboratory analyzed, but general questions. California has a significant number of private forensic science laboratories<sup>18</sup> and private practice criminalists<sup>19</sup> who play an integral role in professional organizations such as CAC and the California Association of Crime Laboratory Directors<sup>20</sup> (CACLD) and make their services, both analytical and as consultants, available to both sides of criminal as well as civil cases.

#### **Forensic delivery system adequately supported.**

The forensic science delivery "system" in California, which is hardly systematic, consists of a patchwork of city, county, state, and private laboratories. The State of California provides forensic science service mainly in rural counties, primarily in northern and central California. Local police and county sheriff's and district attorneys' laboratories provide service mainly in the urban areas, but there is just about every combination of services imaginable (sheriff-coroner's lab provides general criminalistics and toxicology (Orange Co.); sheriff's lab provide general criminalistics and toxicology (Ventura Co.); sheriff's lab provide general criminalistics but no toxicology (San Bernardino Co.); state lab provides general criminalistics (DoJ BFS-Riverside for Riverside and Imperial Counties). City and County laboratories co-exist in San Diego City/County, Los Angeles City/County, Oakland/Alameda County; County and DoJ-BFS laboratories co-exist in Fresno and Sacramento Counties. Some laboratories provide service on a fee basis (Contra Costa County and Santa Clara County), most without fee. In short there is no consistent pattern and no universal funding source. Forensic science laboratories compete within agencies for funds (patrol cars vs. lab, jail vs. lab, district attorneys vs. lab, but if there is one consistent lesson from the Houston (TX) Police Department debacle, the agency which operates

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<sup>13</sup> Principles of Forensic DNA for Officers of the Court; [www.dna.gov/training/otc](http://www.dna.gov/training/otc).

<sup>14</sup> DNA for Non-Scientists; Workshop at AAFS Meeting, San Antonio TX, February 2007.

<sup>15</sup> Principles of Forensic DNA Analysis for Officer of the Court, Workshop at AAFS Meeting, San Antonio TX, February 2007.

<sup>16</sup> As a personal observation, those persons who become attorneys may be pre-disposed away from science; I suspect the number of law school entrants with baccalaureate degrees in the sciences is highly under-represented versus the general population of law school entrants.

<sup>17</sup> Preamble to the Code of Ethics of the California Association of Criminalists.

<sup>18</sup> Forensic Analytical Specialties, Forensic Science Associates, Serological Research Institute, Valley Toxicology Services, for example.

<sup>19</sup> W. Jerry Chisum, John DeHaan, and Duayne Dillon, for example.

<sup>20</sup> Thomas Nasser, President; Orange Co. Sheriff-Coroner's Department, Forensic Science Services, 320 N. Flower Street, Santa Ana, CA 92703; 714 834-4520.

a laboratory and ignores its funding too long exposes itself and the criminal justice system collectively to disaster.

What is needed is a **dependable** funding source. The blood alcohol fine monies<sup>21</sup> collected are insufficient to even cover the cost of laboratories' blood/breath alcohol program and controlled substance fine monies<sup>22</sup> collected are similarly insufficient to cover the cost of laboratories' controlled substance analysis program. Asset seizure statutes (11489 H&S), which are often applied in drug-related cases, make NO provision for ANY of those funds to go to the forensic science laboratory, without whose analysis, drug cases could not go forward.

In some locations, the state constructs a new physical plant for a local laboratory where the local jurisdiction has done little to provide for itself, but other laboratories soldier on (Oakland PD) in cramped buildings known to be unsafe in earthquakes. Some get surplus county facilities (San Diego Sheriff), others state of the art facilities for themselves (San Mateo Sheriff) or co-located (Sacramento County) or shared with the Coroner's Office (Orange County).

Further, as accreditation complicates requirements for those services with low demand (in terms of numbers of cases), what would also be of service are ways to form consortia to provide such service, typically in the general area of trace evidence analysis, among and between laboratories, yet with reasonable turn-around times where equipment and personnel could be shared or services 'traded'. For example, Lab X performs glass analysis for a region, Lab Y provides paint analysis for the region, and Lab Z provides soil analysis for a region.

### **Educational Opportunities**

California had a premier forensic science training and research organization in the University of California-Berkeley, which it squandered; Cal's D.Crim. Program has never been replaced. The California State University-Los Angeles (CSU-LA) MS program<sup>23</sup>, among the oldest in the country, is in the same facility it occupied nearly 25 years ago, although it has the prospect of moving to new quarters shared with LASO and LAPD. Forensic science programs are multiplying, but it is not so much that new ones are needed, but that the ones we already have be adequately coordinated and funded. Forensic science, numerous colleges have discovered, puts "bums' on seats", but are operated by plenty of doctoral degree holders, only a few of whom have any practical experience of work in a forensic science laboratory or testimony as an expert witness.

Accreditation of forensic science education programs has been developed by the Forensic Education Program Accreditation Commission (FEPAC) through the AAFS. None of California's educational programs are currently accredited by FEPAC.

Training classes presented by the California Criminalistics Institute (CCI) are sporadic, very occasionally with peripheral funding from POST<sup>24</sup>; some years CCI classes have been almost entirely subsidized by the CAC. There is not a single institution that allows a working forensic scientist to pursue a doctoral degree, although CSULA's master's program has always been oriented to a working professional. Crime laboratory management classes are sufficiently spotty to encourage the CACLD to consider funding a 'pocket MBA' specifically to deliver such classes.

I hope the above provides you with my perspective and addresses your published questions. California has a large and complex network<sup>25</sup> of forensic science providers, most of whom have

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<sup>21</sup> 1463.14 PC

<sup>22</sup> 1001.15 and 1001.16 PC and 11372.5 H&S

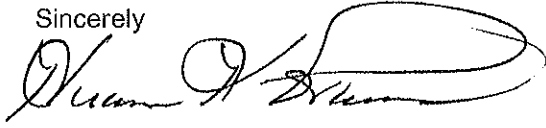
<sup>23</sup> In the interest of full disclosure, I am an alumnus of the CSULA program.

<sup>24</sup> CA Commission on Peace Officer Standards and Training sets standard for peace officers and mandates training for peace officers; there are NO standards for or required continuing education of forensic scientists

<sup>25</sup> "Network" as distinct from "system"

labored in obscurity for years or decades. California CAN do better, not necessarily through a short-term infusion of cash, as happened through LEAA<sup>26</sup> in the 1970s, but through a PLANNED program of development and continuing funding.

Sincerely

A handwritten signature in black ink, appearing to read "Hiram K. Evans". The signature is fluid and cursive, with a large, prominent loop at the end.

Hiram K. Evans, M.Sc., F-ABC

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<sup>26</sup> Law Enforcement Assistance Administration (LEAA) funded crime laboratory facilities and development in the 1970s, including the development of the CA DoJ BFS satellite laboratories.

Attachment

I have been employed at various times during my career as a forensic scientist by the Ventura County Sheriff's Department Laboratory, the San Diego County Sheriff's Department Criminalistics Laboratory, and am currently a Deputy Sheriff/Criminalist III at the San Bernardino County Sheriff's Scientific Investigations Division.

I currently serve on the Board of Directors of the California Association of Crime Laboratory Directors as its Treasurer,

I have served on the Board of Directors of the California Association of Criminalists, of which I am both a past Secretary and Past President,

I currently serve as an inspector and assessor for the American Society of Crime Laboratory Directors Laboratory Accreditation Board, which I currently serve as an inspector and assessor,

I am certified as a Fellow in Drug Identification by the American Board of Criminalistics,

I am a Fellow of the American Academy of Forensic Sciences, whose Criminalistics Section I currently serve as an officer.

The opinions expressed are strictly my own and do not necessarily reflect those of any of the above organizations.