



CALIFORNIA ASSOCIATION OF CRIME LABORATORY DIRECTORS

"Advancing Forensic Science Through Effective Management"

January 10, 2007

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2006 - 2007

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Gerald F. Uelmen
Executive Director
California Commission on the Fair Administration of Justice
900 Lafayette Street
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Santa Clara, CA 95050

Dear Mr. Uelmen:

I would like to thank you for inviting me to participate in the Hearing on Forensic Science Issues in Sacramento on January 10, 2007.

The California Association of Crime Laboratory Directors responses to your seven questions are stated below.

1. What steps must be taken to reduce the current backlog of untested DNA samples taken from convicted felons pursuant to Proposition 69, enacted in 2004? The backlog will grow dramatically in 2009 when all those arrested for felonies will be required to provide DNA samples. There are currently approximately 225,000 untested samples, and the expansion of the program to felony arrests creates a potential for over 500,000 more samples per year being added. The California Department of Justice DNA Laboratory currently has approximately 34 unfilled vacancies for criminalists and outsourcing to private laboratories is limited by the FBI requirement that only public laboratories may enter DNA data into CODIS, the national database.
 - This is really an issue for Cal DOJ to address, however we have some comments and suggestions for your consideration.
 - The timely addition of convicted offender samples to the database has an impact on all casework laboratories in California. If there is a delay in the entry of a convicted offender sample by Cal DOJ, it could mean that a forensic sample from a casework laboratory would not hit on the database which could mean that the offender could commit another crime before the database could be updated.
 - It is well-known that Cal DOJ has difficulty recruiting and retaining analysts at the Jan Bashinski DNA Laboratory. This is at least partly due to the low salary levels paid by the state and the

high cost of living in the Bay Area. It would also help if the entire recruitment process consisting of announcement, interview, background investigation and hiring be streamlined to expedite the process. We also suggest that DOJ consider the creation of an ad hoc committee composed of management, human resources and investigators, to explore ways to improve and speed the hiring of database analysts.

- DOJ might consider thinking outside the box in dealing with the backlog of samples. DOJ could consider pursuing the development of outsourcing laboratories. A full-time management position could be devoted to finding ways to reduce the backlog and/or keeping it from increasing. A new classification of DNA Database Analyst could be created which would require fewer qualifications than those of casework analysts since the job is not as complex as casework. The database laboratory could be relocated to an area where the living expenses are less.
- More radical suggestions would include: establish the DNA database laboratory as a separate forensic entity divorced from the Bureau of Forensic Services. Establish this independent State DNA Database Laboratory in Southern California under the auspices of the Office of Governor rather than the Attorney General.
- I would like to point out that many California laboratories have backlogs in disciplines in addition to DNA and resources such as personnel, instruments and equipment are needed to address these backlogs. DNA backlogs have been in the spotlight for a number of years and funding for this purpose has been emphasized with excellent results. It is now time to acknowledge that all the other disciplines in forensic laboratories need the same attention that DNA has received for the last several years.

2. Although California law provides for post-conviction DNA testing to be ordered by a Court, California Innocence Projects report mixed results in obtaining the cooperation of police and prosecutorial agencies in locating and identifying evidence which might be available for testing. What steps should be taken to encourage greater cooperation in the evaluation of post conviction claims of innocence?

- This is not a crime laboratory issue. The police departments and district attorneys should respond to this question.
- One member responded that law enforcement agencies and crime laboratories are already so overburdened with current casework and cold cases that post convictions tend to take a back seat. The State might consider establishing a task force having a sole responsibility for post conviction investigations. It could be comprised of individuals with a background in law, investigations and forensic science. The task force could be empowered with adequate authority to subpoena records if necessary. It would deal with the Innocence Project and act as an unbiased liaison with the police agencies and crime laboratories. Retirees with pertinent experience could be tapped to serve on the task force.
- Another member replied that legislation could be passed to require the cooperation of police and prosecutors in the evaluation of post conviction issues. An independent post conviction forensic laboratory could be established to solely handle these analyses. Alternatively, funding could be provided to enable defendants the ability to obtain private laboratory analysis of these types of samples.

3. Should statewide standards for the accreditation of forensic laboratories and the certification of criminalists be established? Should a state commission on forensic science be established in California, similar to the New York State Commission on Forensic Science? See: <http://www.criminaljustice.state.ny.us/forensic/aboutofs.htm>

- Statewide standards for the accreditation of forensic laboratories SHOULD NOT be established. The American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) has been operating in this arena very effectively for approximately 25 years on a national and international basis. Quality improvements in crime laboratory work have been remarkable over that period of time. Currently, 97% of the government crime laboratories in the state are accredited (34 out of 35 total). The state's crime laboratories have, by their participation, overwhelmingly endorsed the ASCLD/LAB accreditation program. It is very doubtful that an overlay of state standards will improve on what is already in place. Adding another layer of standards for accreditation of forensic laboratories would amount to nothing more than added bureaucracy with no positive outcome. If the Commission has some suggestions for improving the 142 ASCLD/LAB criteria for accreditation, it is suggested that they might consider submitting a letter with their suggestions directly to ASCLD/LAB.
- Similarly, the American Board of Criminalistics (ABC) has been providing a very successful certification program for criminalists in California and nationally since 1989. Over 160 criminalists in California and nearly 580 nationally and internationally are certified by ABC. Additional state standards will only add more bureaucracy with no additional benefits.
- A state commission on forensic science, similar to what is in place in New York, would also be little more than added bureaucracy. The accreditation requirements under ASCLD/LAB are sufficiently stringent that such a commission is unnecessary. In fact, there is no evidence that New York is better for having a state commission on forensic science than states that do not have one. New York found it necessary to pass legislation requiring crime laboratories be accredited in order insure that they do so rather than rely on nearly 100% voluntary compliance as seen in California. In the event of a significant problem in a laboratory, ASCLD/LAB is willing and able to go in and investigate the problem and ensure that the laboratory initiates remedial action to correct the problem.
- Several members pointed to their disappointing experiences with the State Department of Health Services regulation of breath and blood alcohol analysis as an example of state oversight that failed miserably. The result of this oversight was frustration due to unnecessary procedures that did not have a scientific basis and overemphasis on trivia that meant lengthy delays in obtaining the required approval before being able to institute changes or progress to improvements.

4. Are California judges, prosecutors and defense lawyers adequately trained with regard to the use of forensic evidence in the criminal justice system?

- We do not believe that they are. In recognition of that fact, an interactive training program on CD-ROM was developed by the National Forensic Science Technology Center (NFSTC) under two grants from the National Institute of Justice. This CD-ROM and online training are part of the President's DNA Initiative to ensure that the science of forensic DNA reaches its full potential in solving crimes, protecting the innocent and identifying missing persons. This training only addresses DNA analysis and not the entire realm of forensic evidence. Classes

and other training should be developed and provided to judges, prosecutors and defense lawyers using existing professional and academic experts perhaps through the California District Attorneys Association and other interested organizations. Some training, on a local crime laboratory level, is being provided to prosecutors and defense lawyers by the local crime laboratories throughout the state, but no formal program is in place to address the deficiency.

- A number of laboratories attempt to remedy this situation by offering tours and instruction in forensic science to officers of the court, including judges. However, this is an ad hoc attempt meet specific needs and not a well funded, on-going, global attempt to provide at least a basic level of understanding to the legal practitioners. I have heard prosecutors, defense attorneys and judges remark many times over the years that the reason they chose law was due to a lack of interest or lack of skill in the sciences. This is particularly problematic in the era of Daubert where judges have significant role as gatekeepers.
- There are a number of examples in the state where prosecutors have taken the responsibility for becoming educated and knowledgeable about scientific issues. I don't believe there is a crime laboratory that would not assist prosecutors or judges in this way. There might be some reluctance on the part of crime laboratories to assist the defense bar in the same way because some say they have been burned in the past after having done so.

5. Are California criminal defendants given sufficient access to experts in forensic evidence and testing in crime labs to assure the fairness of their trials?

- A few of our members feel that some of the best private crime laboratories in the country exist in California providing reliable analysis of evidence on behalf of defendants. This issue of sufficient access is more an issue of adequate funds being available to the defendant to be able to hire these private laboratories to assist in their defense.
- A few of our members feel that defendants with limited funds are at a great disadvantage in obtaining the analysis of evidence by private laboratories and that funds should be legislatively mandated to allow defendants sufficient access to defense experts.

6. Is the forensic delivery system in California supported at an adequate level to provide accurate and timely testing results?

- No, the forensic delivery system in California is not adequately funded at a level to provide timely testing results as evidenced by the large backlogs in most crime laboratories. There are too many requests for work, i.e. cases, too few trained criminalists, insufficient physical facilities, too little funds for supplies, instruments and equipment. Federal grants have helped gain some ground and prevented us from falling further behind, but the grants appear to be ending and the state and local governments will need to pick up the slack as the ever increasing demand for services will create huge backlogs in the future.
- Most laboratories are not adequately staffed to provide timely information on investigative level cases which historically has been one of the primary services provided by a crime laboratory. When resources are limited, evidence analysis is limited to cases being prepared for trial and cases that could provide investigative information remain in a backlog. This situation does not serve law enforcement or justice very well.
- Since most of the crime laboratories in California are associated with a parent law enforcement agency, the laboratory is constantly in competition with other functions in their parent agency. If the parent agency is a police department, the competition arises from a

question of more police officers vs more scientists, more patrol cars vs more scientific instruments. The laboratory's funding is also only as good as the parent agency can afford. Some agencies are affluent and the laboratory flourishes, others are not so affluent and the laboratory languishes. What is needed is source of funding that is dependable year after year to take the place of the Federal Grants that have provided money for DNA backlog reduction and DNA capacity enhancement the past several years. This Federal money has allowed crime laboratories to redirect their internal budgets toward funding other disciplines since the DNA programs have benefited from the grants. If a dependable source of funding is not identified after the grants end, many laboratories will find themselves again facing large DNA backlogs in addition to the backlogs they already have in the other disciplines.

7. Are California educational opportunities sufficient to supply future needs for fully trained forensic criminalists in California? Is adequate continuing education available to ensure that forensic science personnel are up-to-date in their fields of expertise?

- One of our members, who is a professor, feels that education is an essential part of the foundation for the development of forensic science as a professional endeavor. It is very important that the powers-that-be appreciate the role of education in honing critical scientific thinking skills, in developing a philosophy of the role of science in the furtherance of justice, and in instilling professional ethics and responsibility. We have to move past the limited view that forensic science is no more than a collection of technologies. California has had good leadership, due in no small part to the educational opportunities available through the UC and CSU systems; these need continued support.
- There do appear to be sufficient educational opportunities at the university level, however there is a definite shortage of training academies that could provide more specific, job oriented training to newly hired scientists. Currently, laboratories are required to pull experienced scientists from casework in order to train and mentor new hires. This causes increased backlogs and increased turn-around times until the new hires become trained and productive.
- Funding for training has been provided by Coverdell Grants the past few years. Once these Federal grants are no longer available, training will be negatively impacted in most laboratories.
- There currently are many continuing education opportunities available that ensure that our personnel are up-to-date in their fields of expertise. The issue again is funding and location of the training. It is very disruptive to send a new employee to Florida for 12 weeks of training and conversely, very expensive to bring the instructor and all the required instruments or equipment to California for the training. Adequate funding could insure that training academies be established on a regional basis for this purpose in California.
- The training classes provided by the California Criminalistics Institute (CCI) have proven to be extremely valuable to employees of our crime laboratories. However, most of the classes are held in Sacramento which requires costly travel for southern California laboratory employees. The state support for CCI has not been steady and classes which are needed by new employees or continuing education for experienced employees often are not available when needed. Again, the issue is funding to support existing resources, not new entities.

Sincerely,

A handwritten signature in cursive script that reads "Thomas Nasser". The signature is fluid and elegant, with a large initial 'T' and 'N'.

Thomas J. Nasser
President