

# CALIFORNIA COMMISSION ON THE FAIR ADMINISTRATION OF JUSTICE

Minutes of Commission Meeting, January 10, 2007, submitted by Chris Boscia.

Commission Chair John Van de Kamp convened the meeting at 9:30 a.m. at Room 4203 in the State Capitol at Sacramento.

Those present included Vice-Chair Jon Streeter, Executive Director Gerald F. Uelmen, Commissioners Michael P. Judge, Jim Fox, Michael Hersek, John Moulds, Michael Laurence, Greg Totten, Alejandro Mayorkas, Douglas Ring, George Kennedy, Cookie Ridolfi, Diane Bellas, Glen Craig, Scott Thorpe (for Attorney Jerry Brown), Sheriff Curtis Hill, and Harold Boscovich.

Commissioners not present were Gerry Chaleff (for Chief William Bratton), Rabbi Allen Freehling, and Bill Hing.

John Van de Kamp (JVD) welcomed the group.

- I. Welcome and introductions by John Van De Kamp
  - A. Intros and call to order
  - B. Discussion of origin of Commission and Focus Questions
    1. Backlog of DNA
    2. Post-conviction DNA testing difficult
    3. Statewide standards for accreditation for labs and certification for criminalists
    4. Training for judges, lawyers, etc.
    5. Defendants' access to experts for forensic science
    6. Forensic delivery system in CA
    7. Future training needs for California criminalists
- II. Peter Neufeld
  - A. Story of Herman Atkins
    1. Wrongful conviction for rape in LA
    2. Causes
      - i. Bad eyewitness i.d.
      - ii. Forensic Science issue: Serology report and Serology testimony of person who worked for DOJ lab
        - a. Report distorted real science of serology; suggested that it was more likely than not that Herman Atkins' semen was in the rape victim

- b. Testimony was that one could exclude 96% of population; Herman Atkins fit into 4%
        - c. Testimony was false according to real science. 100% of population could have contributed semen sample given serology sample.
  - 3. Atkins exonerated in 2000. In 2002, Innocence Project asked DOJ to audit this criminalist's work.
    - i. Internal audit conducted.
    - ii. Supervisor wrote report to DOJ headquarters and said they were fine.
    - iii. Innocence project subpoenaed the cases and found similar errors.
- B. Michael Crowe case—recording case in Escondido
- 1. Lone Drifter killed little girl in San Diego
  - 2. Forensic Science issue: blood splatter expert working in San Diego told DA that you could tell from blood-splatter patterns that multiple perps were involved in murder.
  - 3. DA used that to prove it was victim's brother and his buddies.
- C. These cases happen with alarming frequency.
- 1. With the exception of mistaken eyewitness id, the single greatest cause is bad forensic science.
  - 2. Misapplication of forensic science: 63% of wrongful conviction
  - 3. Common situation where forensic science contributes to wrongful conviction: use of forensic science that hasn't been validated
- D. Other disciplines do not have as rigorous an audit program as DNA
- 1. In 90% of cases where there was a serology inclusion and subsequent exclusion, criminalist exaggerated the probative value of the evidence. Scientific testing is done well, but interpretation could be better.
  - 2. Exs. of other disciplines—bite marks, etc.
- E. History of Problem
- 1. There are instances of misconduct, usually incompetence, negligence, failure to follow scientific method in interpretation of data, etc.
  - 2. 100 years ago, there was a similar chaos in clinical labs.
  - 3. Myth: we don't need the same type of peer review for crime lab evidence that is introduced in court as we do with clinical labs where a sample or biopsy is tested. Reason: the adversarial

nature of the courtroom will expose the flaws of the scientific logic.

4. Daubert and Frye challenges are not made in criminal cases as often as in civil cases.
5. Lawyers need another type of control for forensic evidence that happens before the issues reach the court room.

#### F. Solutions

1. Need to have a state body in touch with scientific developments that allows new technologies to develop and become more useful in court; and get rid of less reliable technologies—establish a state body on forensic evidence; a regulatory body
  - i. CA has a regulatory body for clinical labs.
  - ii. The body can implement reforms to ensure that only valid forensic sciences are used in CA courts
  - iii. Only reliable, validated science is used in courts.
  - iv. Difference between reliable and validated science—science can be valid but there may be an unreliable delivery mechanism to courts.
  - v. NY requires ASCLAD lab certification
  - vi. But ASCLAD doesn't require report writing. What are the key elements of writing a professional, objective report? The Commission can deal with these issues.
2. Certification program for people who work in public crime labs—state, county, city, or town.
  - i. Currently there is a voluntary program for the CA Criminalists group.
  - ii. There is a voluntary ethics code for CA Criminalists.
  - iii. Why not make this mandatory?
3. Blind Testing, as in Clinical matters
  - i. In crime labs, the tester knows about the background and contextual bias—confirmation bias—which can contribute to misidentification.
  - ii. This is a problem with all issues in forensic science.
  - iii. Set up a structure where one person is apprised of all information, but individual testers are not. They can then do scientific, objective testing.
4. Proficiency testing
  - i. Court and finder of fact should know error rate for particular methodology
5. Audit functioning

- i. Where important matters are at stake in CA, there is an independent auditing function.
  - ii. The internal audit in the Atkins case was a sham.
  - iii. Coverdell says that where there was negligence, etc. there should be an audit.
  - iv. But in CA, it's limited to labs that receive funding. In CA, there are 18 labs that receive funding.
6. There should be one integrity standard state-wide for all labs. Creating Commission would help solve all these problems.

G. Question from G. Totten

- 1. Misidentification is single greatest cause of wrongful conviction. Forensic Science is down to 4<sup>th</sup> or 5<sup>th</sup> most frequent cause?
- 2. Innocence project now includes situations on its list where testing was done correctly, but interpretation was mistaken. The list used to just include cases with bad science.

H. Question from A. Mayorkas

- 1. Should there be nationwide uniformity for scientific standards?
- 2. National Academy of Science just received grant from Congress to take up issue of a national standard.

I. Question from M. Judge

- 1. *Cumho Tire* case: Amicus brief filed by National Crime Labs that a national standard not be applied to hard science. But court overruled and said that stringent standard should be applied to all science.
- 2. Are there differences between hard sciences and others? Many forensic disciplines are not real science.
- 3. There are at least 8-9 identification disciplines that say, e.g. "This bite from that person's bite." DNA revolution says that you can't make assertions about comparison if there isn't a large database.

III. Dr. William C. Thompson

A. Studies how science is used and misused in courtroom.

- 1. Particularly interested in DNA, gunshot residue, and other areas of forensics
- 2. Much of what he has to say echoes Neufeld

B. Forensic Science is important to justice. How can we make important area work better in justice system?

C. Why is it not working as well as it could?

- 1. Many errors of forensic science are poorly validated.
  - i. Basic scientific research needs to be done to test reliability/accuracy of science being presented in court.

- ii. E.g. Bullet-lead testing episode with FBI.
    - a. Can a bullet used at a crime scene be linked to a particular suspect with a box of bullets? Did bullet come from specific box of ammunition? FBI in the '60s analyzed alloy of bullet. If there was a significant connection, FBI expert would testify that if there was a "match," then it was likely the bullet came from the box.
    - b. National Research Council Report (2004) criticizes that no adequate scientific foundation could link particular bullet to box of ammunition.
    - c. In 2005, FBI terminates alloy testing.
  - iii. Similar problems in other areas
    - a. Cumho tire case
    - b. Daubert standards
    - c. Challenges to toolmark, bitemark, arson investigation, some applications of DNA testing, etc.
2. Bad Work: forensic science criminalists do bad work
- i. Is it negligence or poor training or something else?
  - ii. Many examples of forensic scientists using poor procedures

#### D. Solutions

- 1. Industry self-regulation is not an adequate answer.
    - i. Forensic scientists try to regulate through certification, accreditation, etc.
    - ii. Not sufficient
      - a. With regard to weaker areas of forensic science, having experts in those areas validate each other is like "the blind leading the blind." Risk of standardizing a bad procedure.
      - b. Must bring in outside academic review by University-based scientists.
      - c. Accreditation can have a negative effect by shutting down credible criticism. If only "accredited" scientists can be heard, then skeptical scientists are not able to voice their concerns.
  - 2. Open the process and make it more transparent
- E. Worst crime lab problems occur in jurisdictions where there are limits on criminal discovery and poor resources for defense access to experts.
- 1. Legal process must be adequate.

2. Houston crime lab scandal.
    - i. Not exposed until journalists exposed them.
    - ii. Why didn't defense bar find these problems? Defense lawyers are poorly trained, under-funded, and with little discovery, can't access underlying bench notes to determine accuracy of results.
  3. CA does better than most jdx with regards to defense funding.
  4. CA generally does better than most in discovery issues. Still difficulty with discovery in cold hit DNA cases.
- F. Supports idea of statewide commission or body, similar to Neufeld recommendation. Important part is to have adequate input from academic community and those outside of forensic science community. If certification is done by people within the community, there is a problem with bad certification. Also supports audits and innocence commissions to look into misconduct.
- G. Question from J. Moulds
1. Mention of discovery problems. Most restrictive jurisdiction is federal jurisdiction.
  2. Advocates for more open, transparent bench notes. Open discovery is key to whole area.
- H. Question from M. Laurence
1. Problem with accessing DNA files themselves?
  2. Generic samples from DNA database should be made available for general scientific testing. Not allowed in CA. Sees no downside with civil liberties issues.
- IV. Mr. Frederick Tulleners
- A. Has a master's degree from UC Irvine, not PhD.
  - B. Former crime lab manager, has been running the forensic science master's program at UC Davis
  - C. Is everything doom and gloom in forensic science?
    1. Crime labs are helping solve problems.
    2. Most problems are being helped by labs.
  - D. Problems arise not with scientific evidence presented by crime labs, but by "experts" in civil cases.
  - E. Accreditation
    1. ASCLAD accreditation can be up to 5 days of visits.
    2. Over 120 categories are up for inspection.
    3. ISO accreditation will increase to 400 categories.
    4. DNA section does internal audit every year and external every other year.

5. CA state licensing—from 1973-2005—for alcohol testing. Last year, Department of Public Health oversight was removed b/c DOH standards were not updated.
- F. Crime labs in CA don't need another bureaucratic oversight method. Best oversight besides accreditation is examination by defense experts.
- G. Criminal defense access
1. Ability of defense to access is limited. Only few private labs are able to do this; most do only DNA.
  2. Forensic experts are available, but have limited resources.
  3. Ideal crime labs should work in cooperative role. Issue should be about finding truth, not preconceived notion of party.
  4. Maybe defense and prosecution should meet in lab and discuss procedures.
- H. Crime labs should be removed from control of law enforcement or prosecution, but report to another entity.
- I. Separate crime lab funded by state, properly equipped to fund necessary analysis. Collaborative crime lab effort between counties could reduce cost.
- J. Criminalist training
1. Role of university is to train people how to think and conduct research.
  2. Most forensic science conducted in lab or at separate location.
  3. For many years, CA was leader in forensic science training. But budget cuts have reduced its capacity.
  4. Training must be conducted at central site, more efficient.
  5. Ideal training center should provide training in all areas of forensic science, should serve all, and should be an independent agency. Needs to have access to university research, labs, etc.
  6. Ex. Accreditation program at SUNY—Albany. North East Regional Forensic Institutes conducts 12 week programs of DNA training. It operates under University and Forensic Science Committee. They are currently operating on a tuition basis, but started by public funding.
- K. UC Davis does have extensive training facilities and distance learning opportunities. Could be a participant.
- L. Summary: Need for an independent forensic science training center that covers all areas, that is well funded, and that is independent.
- M. Question from G. Totten
1. Beyond training and research role, what about the proposals to expand role of academia?

2. Forensic Sciences are not supported by NSF. If the money isn't there, academics won't study it.

V. Susan Rutberg

A. Peter Rose case

1. After DNA exonerated Peter Rose in 2004, the chief witness recanted. At the trial, a criminalist testified. Semen and foreign pubic hair left on victim. Testified that hair was similar. Rose and victim had same PGM markers. Prosecutor said hair was consistent with defendant.
2. Serological evidence in bench-notes proved that perp had different blood-type than Peter Rose. He could have been excluded by serology.
3. Benchnotes weren't available to defense. Could defense even handle the notes?
4. How they uncovered the wrongful conviction?
  - i. Students were determined to figure out where the evidence was. Where was semen stain and pubic hair? San Joaquin county said all evidence was destroyed. List said that semen stain was not destroyed but pubic hair was destroyed.
  - ii. DOJ lab in Berkeley said that they still had the semen stain. They forgot to send it back to San Joaquin county for destruction.
  - iii. Current statute says that biological evidence must be preserved while suspect is still in custody.
  - iv. Students filed motion for DNA testing. Prosecutor agreed to permit testing. Judge ordered release. False testimony of serologist pointed out.
  - v. DA does further investigation and agrees to find Peter factually innocent in 2005. Lodi PD exonerated themselves as well, even though the young woman said she was pressured by the police to name Rose as her rapist.
5. Peter was awarded \$327,000. Settlement made for over \$1 million. Doesn't take into account all the pro bono hours, etc.

B. Rutberg's student researchers

1. Jung Pham paper
  - i. Internal quality assurance system to ensure compliance with standards created by Commission
  - ii. Culture change from blind reliance on science to where science fits into case

- iii. Independence of labs is crucial
- 2. Sarah Markert
  - i. Viewing the right to expert assistance as analogous to write to assistance of counsel.
  - ii. Defense bar needs independent experts not beholden to state. Provide funds for public defender to have forensic science experts on staff.
  - iii. Expand discovery to benchnotes, etc.

C. Comments from JVD

- 1. Save taxpayers money
- 2. Do the right thing
- 3. Get guilty people behind bars
- 4. Add from Rutberg: all the people who have made past errors should be held accountable

VI. Bicka Barlow

A. Master's in Genetics from Cornell. Worked in labs using same technology.

B. Cautionary tale about cold hit cases

- 1. In 2001, a woman who worked in DOJ in AZ presented a poster at an international meeting. She identified two people in convicted defender database as having matched certain issues in COHTIS.
- 2. Found two individuals in database that held 20,000. They were unrelated, but had DNA that matched to 1 in 750 million.
- 3. She found two more pairs that matched at 9 of 13 indicators. As the database grew, she found more matching pairs.
- 4. In a database of 60,000, there were 90 pairs of people who matched at 9 of 13 loci in convicted offender database, and a handful that matched at 10 of 13.
- 5. Judge orders report in AZ. DOJ identified 122 matching at 9 of 13, 10 pairs at 10 of 13, and 1 pair each at 11 and 12 of 13.

C. DNA technology, although grounded in good science, has not been thoroughly validated and researched.

- 1. We don't know what a "match" means.
- 2. When there is a cold hit case where there is no other evidence of guilt, a DNA match has very little other meaning.
- 3. CA database has 600,000 profiles. There will be people that match at 13 loci and may be completely unrelated.
- 4. When defense attorneys go into court and criminalists say that possibility of match at 13 loci is non-existent, that is not true.

- D. She has spent the past year trying to get the Court in SF to do the same testing of database as in AZ, but Court denied stating insufficient showing.
- E. Problem: how can anyone have a fair trial when the database could show that a DNA profile might not be unique?
  - 1. Wasted resources on motions, experts, testimony, etc. to fight fights which should not have to be fought.
  - 2. Forensic communities ought to produce this info and provide it to the public.
  - 3. Money could be saved if discovery process could be regularized.
  - 4. Civil liberties issue shouldn't be a problem b/c DNA info can be made anonymous.
- F. SF Public Defender has 90 attorneys and she has 40 cases sitting on her desk that involve DNA issues. Need more training for judges and attorneys.
  - 1. IL and Washington D.C. have training units.
  - 2. Not enough funds to support training
- G. Question from J. Streeter
  - 1. What is the standard in Superior Court to meet the showing?
  - 2. Hearing done in camera. Judge applied weighing standard of burden to state against benefit to defense. Burden to state outweighed b/c benefit was determined to be speculative.
- H. Question from M. Judge
  - 1. Neufeld suggests that rigorous standards be established as to validity and reliability of science.
  - 2. Lawyers don't have scientific background; less of a burden placed on lawyers. Question for lawyers should be "were procedures followed? Were any errors committed?"
  - 3. Should we do more training with lawyers or do what Neufeld suggested, assuring that science is valid and reliable?
  - 4. She doesn't believe that upstream solution would work.
- VII. Gail Abarbanel from the Rape Treatment Center at UCLA
  - A. Tool that can solve many rape cases is DNA Forensic Technology. CA is not using technology to fullest extent.
  - B. Example of Laurie. Detective told by crime lab that it would take 8 months to analyze rape kit. When finally processed, there was a cold hit. During those months, same rapist attacked two other victims, one a child. This happens b/c state and local labs lack resources to utilize DNA to its fullest potential.
  - C. Question 6 of hearing questions

1. At State lab, there are critical staffing issues. Salaries are lower than other public labs throughout state. Raise state salaries.
  2. Local labs also lack resources. Evidence collected from many crime scenes sits in crime lab freezers unprocessed. Implications are significant
    - i. Many rape kits are unopened. Oakland processes fewer than half.
    - ii. LA has backlog of 5000 unopened rape kits.
    - iii. 6-8 months to open a rape kit.
    - iv. Detectives don't have critical info at beginning of investigations.
    - v. Victims have no closure. Suspects not identified. Cases postponed or dismissed.
  3. Delays also result in suspects who are innocent being incarcerated until rape kit tested.
  4. Penal Code §680: Rape Victim Bill of Rights—timely analysis of rape kit evidence. If not tested within time limits, victim must be informed of this fact. §803(g) of Penal Code—if DNA is processed and identified within 2 years, no statute of limitations on case.
  5. Failure to give labs resources to analyze rape kits impedes justice in a number of ways.
- D. Rape Center and DOJ are collaborating on fast-track evidence. Answers come back in days as opposed to months. In 20% of cases, cold hits have been found.
- E. Prop 69 means more samples will go into database. Cold hits need follow-up.
- F. Crime labs, law enforcement, prosecutors' offices, etc. need adequate resources. In England, they can analyze a swab in 8 hours.
- G. Public Safety Emergency—CA should be at forefront of addressing statewide issues and local issues as well.
- H. Question from G. Craig
1. Is shortage of backlog b/c positions are unfilled, unauthorized, or are universities not producing enough people to fill those positions?
  2. Abarbanel response: It's a combination of all three.
- VIII. Michael Chamberlain
- A. County Prosecutor in Contra Costa before. Represents bureau of Forensic Services, etc.
  - B. No systematic flaw in CA Forensic delivery system.

1. Expert Assistance provided at trial and post-conviction stages.
  2. Lack of confidence in integrity of product produced by gov't crime labs?
    - i. Instead of additional layer of regulatory oversight, provide access to defense for re-testing.
    - ii. Results should be made available to all parties. It's the best option to ensure accurate, reliable results.
    - iii. Recommends to make money available for defense re-testing
- C. Post-Conviction DNA Testing
1. System is working. Robust litigation of issues in superior court.
  2. Standard: if D has reasonable probability to show DNA will show innocence, then testing can be done. Standard mirrors Brady test.
  3. CA has expansive provision for appointment of counsel to assist in investigation and filing motion at this stage.
- D. Defense access to experts is not a problem
1. SF Public Defender retained three experts for pre-trial discovery.
  2. Defense requests for outside expertise or assistance have not been denied in appropriate circumstances.
- E. Level of Review for fundamental validity of science
1. Judges keep junk science away from juries.
  2. *Kelly* analysis must be met in DNA cases as well. Court room should not be a lab, but it's a consensus to see if relative scientific community has reached conclusion that science is accurate and reliable to be shared with jury.
- F. DNA database program
1. Strict statutory use and disclosure restrictions by defense bar and privacy rights' advocates
  2. Narrowly tailored by legislative design. Discovery is provided in cold hit case.
  3. Permitting broad access to database for research or sifting through database for 3<sup>rd</sup> party perpetrators goes beyond statutory restrictions.
  4. Judges quash subpoenas for access to database. There is an absolute privilege over that information as set down by the Legislature.
  5. Database not set up to be a population research tool.
  6. AZ database issue raised by Barlow does not undermine CA data.
- G. Additional oversight for crime labs. What is currently in place?

1. DNA

- i. CA provides samples to national DNA regulatory system
- ii. Quality assurance audits every two years to look at crime lab management, facilities, equipment, analysis procedures, etc.
- iii. FBI panel regularly reviews audit findings at second level.
- iv. Inspector-general audits select labs.
- v. This is in addition to accreditation required of DNA labs.

H. Question from M. Laurence

1. Has DOJ conducted similar study against itself?
2. There would be over 200 billion comparisons against each other. This is not useful and would be a burden to DOJ.
3. Matches would come up b/c of duplication.
4. State doesn't keep any information on kinship.

IX. Rockne Harmon

- A. DNA cuts both ways. The adversary system takes answers in either direction; usually the direction of the person pushing it.
- B. Challenge is to judge those who have competing, sometimes conflicting, responsibilities.
- C. *Science* article has many flaws and Commission should get a look at letters to editors, including the one written by Harmon.

D. Question 1

1. Private lab profiles may be entered into CODIS once they are reviewed. Review is labor intensive.
2. Many hits occur through private labs. We cannot survive only with what gov't produces.

E. Question 2

1. History of post-conviction testing and Pc1405, enacted in 2001.
2. All parties mutually agreed upon it. Sen. Burton entered amendment one year later that expanded defendant's rights. Statute reflects framework for having to go to judge. Most Courts have not afforded defendants access to evidence.
3. If post-conviction testing is institutionalized, then it needs to be funded. What is the demand and likelihood for success before funding? Expanding entitlement enlarges draw on legal resources.
4. Should post-conviction funding equal cold hit, etc? It's important to keep in mind the cold hit portion of DNA.

- F. Question 4—training is not adequate. Difficult to break away from job of being a lawyer or judge to do more training.

G. Question 5

1. If defense attorney can't make showing b/c facts don't support it, then that's the right outcome under current system of law. Ake v. Oklahoma.
2. Defendants almost never re-test the evidence. Given the proliferation of private labs, wouldn't re-testing be the key to reducing excessive discovery requests?
3. Private labs are absolutely necessary to existence.

X. Herman Atkins

- A. Chair of CA Council of Wrongfully Convicted, established in August 2006 by and for persons wrongfully convicted.
- B. There are few organizations that support exonerees. The only one is about to shut down.
- C. The wrongfully convicted deserve a stable foundation which will allow them to participate in the processes that would make justice system more just.
- D. Post-conviction DNA testing is the best thing that happened since the invention of paper napkins.
- E. Question 4—lack of education for judges, lawyers, etc. is what leads to wrongful conviction. All should be educated on issues of forensic science.

XI. Thomas J. Nasser

A. Question 1

1. This is a CA DOJ issue to address.
2. Timely addition of convicted defender to database.
3. Well known that CA DOJ has hard time recruiting because of salary level and high cost of living. Recruitment process should be streamlined.
4. DOJ should create ad-hoc committee to speed hiring of DNA analysts.
5. Backlog—outsourcing, management position to reduce backlog. New classification of DNA analyst could be created, which would have fewer qualifications just to manage database. Could be re-located to place where living expenses are less. Could establish a separate DNA testing facility under Governor's office instead of DOJ.
6. Instruments and equipments are needed to address backlog in other disciplines as well.

B. Question 2

1. Not a crime lab issue.

2. DA should respond to question. Crime labs are so overburdened, post-conviction takes a back seat. Task force could be set up to deal with post-conviction issues. Pass legislation requiring compliance with post-conviction requests, establishing a separate lab to deal with post-conviction testing (or use private labs)

C. Question 3

1. No statewide standards should be established. National group has been operating effectively for 25 years on a national and international basis.
2. 97% of crime labs in state are accredited (34 of 35). Doubtful that overlay of state standards will improve what is already in place.
3. 142 ASCLAD lab criteria. Send letter directly to ASCLAD if we have improvements to suggest.
4. State Commission similar to NY would be more bureaucracy. No evidence that says NY is any better for having special commission.
5. Breath and blood alcohol oversight has failed.

D. Question 4—adequate training does not exist

1. Interactive training program on CD-Rom was created by National group.
2. Most enter the legal field because they are not inclined towards science.

E. Question 5

1. Some of the best private crime labs in the country are in CA.
2. Issue of sufficient access is about funds available to defendants to hire private labs.
3. Funds should be legislatively mandated to allow defendants access to private testing.

F. Question 6

1. Not adequately funded; too many requests for work.
2. Grants are ending and state and local gov'ts must pick up slack.
3. Most labs not adequately staffed to provide basic services for investigation of evidence analysis. Analysis limited to cases going to trial.
4. Labs are in competition for resources with other branches of parent agencies.

G. Question 7

1. Education is crucial for honing critical scientific skills, providing ethical training, etc.
2. UC and Cal state system need more support. There is a shortage of training academies that could provide more job-oriented training to new employees.
3. Training provided has been very valuable, but since all meetings happen in Sacramento there are added costs for southern California labs.

H. Question from M. Hersek

1. How many non-government labs are there that are not accredited? There are only 3 private labs in organization.
2. What percentage of individuals in labs are credentialed? Can't answer question.

I. Question from Uelmen

1. What independent agency investigates Coverdale?
2. Audits are conducted by internal agencies
3. Could the audit function be taken over on a statewide level? Department of Health Services oversight has been counter-productive, petty, and a stumbling block.

XII. Lance Gima

A. Status report of DNA situation with backlog

1. Prior to Prop. 69, a law required felons of violent offenses to provide DNA sample to databank in Richmond.
2. Total number of samples in 2004 was 35,000. Impact of Prop. 69: year 2005, Richmond lab received 300,000 samples.
3. Salary structure has been publicly criticized. Average lags 20% behind city and county labs. Starting salary for DOJ is under \$3100 per month. Starting salary in LA is \$4600 per month. Salary has been increased
4. There should be improvements in salary, comparable to top 5 salaries for crime labs in CA. That will deal with issues of retention as well.
5. Backlog reduction down from 300,000 in summer of 2006 to 175,000 as of Dec.31, 2006. Commitment is to reduce backlog to workable number (below 60,000) by June 30, 2007. What is the turnaround time for a sample by July? Less than two months is the goal.
6. There are 20 vacancies for criminalists in the DOJ labs

B. Question G Totten:

1. If we took one sample, analyzed, and uploaded, it takes 4-5 days.

2. Offender backlog was the 300,000 backlog. The rapekit backlog is different. It takes about 6 months for evidence collected from a violent case to go through analysis system. That is not an appropriate turn-around time.
3. 30 days is target within department. What resources are necessary for sexual assault cases?
4. JVD requests information after DOJ develops it.

C. Question S. Thorpe

1. Salary structure hasn't changed. Governor's office has given incentive pay for over time.
2. Rank and file were receiving raises when managers were not.
3. There is another scheduled increase in July.
4. JVD says increase for analyst was a \$1200/month increase, according to Tom Sawyer, Governor's liaison for public safety.

D. Question G. Totten

1. Is it possible to quantify time it takes to update info into CODIS?
2. Since there are thousands of samples per day handled in batches, it's difficult to say.
3. 35 individuals uploaded 37,000 samples last month.

E. Question J. Uelmen

1. Do we need analysts to upload information? Yes, disagree with Mr. Nasser
2. Analysts must know lab techniques. Strong training and education in forensic science.

F. Educational opportunities and training for forensic scientists in CA is not working

1. Most labs take veterans to train, but it's inefficient.
2. Commission should consider a paradigm shift: gather crime lab directors with academics to see if Universities can put young scientists through basics to provide training that crime labs would provide in labs. Universities can do it more efficiently and consistently. It would also establish a standard and protocols.

XIII. Barry A.J. Fisher

- A. 38 years in forensic science.
- B. Nagging Question: are the wrongful convictions the product of bad days at the labs or is this the tip of the iceberg of a larger problem?
- C. Other areas than DNA will be affected by crime lab changes. Approach of Commission should be broadened.
- D. Issues like bitemark analysis have nothing to do with crime labs. It's covered by dentists.

- E. Unfair to blame crime labs for problems when certain law enforcement departments that are doing forensic services are doing them incorrectly.
- F. Should the Commission be concerned about all the people in the State doing forensic science or just narrowly focused on public crime labs?  
Both.
- G. Two areas for CA interest
  - 1. Quality delivery of services—expectation of good quality service
    - i. There are a number of very fine independent programs (ASCLAD and FQS). These are voluntary.
    - ii. Police agencies that dabble in forensics may or may not be taking part in these accreditations.
    - iii. Is there a public interest in oversight of what’s going on? Analogy of going to barber to get hair cut by state-licensed barber.
    - iv. Should promotion be tied to certification of individuals? Yes, to go from entry-level to journeyman, there should be a demonstration of some type of proficiency increase.
  - 2. Timely service—work is getting out in a reasonable amount of time.
    - i. A few states look into mandating turn-around times (IL, WA, MA).
    - ii. 30 day turnaround for DOJ. What is current turn-around time at LA County Sheriff? Firearms section has big backlog. Fingerprint and DNA is pretty reasonable.
    - iii. Case priority system is set by type of crime, e.g. serious felony, case is going to trial, officer involved in shooting, etc.
- H. We are not ready for forensic commission oversight. But a master plan for forensic services in CA is worthwhile to look into. Bring stakeholders (police, prosecutors, defense, etc.) to decide issues and where they could go for them.

#### XIV. Others

- A. Rev. Evans—Episcopal priest in diocese of LA. Faith community is aware of work and is very interested in Commission’s work. Licensed to practice law here.
  - 1. Two causes of wrongful conviction (people make mistakes and bias). Those will not be changed.
  - 2. There will never be a completely foolproof system.

3. Price we pay for thinking the system will be perfect results in capital sentencing system. Once a prisoner is executed; all the safeguards are meaningless.

B. Ms. Bendell

1. Representative of LA Commission to abolish death penalty
2. Coalition is disappointed that Commission's bills were vetoed.
3. 123 condemned individuals have been exonerated. Over 100 of those cases involved DNA/Forensics. Mentioned Troy Lee Jones case in CA
4. Recommendations
  - i. Neutral party, friend of court or special master, should be aware of all management of evidence in criminal cases, answerable only to court
  - ii. DNA evidence and fingerprints should be placed in national databases available to all
  - iii. Money should be invested in technology to allow police personnel to collect evidence at scene of crimes. Better documentation as well.