

Testimony to the California Commission on Fair Administration of Justice

by

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I have been asked to address my testimony in three specific areas

- Crime lab accreditation at the state level.
- Access of criminal defendants to forensic science experts in forensic science and laboratory facilities.
- Future needs for training the forensic scientist

Background:

I have worked for Los Angeles Police Department Crime lab and the California Department of Justice (CALDOJ) Crime labs for a period of 33 years. During this time, I have served as the laboratory director of the Sacramento CALDOJ and the Santa Rosa CALDOJ laboratories. For a short period of time I was the director of the CALDOJ California Criminalistics Institute, a forensic science-training institute. I am currently the director of the UC Davis Forensic Science Graduate program in which there are 65 students pursuing a 2+ year research based MS degree in Forensic Science. On occasion I assist defense attorneys in the reviewing and analyzing forensic science cases.

Crime Laboratory Accreditation Issues.

I have looked at some of the information presented to this committee and it would appear that it is all doom and gloom for the forensic science. Nothing could be further from the truth. One only has to look at the California Innocence project links on your web site. It becomes obvious that the issues are not with the crime lab. In fact it's the crime lab that is helping resolve the question by its DNA analysis. Most of the Innocence project issues relate to problems with police, eyewitnesses, defense attorneys or the use of questionable technology not supported by California crime labs.

I recently participated in the California Judicial Council meeting where the focus was on the use of scientific evidence. It became readily apparent to me that the problem was not with the scientific evidence presented by the crime labs in criminal cases but with the testimony proffered by various so-called experts in civil cases.

The laboratories that undergo accreditation by the American Society of Crime Lab Directors (ASCLD/LAB or <http://www.ascl-d-lab.org>) undergo a rigorous self-preparation, which is followed by a visit of a multi-member ASCLD/LAB inspection team that may be on site for 5 days depending on the lab's complexity. The lab is required to have detailed policies, procedures, quality assurance, proficiency and training records. Over 120 categories are subject to inspection. Within the next few years, the ASCLD/LAB accreditation procedures will require the labs to participate in an ISO based

international accreditation standards. The standards in that format that will address over 400+ categories (<http://www.asclcd-lab.org/international/indexinternational.html>). This ISO accreditation will entail yearly inspections of the laboratory along with very extensive cradle to grave documentation.

The DNA section of a lab undergoes a separate audit every year with an external examiner conducting the audit every other year. Furthermore, most public labs also have to undergo a separate agency audit or inspection every other year.

California labs had a lengthy and turbulent experience with state licensing oversight of alcohol analysis from 1973 until 2005 under the auspices Title 17. Last year a senate bill was approved removing California Department of Health Service (DOHS) oversight. While laudable when it was first instituted, the regulations produced by DOHS were almost never changed or upgraded in the 30+ year of their existence resulting in archaic procedures and methodology. For a longest time, it also prevented us from using technologies approved by the National Highway Traffic Safety Administration. Under the California administrative rules procedures changing a rule or regulation can take anywhere from 1-3 years. Surely you do not want this type of responsiveness for the crime labs in this state.

Some parties would like us to follow the clinical lab route and their licensing methods/procedures, but one should realize that the clinical labs deal with evidence that is generally from known pristine sources and matrix. The crime labs do not have these luxuries. The blood can be found, cloth, dirt, asphalt etc. I venture to say that if the licensed clinical labs underwent the same level of adversary review as the crime labs, you would find a lot more serious errors.

The New York legislature and their governor wanted all their public labs to be accredited thus they initiated the New York State oversight of the crime labs. In fact this current oversight is nothing more than a rubber stamp. If a lab has received ASCLD/LAB accreditation, it automatically receives another accreditation certificate from the New York Commission on Forensic Science.

In summary, the Crime Laboratories in California do not need another bureaucratic oversight layer. The labs, their reports, records, case notes, proficiency test results are a matter of public record and readily obtained by the defense attorneys. The best oversight for a lab, besides accreditation, is the review of that data by experts hired by the defense attorney. The current and future accreditation programs by ASCLD/LAB provides a mechanism for thorough evaluation, oversight and is responsive to changing technologies in a crime lab,

Criminal Defendant Access to Forensic Science Experts and Laboratory Facilities

The ability of the defense attorney to obtain forensic science expertise and laboratory service is limited. In the area of laboratory analysis, there are only a few private labs that are capable of doing cases for the defense. Most of these labs focus on the DNA

analysis. That leaves a lot of other areas where only a few private labs can perform the more complex analysis. Forensic experts are more readily available but some have limited resources when it comes to laboratory facilities. In either case, the use of any expert or private lab will entail the expenditure of substantial funds by the county responsible for prosecution.

Ideally the crime lab should work in a cooperative role to resolve the questions of the prosecution and the defense attorney. The issue is one of finding the truth not supporting the preconceived scenarios of any one party. On occasion with objective counsel, this can happen. The defense and prosecution can meet with the lab and discuss what would be the appropriate analysis for their particular case. In reality, the issue is that if the lab reports to a law enforcement agency or the District Attorney there are usually extremely restrictive policies as to what types of communication can take place without prior approval. In an ideal world, the crime labs should be removed from the control of law enforcement or the prosecution and report to a neutral agency, the courts or to the county executive/city manager.

In summary, there is a need for a separate crime lab funded by the state that could address the privacy and analytical needs of the criminal defense community. Such a lab would need a minimum staffing level and be properly equipped to perform the routine analysis. This is an expensive proposition but in the long term a state supported lab could reduce the cost of counties who would not have to pay the much higher fees for private labs and independent experts. It might be worthwhile for counties to look at their court ordered defense expert payments and see if a collaborative crime lab effort with other counties could reduce their costs.

Forensic Science Training

There is a real need of Forensic Science training wherein the practitioner can obtain training in specific forensic science areas such as DNA, Firearms, Toxicology, Trace, Clandestine labs, and Questioned documents etc.

Most forensic science training in California is either conducted in the laboratory or at another location where members from several labs come together and attend a week long course. For many years, the CALDOJ California Criminalistics Institute (CCI) was the nation's leader in forensic science training but loss of staff and budget cuts have substantially reduced its overall capabilities. In its prime days, it attracted forensic scientists from all over the world and provided free training to the California forensic scientists in broad diversified area. With the budget problems, CCI has been a shell of its former self. Frankly, research and training in state government play second fiddle to the needs of attorneys and police when there budget problem. Traditionally, the free training offered by CCI, has been about 30% CALDOJ and 70% public labs. Because of budget cuts and changing priorities, most of the forensic science training has now been focused on CALDOJ staff in the DNA area. While CCI may regain its former preeminence, its future will always be subject to the budget and political priorities of CALDOJ.

Training at a central or off-site location that is outfitted with the proper equipment and laboratory space is the most cost effective and technology proficient method of education. Bringing together students from different labs to such a site allows the students to learn from nationally recognized instructors who have a proven track record. These students then have access to the appropriate technology and equipment along with exposure to current methodologies. Training that is held in a local laboratory seldom achieves this because of limited resources in personnel and facilities. Furthermore, the student is subjected to the lab's analytical concepts and may not be exposed to newer methodology. In addition, the preparation time required for a lab-based instructor teaching of 1-2 students is not cost effective use manpower.

The recent demand for qualified DNA analysts has exacerbated these training issues. In the smaller DNA labs, 25% of the lab DNA staff may be training the other 25%. Clearly this is not a cost effective use of manpower resources. DNA training is not the only area where this is an issue. Proper training in firearms identification takes about a year. Until recently, the BATF had a national academy that taught a year-long course in this subject area. But budgets cuts and changing priorities in the BATF program has closed the national firearms academy.

The Ideal Forensic Science Training Center

An ideal forensic science training center should provide service in all major area of forensic science areas and should be an institution is independent of any one particular law enforcement agency. It should be responsive to the crime labs it proposes to serve. The benefits of such training is that it would:

- Focuses on training all the forensic scientists in all the California labs, not just those of one agency
- Incorporates as part of it oversight and advisory committee, the lab directors and practitioners of California labs
- Has a dedicated facility, equipment, basic program staffing and a dedicated budget for training
- Has access to university research, staff and library facilities
- Students should be able to receive upper division/graduate credit for course work
- Students should be tested and evaluated on their proficiency
- The center would hire short-term contractor instructors recognized for their competency at the local and national levels

Late last year, I had occasion to participate in an accreditation inspection at the State University of New York at Albany. While I was there, I had the opportunity to observe a forensic science training concept that could be used as a model for California. This organization is known as the Northeast Regional Forensics Institute (NERFI). NERFI (http://www.albany.edu/nerfi/dna_academy) conducts a series of 12+ weeks DNA training classes for lab scientist. NERFI operates under the control of a steering committee consisting of the university and a forensic science advisory committee. At the present time it does not conduct any other forensic science training. They are tuition based training organization with the crime lab agencies compensating NERFI. They

provide trade craft DNA training over a 12-16 week period after which the student can be qualified for case work analysis. NERFI had its beginnings with an earmarked grant sponsored by Senators Clinton and Schumer. This 1.5 million dollar grant was split between the university and NERFI and it enabled NERFI to remodel about 4,000 square feet of university lab space, purchase new equipment, supplies and staff at the basic level. In order to continue operations, NERFI has to charge tuition for each student and it usually contracts with the crime lab(s) to train a certain number of analysts over a 12-16 week period. They use nationally recognized instructors and when students have completed the training, they have met the required national level TWGDAM DNA training and competency requirements for case work DNA. A synergistic benefit of this program is that the students in the State University of Albany MS Forensic Biology program can interface and use the NERFI facility when class is not in session. A key issue for the continuing success of NERFI will be the willingness of the agencies in New York and surrounding states to pay for this training.

Proposal for a California Training Center

If a central training facility were to be developed for forensic science training, one should consider a broad based training by an organization that has the proper equipment, laboratory facilities, staff and initial financial support.

The type of training required by the crime labs is not only DNA but also in such areas as toxicology, trace evidence, firearms identification, question documents and a host of other areas. Focused tradecraft training can be provided if the training organization is supported and approved by the local crime labs and if there is a mechanism to pay for that training.

Some points to consider are:

- Laboratory managers need realize that off-site training of their staff using other forensic scientists is much more cost effective then in-house training even if one has to pay for combined tuition, travel and per diem that may cost \$2,000 per week
- Off-site training will expose the students to instructors who bring concepts and ideas from throughout the nation
- Recognized quality instructors are available when one brings together students for off-site training.
- The off-site training will help the lab to maintain its current productivity
- Off-site training has the forensic science students compete in a competitive environment
- If California could follow the NERFI model, we could begin the process of to significantly reducing the DNA case load backlog

A university Master's degree program is not the place to provide such highly focused trade craft training because we do not train for highly focused and specific laboratory tasks. At UC Davis, we focus on intellectual development and the ability to conduct independent research. We believe that this best prepares the student the crime lab.

Because of the large diversity of tasks in a larger crime lab, even our students will need trade craft training when they begin working in their assigned areas.

Possible concepts

There are several models or options for developing a NERFI type model in California. One possibility, but not the only one, is to consider a program that can utilize the expertise of UCDE. UCDE has achieved recognition not only trade craft or adult training but also in their administrative and operational support of the UC Davis Forensic Science Graduate program. UCDE has extensive experience in adult education and the development of distance learning techniques. They have the resources and skills to develop forensic science training. However, with any such effort there is an overall startup costs that must be paid by someone.

The benefits of such a UCDE based education are numerous:

- Training is provide by a unbiased educational institution
- The program does not have to compete for budget with law enforcement budgets
- Access to specialized university equipment when need for focus training
- Access to the intellectual pool at a UCD, the number 20 research university in the United States
- As a fee based institution, training can be provided to all interested forensic scientists not just the prosecution forensic scientists
- There will be synergistic effect for the Masters program with the co-location of such a training center.
- Students could earn credit for their courses or partake in a certificate program

In summary, there is a need for a forensic science training center that is independent of any particular law enforcement agency budget. It should be independently funded and be properly equipped. This forensic science training center should be responsive to the laboratory managers of California and should provide education not only in DNA but also the other critical fields of forensic science. Furthermore more this center should also allow private forensic scientist to enroll in its courses. Considering UC Davis Extension as a candidate site could be one viable option because of its forensic science expertise.

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