

Following the Money

To the Editor:

The article by John M. Collins, "A Reality Check on Crime Lab Backlogs," in the October 2012 issue should be applauded for the frank approach to this important aspect of the criminal justice system. The public is accustomed to hearing that underfunding of government programs is a problem external to the program and always solved by more money.

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Because Collins frames his article in terms of economics, there is another source of pressure on both the government agencies and, subsequently, the laboratories that is also driven by economics. It flows from the adage "follow the money." In my experience both as a prosecutor and a defense attorney, for many years I have seen the bulk of marijuana tests consist of questioned samples that are frequently less than one gram. This trend of very small samples is also present in cocaine cases, but the prevalence of crack cocaine skews the numbers. This is understandable because crack cocaine is a much more dangerous drug than marijuana and to some extent more dangerous than powder cocaine. There is a strong possibility that many smaller agencies are making arrests and prosecuting cases to generate revenue through fines, costs, and forfeitures. Many of these cases need to be diverted out of the system. Efforts have been made by the labs to reach formal or informal agreements with smaller jurisdictions and their local prosecutors to only submit samples at certain points in the process, such as after a pretrial fails to result in a plea.

Any cost savings may be offset by additional costs incurred in other parts of the system because of the delay caused by this option.

The February 2011 issue of the *Bar Journal* contained an article by Hon. David A. Hogg titled "District Court Tax Farming: Are Judges the New Publicans?" The purpose of this letter is to ask readers to combine the thought processes of Mr. Collins and Judge Hogg. We should be mindful that courts also previously charged all drug offenders a fee specifically for laboratory funding. With the significant increase in municipal ordinances, aggressive enforcement driven by private attorneys with contractual relationships with those municipalities, and the ability of these municipalities to retain a portion of each fine collected for violations of their local ordinances, the economic benefit to the municipalities is multiplied beyond what Mr. Collins envisioned. The service is not only "free," but it promotes a source of revenue for the customer. To the extent this follow-the-money theory is accurate, it is quite evident that the system may need to look internally for solutions.

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