

National Commission on Forensic Science (NCFS)

A Federal Advisory Committee
for the U.S. Department of Justice



U.S. Department of Commerce

6th Meeting: April 30 – May 1, 2015

Should the MOU be between DOJ and DOC or DOJ and NIST?

15 U.S.C 271 (The National Institute of Standards and Technology Act)

SECTION 2.

(b) The Secretary of Commerce (hereafter in this Act referred to as the 'Secretary') **acting through the Director of the Institute** (hereafter in this Act referred to as the 'Director') **is authorized to take all actions necessary and appropriate to accomplish the purposes of this Act, including the following functions of the Institute—**

(10) to cooperate with other departments and agencies of the Federal Government, with industry, with State and local governments, with the governments of other nations and international organizations, and with private organizations **in establishing standard practices, codes, specifications, and voluntary consensus standards;**

Additions to the NCFS Charter

5. Agency or Official to Whom the Committee Reports: The Commission shall report to the Attorney General, who, through the Deputy Attorney General, shall direct the work of the Commission in fulfilling its mission. The Attorney General will refer recommendations regarding measurement standards and priorities for standards development to the Director of NIST, as she deems appropriate.

Changes to the MOU: Cooperative and Collaborative Activities

- Prior - Discipline-Specific Guidance Groups: ~~The Attorney General and the Director of NIST will jointly~~ approve the creation of discipline-specific guidance groups (Guidance Groups), and modify or approve the agendas proposed by those groups for the development of scientific guidance. ~~NIST will administer and coordinate support of those Guidance Groups, which will report to the Director of NIST. The Attorney General and the Director of NIST will appoint the initial chairs of each Guidance Group and review and approve the membership roster prepared by the Guidance Group chairs.~~
- Proposed - Scientific Area Committees: The Director of NIST, in consultation with the Attorney General, will approve the creation of Scientific Area Committees (formerly Guidance Groups), and modify or approve the agendas proposed by those groups for the development of scientific guidance. The Director of NIST will consult with the Attorney General to ensure that the Scientific Area Committees retain an appropriate balance of participants. The Scientific Area Committees will not provide advice to the Attorney General, the NIST Director, or the Commission, but, instead, their findings will be publicly vetted.

“Guidance Groups” replaced with “Scientific Area Committees” throughout

Changes to the MOU: Purpose

- Prior - The purpose of this Memorandum of Understanding (MOU) is to outline the framework for cooperation and collaboration between DOJ and NIST in support of the National Commission on Forensic Science (Commission), which will develop national forensic science guidance and policy recommendations for consideration by the Attorney General. The activities described below are intended to strengthen the validity and reliability of forensic science by enhancing oversight and improving coordination across a broad range of forensic disciplines.
- Proposed - The purpose of this Memorandum of Understanding (MOU) is to outline the framework for cooperation and collaboration between DOJ and NIST in support of the objectives of the National Commission on Forensic Science (Commission), which will develop national forensic science guidance and policy recommendations for consideration by the Attorney General, and the Organization of Scientific Area Committees (OSAC), which will facilitate the development of voluntary consensus standards for forensic practitioners. The activities described below are intended to strengthen the validity and reliability of forensic science by enhancing oversight and improving coordination across a broad range of forensic disciplines.

“Guidance Groups” replaced with “Scientific Area Committees” throughout

Acting NIST Director Willie May

1. **Meeting length and frequency:** do you like the current structure or would you like to move to two full days with only three meetings per year?
2. NIST Forensic Science Center of Excellence status
 - More than a dozen proposals on probabilistic methods for impression evidence and digital evidence were reviewed
 - Going through final selection process
 - Announcement is planned for the end of May
3. NIST-sponsored International Symposium on Forensic Error Management (July 20-24, 2015)

Planned Future Commission Meeting Dates (2nd Term)

- *Meeting 7: August 10-11, 2015* M/T
- *Meeting 8: December 7-8, 2015* M/T
- *Meeting 9: March 21-22, 2016* M/T
- *Meeting 10: June 20-21, 2016* M/T

NIST Forensic Science Center of Excellence

Focus and Status

- This new Center of Excellence will focus on **developing probabilistic methods** to support the forensic science disciplines **with a focus on Pattern Evidence and Digital Evidence**
- Center will also focus on **developing training tools for practitioners and non-practitioners**
- Solicitation was open from August 19 to December 11, 2014
- **NIST plans to make the award soon (Spring 2015)**
- For more information, see <http://www.nist.gov/coe/forensics/>



Credit: NIST



Credit: FBI

NIST-Sponsored International Symposium on Forensic Science Error Management – Detection, Measurement and Mitigation

FORENSIC SCIENCE
ERROR MANAGEMENT

INTERNATIONAL
FORENSICS SYMPOSIUM

JULY 20-24, 2015 • WASHINGTON, DC

As of 8am this morning:

103 abstracts have been received

*Brandon Mayfield will be the
keynote speaker*

**Abstract deadline
extended to April 30**

**Final program to be
posted by end of May**

The technical program will cover eight tracks: *death investigation, crime scene investigation, human factors, criminalistics, digital evidence, legal factors, quality assurance and laboratory management*. Each track will consist of plenary lectures, poster sessions and panel discussions.

[Hilton Washington DC - Dupont Circle](#)

1919 Connecticut Ave., NW, Washington, DC

http://www.nist.gov/director/international_forensics_home.cfm

Vice Chairs Opening Remarks

Nelson

- Review of agenda for this meeting
- Subcommittee report expectations

John

- Establishing a quorum for voting
- Work products at this meeting (3 planned for a vote)



Posted April 28, 2015

Notice

National Commission on Forensic Science Notice of Charter Renewal and Solicitation of Applications for Additional Commission Membership

A Notice by the [Justice Department](#) on 04/28/2015



ACTION

Notice Of Charter Renewal And Solicitation Of Applications For Additional Commission Membership For The National Commission On Forensic Science.

SUMMARY

☐ In accordance with title 41 of the U.S. Code of Federal Regulations, section 102-3.65(a), notice is hereby given that the Charter for the National Commission on Forensic Science was renewed for an additional two-year period on April 23, 2015. The Attorney General has determined that the National Commission on Forensic Science is necessary and in the public interest in connection with the performance of duties of the Department of Justice and these duties can best be performed through the advice and counsel of this group.

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PUBLIC INSPECTION

Publication Date:

Tuesday, April 28, 2015

Agency:

Department of Justice

<https://www.federalregister.gov/articles/2015/04/28/2015-09934/national-commission-on-forensic-science-notice-of-charter-renewal-and-solicitation-of-applications>

Subcommittee Report Expectations

1. Meetings (virtual or in-person) held since January Commission meeting
2. Introduce final work products prior to a vote
3. Introduce draft work products for discussion
4. Brief review of overall activities and priorities

Final Draft Documents Up for Potential Vote at this Meeting (April 30 – May 1, 2015)

Through 30 day public review (and revisions made):

1. Inconsistent Terminology (views)

- From Reporting & Testimony Subcommittee

2. Universal Accreditation (policy)

- From Accreditation & Proficiency Testing Subcommittee

3. Defining Forensic Science and Related Terms (views)

- From Interim Solutions Subcommittee

New Draft Documents Up for Review and Discussion at this Meeting (April 30 – May 1, 2015)

Public comment may be received until May 15

1. Pretrial Discovery of Forensic Materials (views)
2. Testimony using the Term “Reasonable Scientific Certainty” (views)
3. Automated Fingerprint Identification System (AFIS) Interoperability (directive)
4. National Code of Ethics and Professional Responsibility for the Forensic Sciences (directive)
5. Root Cause Analysis (RCA) in Forensic Science (directive)
6. Increasing the Number, Retention and Quality of Board Certified Forensic Pathologists (policy)
7. Electronic Networking of Medical Examiner and Coroner Offices in the United States (policy)

Criteria for Judicial Training (views) was removed after initial posting as the full Training on Science and the Law Subcommittee had not reviewed and approved it yet

Abstracts Provided by Subcommittees to Commissioners

- 1. Evidence Retention and Preservation**
(Reporting and Testimony Subcommittee)
- 2. National Judicial College on Forensic Science**
(Training on Science and Law Subcommittee)
- 3. Institutional and Organizational Best Practices**
(Human Factors Subcommittee)

Members Here & Establishing a Quorum

31 voting members and 8 ex-officio members

8 Ex-Officio Members

1. Judge Jed Rakoff
2. Kathryn Turman
3. Fran Schrotter
4. Mark Weiss
5. Patricia Manzolillo
6. Gerry LaPorte
7. Marilyn Huestis
8. David Honey (proxy here)

Voting Members Not Here

- Fred Bieber (proxy here)
- R. Washington & J. Kacavas
 - have stepped down
 - (proxies are here)
- Andrea Ferreira-Gonzalez
 - has stepped down
- Tom Cech (proxy here)
- John Fudenberg (proxy here)
- Jim Gates (not here today)
- Paul Giannelli (observing on-line)

<http://www.justice.gov/ncfs/members>

Those Voting Today

19 votes needed for 2/3

- | | | |
|------------------------------------|-----------|---------------------------------------|
| 1. Nelson Santos | | 16. Julia Leighton |
| 2. John Butler | | 17. Judge Hervey |
| 3. Greg Czarnopys | | 18. Judge McCormack |
| 4. John Kacavas (Deirdre Daly) | | 19. Suzanne Bell |
| 5. Marc LeBeau | | 20. Fred Bieber (Victor Weedn) |
| 6. Cecelia Crouse | | 21. Bonner Denton |
| 7. Dean Gialamas | | 22. Stephen Fienberg |
| 8. Linda Jackson | | 23. Troy Duster |
| 9. Jeff Salyards | | 24. Jules Epstein |
| 10. Phil Pulaski | | 25. Paul Giannelli (on-line) |
| 11. Vince Di Maio | | 26. Susan Howley |
| 12. John Fudenberg (Frank DePaolo) | | 27. Peter Neufeld |
| 13. Ted Hunt | | 28. R. Washington (Greg Champagne) |
| 14. Matt Redle | Responses | 29. Jim Gates |
| 15. Pam King | via email | 30. Tom Cech (Ed McCleskey) |

If no Paul, then 27 voting and 18 votes = 2/3

Commission Work Products

- The Commission is a Department of Justice Federal Advisory Committee and therefore **only has direct authority to make recommendations to the Attorney General** (who can direct efforts in three DOJ laboratories: FBI, DEA, and ATF)
- Work Product Types: (1) Views, (2) Directives, or (3) Policies

Voting is conducted electronically with a **two-thirds majority required** to pass



Problems with Recording Votes at the Last Meeting

- In the summary of the last meeting, it was observed:
With the “Accreditation of Medicolegal Death Investigation Offices”, the final vote count was 100% yes, 0% no, 0% abstain. However, **only 26 of 29 possible votes registered a “Yes” with the clickers** possibly because buttons may not have been pushed hard enough.
- **We will have a count for the number of votes cast before we close the polling**
- Everyone needs to provide a vote of Yes, No, or Abstain (**do not abstain by not voting**)

Inconsistent Terminology

Reporting and Testimony
Subcommittee

Inconsistent Terminology

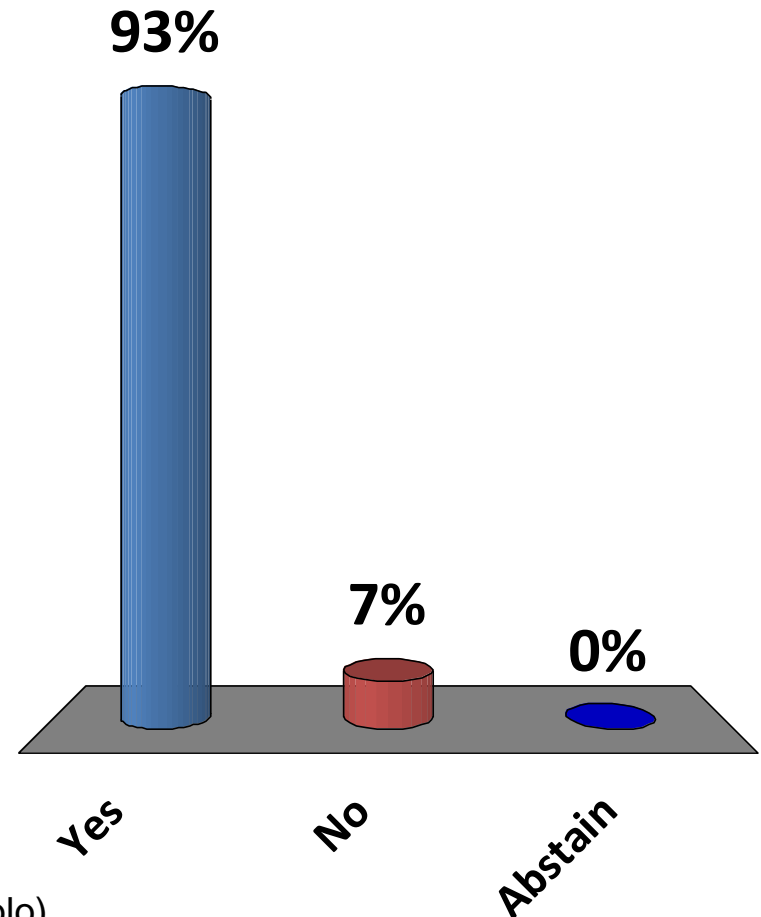
Views Document

Approve of document (move first sentence)

1. Yes

2. No

3. Abstain



26 YES

2 NO (Ted Hunt & John Fudenberg proxy Frank DePaolo)

Via email (Jim Gates and Ed McCleskey both voted YES)

Universal Accreditation

Accreditation and Proficiency Testing
Subcommittee

Universal Accreditation

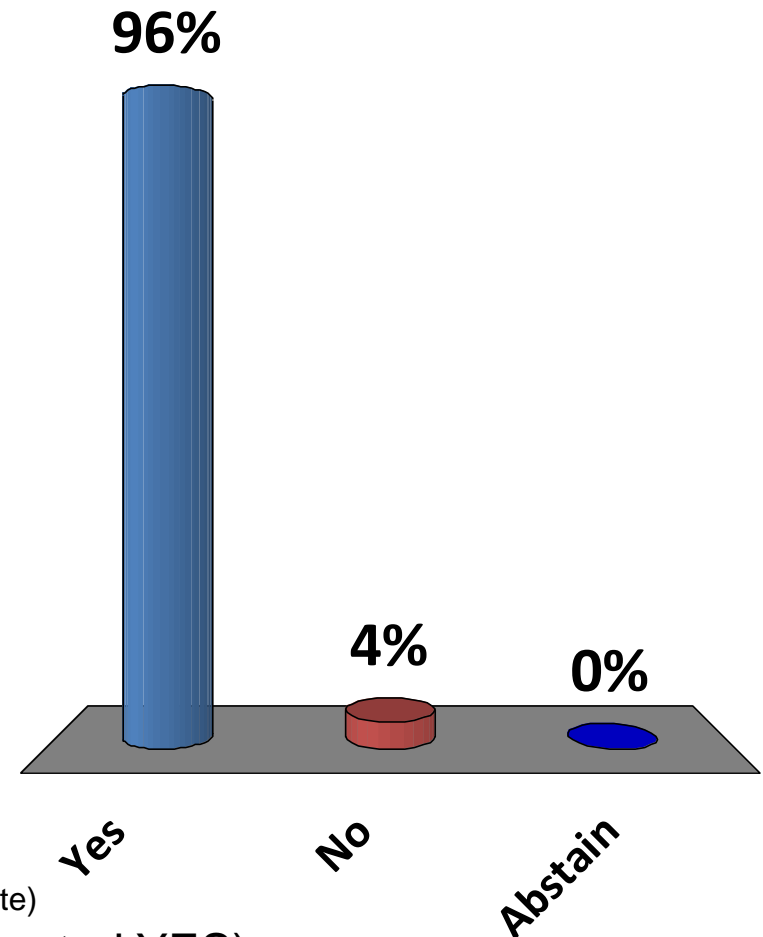
Policy Document

Approve of document as is

1. Yes

2. No

3. Abstain



27 YES

1 NO (Jeff Salyards – wanted definitions voted on before this vote)

Via email (Jim Gates and Ed McCleskey both voted YES)

Those Voting May 1

20 votes needed for 2/3

1. Nelson Santos
2. John Butler
3. Greg Czarnopys
4. John Kacavas (Deirdre Daly)
5. Marc LeBeau
6. Cecelia Crouse
7. Dean Gialamas
8. Linda Jackson
9. Jeff Salyards
10. Phil Pulaski
11. Vince Di Maio
12. John Fudenberg (Frank DePaolo)
13. Ted Hunt
14. Matt Redle
15. Pam King
16. Julia Leighton
17. Judge Hervey
18. Judge McCormack
19. Suzanne Bell
20. Fred Bieber (Victor Weedn)
21. Bonner Denton
22. Stephen Fienberg
23. Troy Duster
24. Jules Epstein
25. Paul Giannelli (**on-line**)
26. Susan Howley
27. Peter Neufeld
28. R. Washington (Greg Champagne)
29. Jim Gates
30. Tom Cech (Ed McCleskey)

If no Paul, then 28 voting and 19 votes = 2/3

Definition of Forensic Science and Related Terms

Interim Solutions Subcommittee

Forensic Science and Related Terms

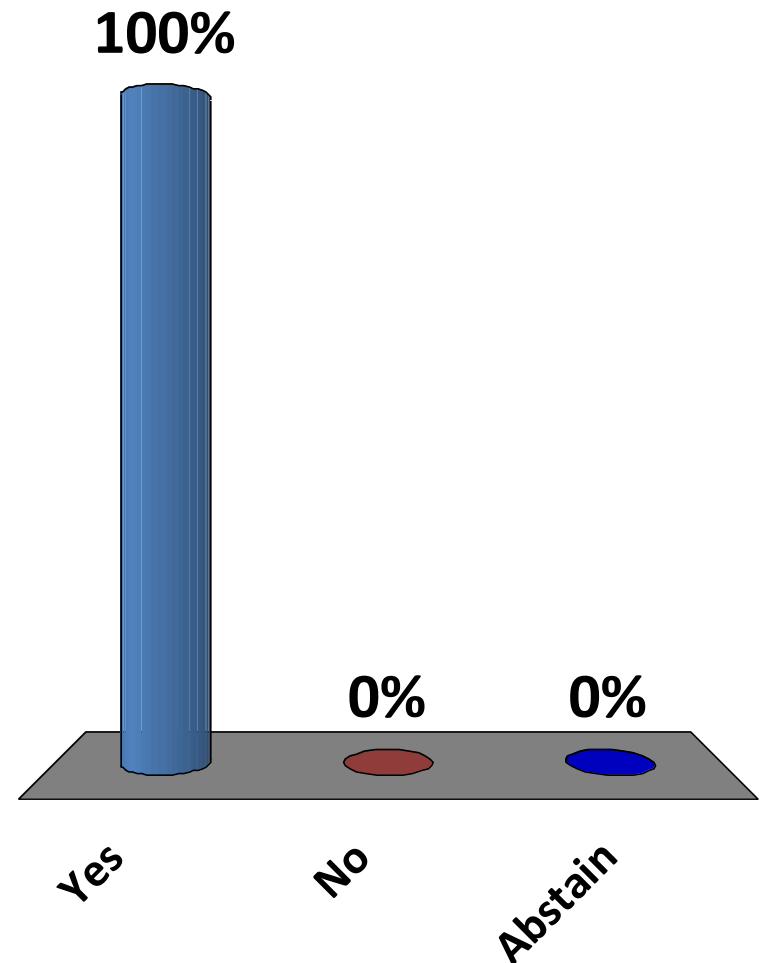
Views Document

Approve of document as modified

1. Yes

2. No

3. Abstain



30 YES

Wrap-Up Summary

- Review Federal Register announcement
- Introduce Andrew Bruck as new DFO
- Discuss ideas for bylaws process plan
- Vote on keeping current meeting schedule of 1 ½ day Commission meetings (4 per year)
- Discuss potential agenda items for future meetings
- New Commission support staff and their roles
- Some final acknowledgments



Posted April 28, 2015

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PUBLIC INSPECTION

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Tuesday, April 28, 2015

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Department of Justice

<https://www.federalregister.gov/articles/2015/04/28/2015-09934/national-commission-on-forensic-science-notice-of-charter-renewal-and-solicitation-of-applications>

Federal Register Notice

- The renewed charter removes the prohibition on developing or recommending guidance regarding digital evidence.
- The renewed charter additionally states that the Attorney General will refer recommendations regarding measurement standards and priorities for standards development to the Director of the National Institute of Standards and Technology, as the Attorney General deems appropriate.

Federal Register Notice

- Members will be appointed by the Attorney General in consultation with the Director of the National Institute of Standards and Technology and the vice-chairs of the Commission.
- **Additional members will be selected to fill vacancies to maintain a balance of perspective and diversity of experiences**, including Federal, State, and Local forensic science service providers; research scientists and academicians; Federal, State, Local prosecutors, defense attorneys and judges; law enforcement; and other relevant stakeholders.
- **Members will also be selected specifically to support the inclusion of digital evidence.**

Federal Register Notice

- Any qualified person may apply to be considered for appointment to this advisory committee.
- Each application should include: **(1) A resume or curriculum vitae; (2) a statement of interest describing the applicant's relevant experience; and (3) a statement of support from the applicant's employer.** Potential candidates may be asked to provide detailed information as necessary regarding financial interests, employment, and professional affiliations to evaluate possible sources of conflicts of interest.
- The application period will remain open through May 28, 2015.
- The applications must be sent in one complete package, by email, to **Andrew Bruck** (contact information above) with the subject line of the email entitled, “NCFS Membership 2015.” Other sources, in addition to the Federal Register notice, may be utilized in the solicitation of applications.

Federal Register Notice

- This notice announces the solicitation of the application for additional Commission membership.
- **Applications must be received on or before May 28, 2015**
- All applications should be submitted to: Andrew Bruck, Counsel to the Deputy Attorney General, 950 Pennsylvania Avenue NW., Washington, DC 20530, by email at Andrew.J.Bruck@usdoj.gov, or by phone at (202) 305-3481

New Designated Federal Official: **Andrew Bruck**

Ideas for bylaws revision

Proposed **Bylaws and Process Documents**

Task Group (8 total)

- DFO: Andrew Bruck
- Vice-chairs: Nelson Santos and John Butler
- OSTP representative
- Commission representatives (4)
 - Forensic science researcher (1): Marilyn Huestis
 - Forensic science practitioner (1): Dean Gialamas
 - Legal community reps (2): Pam King, Matt or Ted

Keep current structure of meetings

(4 per year; 1 ½ days each)?

- Notes after the meeting from JMB:
 - Did not do a clicker vote but there was no support for 3 meetings per year
 - Several spoke up in favor of four meetings per year
 - Not hearing any support for 3 meetings per year, we will plan to keep the current structure of meetings

Planned Future Commission Meeting Dates (2nd Term)

- *Meeting 7: August 10-11, 2015* M/T
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Commission DOJ Support Staff and Roles

(National Institute of Justice employees or contractors)

- **Robin Jones** (Robin.W.Jones@usdoj.gov):
 - Organizes meetings and coordinates Commission activities
 - Point-of-contact (POC) working with the **Reporting & Testimony** and the **Training on Science and Law** Subcommittees
- **Jonathan McGrath** (Jonathan.McGrath@usdoj.gov):
 - Works on implementing recommendations made by the Commission
 - POC working with the **Scientific Inquiry & Research** and the **Accreditation & Proficiency Testing** Subcommittees
- **Toni Roberts** (on detail from the FBI Laboratory; Maria.Roberts@ic.fbi.gov):
 - Serves as a liaison between NCFS subcommittees and OSAC
 - POC working with the **Human Factors** and the **Interim Solutions** Subcommittee
- **Danielle Weiss** (Danielle.Weiss@usdoj.gov):
 - Provides support with public comments received on draft documents
 - POC working with the **Medicolegal Death Investigation** Subcommittee

Thank you!

- Please leave the clickers on your desk and I will pick them up at the end of the meeting
- Donna Kimball and Dianne Poster for note taking
- Robin Jones and support staff – for making meeting arrangements
- Brette Steele – for dedicated service as DFO
- House of Sweden for an excellent venue