

SUBCOMMITTEE REPORTS



NATIONAL COMMISSION ON FORENSIC SCIENCE

NIST
National Institute of
Standards and Technology
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Reporting and Testimony Subcommittee Report March 21-22, 2016

Project
Recommendation on Pretrial Discovery
Status
Initial Draft
Discussion
Because the need for pretrial discovery of forensic evidence in criminal cases is critical so that the information can be reasonably evaluated and tested, this report recommends that when expert forensic testimony is intended to be offered by the Government, each expert must submit, reasonably in advance of trial, a detailed expert report that states the expert's opinions, the reasons for them, the facts and data that were considered in forming the opinions, and other pertinent information. The report also recommends that full pretrial access to the expert's case file be permitted -- but only if the defense reciprocally agrees that, if it intends to offer expert forensic testimony, its expert will provide the same detailed report and full access as provided by the Government.

Project
Views Document on Judicial Vouching
Status
Initial Draft
Discussion
Some litigators request the trial judge to declare a witness to be an expert <i>in the presence of the jury</i> . This practice has the potential of misleading the jury into believing that the judge is vouching for the witness and the content of the witness's testimony. It is the view of the National Commission that this type of judicial vouching of experts should be discontinued.

Project
Views Document on Notice and Demand
Status
Initial Draft
Discussion
<p>As a result of decisions of the Supreme Court of the United States examining the right of confrontation, many laboratory examiners are required to attend trials even though the results of their examinations are not challenged by the defense—thus, creating an unnecessary workload burden on FSSPs. To avoid this situation, some jurisdictions have adopted notice-and-demand provisions, which (1) require the prosecutor to notify the defense before trial that a laboratory report will be offered in evidence and (2) provide the defense with the opportunity to demand that the analyst testify at trial. Failure to demand the analyst’s presence permits the admission of the report and waives the right to the analyst’s presence at trial—if (1) the notice is given in sufficient time for defense counsel to consult an expert and (2) sufficient information is provided to permit counsel to make an informed decision regarding waiver. It is the view of the National Commission that jurisdictions should adopt notice-and-demand provisions that meet these requirements.</p>

Project
Recommendation on Use of the Term “Reasonable Scientific Certainty”
Status
Final Draft
Discussion
<p>Forensic discipline conclusions are often testified to as being held “to a reasonable degree of scientific certainty” or “to a reasonable degree of [discipline] certainty.” These terms have no scientific meaning and may mislead factfinders about the level of objectivity involved in the analysis, its scientific reliability and limitations, and the ability of the analysis to reach a conclusion. Neither the <i>Daubert</i> nor <i>Frye</i> test of scientific admissibility requires its use, and consideration of caselaw from around the country confirms that use of the phrase is not required by law and is primarily a relic of custom and practice.</p> <p>It is the recommendation of the National Commission on Forensic Science that 1) The Attorney General should direct all attorneys appearing on behalf of the Department of Justice (a) to forego use of these phrases when presenting forensic discipline testimony unless directly required by judicial authority as a condition of admissibility for the witness’ opinion or conclusion, and (b) to assert the legal position that such terminology is not required and is indeed misleading.; 2) The Attorney General should direct all forensic science service providers and forensic science medical providers employed by Department of Justice not to use such language in reports or couch their testimony in such terms unless directed to do so by judicial authority; and 3) The Attorney General should, in collaboration with NIST, urge the</p>

OSACs to develop appropriate language that may be used by experts when reporting or testifying about results or findings based on observations of evidence and data derived from evidence.

Project
Views Document on Testimony Using of the Term “Reasonable Scientific Certainty”
Status
Final Draft
Discussion
It is the view of the National Commission on Forensic Science (NCFS) that legal professionals should not require that forensic discipline testimony be admitted conditioned upon the expert witness testifying that a conclusion is held to a “reasonable scientific certainty,” a “reasonable degree of scientific certainty,” or a “reasonable degree of [discipline] certainty.” The legal community should recognize that forensic scientists, medical professionals and other scientists do not routinely use “to a reasonable scientific certainty” when expressing conclusions outside of a courtroom context. Nor should forensic science service providers and forensic science medical providers endorse or promote the use of this terminology.



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Human Factors Subcommittee Report March 21-22, 2016

Project
Lab Survey
Status
Now in data compilation and analysis stage
Discussion
Survey conducted through ASCLD received a large number of responses addressing issues related to cognitive bias concerns in the forensic laboratory setting. Preliminary reporting of the data received will be reported to NCFS at the March meeting. Analysis of the responses is, however, ongoing. As data are analyzed the analyses will be shared with the NCFS.

Project
Checklists
Status
Early stages of information gathering to assess whether checklists may be useful in forensic laboratories to reduce error
Discussion
Checklists, used in the airline industry and in medicine to reduce error, are being assessed to see whether they can and should be used in forensic laboratories. Depending upon the outcome of the research, a Views document or Recommendation may be forthcoming.

Project
Internal Proficiency
Status
In the earliest stages of discussion and study
Discussion
Discussion is at the preliminary stage within the subcommittee but work is being done between now and the March meeting, and there will be more to report at that point.



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Scientific Inquiry and Research Subcommittee Report March 21, 2016

Project
Views Document on Establishing the Foundational Literature within the Forensic Science Disciplines
Status
Final Draft
Discussion
There were a few comments and all in a positive vein. Minor editorial changes were made in response, along with addition of definitions. The subcommittee approved via electronic vote and the document is ready to be presented to the full commission for a vote.

Project
Recommendation for Post-Doctoral Projects to Facilitate Translation of Research into Forensic Science Practice
Status
Final Draft
Discussion
There were a few comments and all in a positive vein. Minor editorial changes were made. The subcommittee approved via electronic vote and the document is ready to be presented to the full commission for a vote.

Project
Views Document on Validation of Forensic Science Methodology
Status
Initial Draft – sent out for public comment
Discussion
This document was proposed and discussed prior to the December meeting. Several subcommittee members worked on drafts leading to a conference call in late February in which consensus on content and direction was achieved. A small group finalized the draft and submitted it. The subcommittee anticipates vigorous discussion of this document at the March meeting.

Project
Recommendation to Request for NIST to Evaluate Developmental Validation Studies for Forensic Science Test Methods in Advance of Documentary Standards Setting
Status
Initial Draft – sent out for public comment
Discussion
This document was proposed and discussed prior to the December meeting. Several subcommittee members worked on drafts leading to a conference call in late February in which consensus on content and direction was achieved. A small group finalized the draft and submitted it. The subcommittee anticipates vigorous discussion of this document at the March meeting.



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Accreditation & Proficiency Testing Report March 21-22, 2016

Project
Views Document on Critical Steps to Accreditation
Status
Final Document for Vote
Discussion
This document provides an overview of nine critical steps that can encompass significant progress in accreditation of an FSSP. It was intended to inform and encourage FSSPs to move towards accreditation. It was open for public comment and discussed at the December NCFS meeting. All public comments were discussed and adjudicated by the subcommittee; some minor changes were incorporated into this final version. It is now presented to the NFCS for a final vote and adoption.

Project
Views Document on Proficiency Testing in Forensic Science
Status
Final Document for Vote
Discussion
This document provides an overview and understanding of the current state of proficiency testing with emphasis on the forensic sciences. It was open for public comment and discussed at the December NCFS meeting. All public comments were discussed and adjudicated by the subcommittee; some minor changes were incorporated into this final version. It is now presented to the NFCS for a final vote and adoption.

Project
Recommendation to the Attorney General for the Accreditation of Digital and Multimedia Forensic Science Service Providers
Status
First Draft Document for Public Comment
Discussion
This document is based upon the previous NCFS recommendation on Universal Accreditation and intends to address issues for accreditation of Digital and Multimedia FSSPs. This document is presented for public comment and discussion. The subcommittee anticipates significant input from the community so a final document that is specific to Digital and Multimedia FSSPs can be developed. The document will be finalized in conjunction with a group of subject matter experts in the coming months.

Project
Creation of Subject Matter Expert advisory Group in Digital and Multimedia FSSPs
Status
SME group established February 2016
Discussion
To ensure that the community of Digital and Multimedia FSSP was involved in future NCFS work products involving accreditation, proficiency testing and certification, a group of SMEs was established. This group includes six individuals from federal and private FSSPs and augments the existing expertise on the subcommittee in the areas of Digital and Multimedia Sciences. They will participate in subcommittee document development and provide feedback to ensure issues and challenges appropriately addressed.

Project
Views on Recommended Improvements for Proficiency Testing in Forensic Science
Status
Abstract
Discussion
The National Commission on Forensic Science (NCFS) has previously adopted the policy recommendation on the Universal Accreditation of all Forensic Science Service Providers (FSSPs). Proficiency testing is required of all accredited FSSPs. The NCFS has expressed the view that as a recognized quality control tool, proficiency testing should also be implemented by non-accredited FSSPs in disciplines where proficiency tests are available from external

organizations. However, the NCFS has identified several issues for proficiency testing in forensic science including cost, test availability, creating test samples that simulate case work, availability of test result data, and blind testing. The Accreditation and Proficiency Testing Subcommittee of the National Commission on Forensic Science will examine the current state of Proficiency testing to determine whether there are avenues for improvement that might be impacted by a views document or recommendations from the Commission. This intention is to gather specific areas of focus from the NCFS.

Project

Views Document on Recommendations for Accreditation Programs and Standards

Status

Future Document

Discussion

After completion of the Universal Accreditation recommendation the subcommittee felt there was value in an evaluation and review of the existing accreditation programs for FSSPs. Suggestions for improvement or changes based upon this review would be included in a Views document for discussion and presentation to the NCFS.

Project

Views Document on Certification

Status

Future Document and Panel Discussion for NFCS

Discussion

The subcommittee feels strongly that a document discussing the complex issues surrounding certification in forensic sciences should be developed for presentation to the NCFS. Following a panel discussion of stakeholders in the forensic science certification (i.e. certifying bodies, entities that accrediting certifying bodies, FSSPs) the subcommittee would develop a Views document that includes an overview of the current state and challenges in certification of forensic science practitioners.



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Medicolegal Death Investigation Subcommittee Report March 21-22, 2016

Project
Recommendation on Establishment of a National Call Center
Status
Introduce to Commission and pending public comment period in March 2016
Discussion
<p>The National Commission on Forensic Science requests that the Attorney General of the United States advocate for the establishment of a National Disaster Missing Persons Call Center.</p> <p>There is a need for a national Disaster missing persons call center capability to assist in the development of victim manifest following large scale mass fatality incidents. This center should be distinguished from 911 systems or other emergency call centers to reduce impact on such systems following large scale disasters. The National Disaster Call Center would be available for families and significant others to call when their loved one goes missing after a significant disaster event. Mass Fatality incidents may span jurisdictions, hence necessitating a national solution. It is unrealistic for local jurisdictions to fund such centers.</p>

Project
Next of Kin Communication and Interactions during Medicolegal Death Investigations
Status
Abstract – Pending Introduction at the March 2016 meeting
Discussion
<p>“When a death requiring a medicolegal death investigation occurs, families will have many questions and concerns as they assimilate and accept information about the death of their loved one. Families of individuals who died in situations requiring an investigation experience additional challenges and emotions not faced by families following “normal or anticipated” deaths. Sudden deaths exacerbate the experience of grief and loss- regardless of the manner of death. The investigation generally delays and often affects mourning rituals, and thus has the potential to create uncertainty, additional frustration and psychological stress.</p> <p>How medicolegal professionals communicate with families in the aftermath of a death will</p>

have a direct impact on their ability to cope, their view of the medicolegal system, and their willingness to cooperate with the investigation and future proceedings.”(1) Therefore, the impact of communication issues affects not only next of kin, but all investigators and the general public as well. It is the intention of the Medicolegal Death Investigation subcommittee to create a views document to address the issues surrounding next of kin communications and interactions during medicolegal death investigations to support consistency and sensitivity for the benefit of all.

References:

1. SWGMDI, Guidelines for Communication with Next of Kin During Medicolegal Death investigations, June 13, 2012.
2. Rudd R, Capizzi Marain L, Crandall L To Hold or Not to Hold: Medicolegal Death Investigation Practices During Unexpected Child Death Investigations and the Experiences of Next of Kin. Am J Forensic Med Pathol. 2014 Jun; 35(2): 132-9.)
3. Baker AM, Crandall L. To Hold Or Not To Hold. Forensic Sci Med Pathol. 2009 (Dec; 5(4):321-3. Epub 2009 Nov 13.
4. National Transportation Safety Board, Office of Communication Transportation Disaster Assistance Division COMMUNICATING WITH FAMILY MEMBERS AND SURVIVORS: A Guide for NTSB Board Members

Project
Views Document on Medicolegal Autonomy and Independence
Status
Draft Views Work Product Pending Final Approval in Subcommittee
Discussion
<p>Currently, many medicolegal offices do not allow (or they restrict) forensic pathologists (FPs) from performing private work outside of their full-time employment, to include consultative work and/or locum tenens for reasons of alleged conflicts of commitment and/or interest. Because of the national shortage of forensic pathologists, this means that the public, courts and defendants, both civil and criminal, are deprived of forensic services.</p> <p>Currently, many medicolegal offices do not allow (or they restrict) forensic pathologists (FPs) from performing private work outside of their full-time employment, to include consultative work and/or locum tenens for reasons of alleged conflicts of commitment and/or interest. Because of the national shortage of forensic pathologists, this means that the public, courts and defendants, both civil and criminal, are deprived of forensic services.</p>

Project
Recommendation - Model Legislation for Medicolegal Death Investigation Systems
Status
Discussion
<p>The National Commission on Forensic Science requests that the Attorney General of the United States advocate and provide financial support for the drafting of model medicolegal death investigation legislation by the Uniform Law Commission.</p> <p>The 1954 Postmortem Examinations Act was an early model medical examiner act; no equivalent model coroner act exists. The 1954 act is so obsolete that it provides little guidance for either modern medical examiner or coroner legislation and needs to be updated. Model legislation would assist State governments to improve the quality of their medicolegal death investigation statutory framework and their ability to conduct adequate medicolegal death investigations.</p>

Project
Views Document on Accreditation of Medical Examiner and Coroner's Offices
Status
Pending – Conversion from Policy recommendation to Views document
Discussion
<p>Accreditation demonstrates compliance with industry and professional standards and performance criteria and provides an independent measure of assurance to the tax-paying citizens of the community served. Unfortunately, many government bodies which fund forensic science or health and human services programs do not give priority to death investigation systems, making it difficult for such systems to achieve accreditation.</p> <p>Unlike traditional publicly-funded crime laboratories, most medicolegal death investigation offices, medical examiner and coroner offices are not accredited. Of the estimated 2,479 medicolegal death investigation offices in the United States, less than 100 are accredited by either the National Association of Medical Examiners (NAME) or the International Association of Coroners and Medical Examiners (IAC&ME), the only two accrediting bodies in the United States for medicolegal death investigation institutions.</p>

Project
Views Document on Certification of Medicolegal Death Investigators
Status
Pending - Conversion from Policy recommendation to Views document
Discussion
<p>Certification is a basic credential for individuals practicing within a particular industry. ABMDI registry certification is the primary and basic credential for medicolegal death investigators (ABMDI “board certification” is an advanced credential). Unfortunately, many government agencies that have the capability to provide financial support to medical examiner or coroner offices do not give priority to enhancing professional competency of our Nation’s MDIs. Federal funding to support certification of MDI practitioners is non-existent. The National Research Council (NRC) has published two reports which have components that emphasize the importance of improving our Nation’s MDI system, which is demonstrative of the fact that this vital community of practitioners is not properly supported to ensure competency.</p>



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Training on Science and the Law Report March 21–22, 2016

Project
Tools to assess training on science and the law
Status
Approved abstract; developing initial Views Document
Discussion
Assessment is an integral part of instruction because it allows instructors to determine whether the goals of education are being met. This project addresses that problem by giving background regarding the pros and cons of different assessment methods. This document is currently an abstract that has been approved by the Training on Science and the Law Subcommittee. Next, the Subcommittee intends to convert this document into a Views Document and is intended to foster discussion (including public comment) regarding the best way or ways to assess the success of training on science and the law.

Project
Notification training after an irregularity in the criminal justice system
Status
Approved abstract; developing initial Views Document
Discussion
Some errors or irregularities in the functioning of the criminal justice system warrant notifying a defendant. To ensure that this goal is met, it is of paramount importance that all necessary parties receive training regarding this issue. This document in part addresses those needs by providing background information regarding the topic of notification and providing specific examples. This document is an abstract that has been approved by the Training on Science and the Law Subcommittee, and the Subcommittee intends to convert this document to a Recommendation.

Project
Training on the collection, preservation, and storage of evidence
Status
Abstract to be submitted to subcommittee
Discussion
The collection, preservation, and storage of evidence often sit at the intersection of science and the law. As such, actors in the criminal justice system, including scientists and lawyers, amongst others, must understand how evidence is collected, why certain evidence is collected (or not collected), and how to preserve and eventually destroy that evidence. Understanding these issues is critical to the effective use (and opposition to) scientific evidence at trial.

Project
Training for postconviction work based on new developments in science
Status
Abstract to be submitted to subcommittee
Discussion
Training young lawyers how to handle postconviction writs.

Project
Conducting a survey of criminal judges to determine where we are since the initial National Academy of Sciences Report: gatekeeping role.
Status
Abstract to be submitted to subcommittee
Discussion
Before future training can be designed and implemented it is first necessary to determine whether the training that has been offered since the NAS report was published has been successful.