

National Commission on Forensic Science

Meeting #9

March 21–22, 2016

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NIST
**National Institute of
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March 21, 2016

Call to Order/Opening Remarks

Andrew Bruck opened the meeting at 9 a.m.

Sally Q. Yates, Deputy Attorney General, U.S. Department of Justice

To help launch a quality assurance review of forensic science disciplines, review and implement recommendations by the National Commission on Forensic Science (NCFS), and build relationships with other Federal agencies, Ms. Yates announced expansion of the forensics team at the U.S. Department of Justice (DOJ). Acknowledging the need for forensics experts when designing policy response, she announced that Dr. Victor Weedn will join the Office of the Deputy Attorney General for the final months of the Administration as an advisor on forensic science matters and point of contact with NCFS. She also introduced Jonathan Wroblewski, who recently took over as head of DOJ's Office of Legal Policy (OLP), which has long assisted the department in the development of forensic science policies.

At last month's meeting of the American Academy of Forensic Science (AAFS), Ms. Yates outlined plans for a quality assurance review of forensic science disciplines to determine whether similar testimonial overstatement found during a review of microscopic hair evidence was present in other disciplines practiced by the Federal Bureau of Investigation (FBI). She emphasized that this review is being undertaken as good operating procedures, not because of specific concerns. OLP will design the review with input from the Commission and the public.

Ms. Yates deferred to the Commission to set its own priorities but encouraged Commissioners to identify a handful of the most important issues for which they could develop thoughtful and robust recommendations. She also asked Commissioners to reserve time for discussing DOJ's proposals for the quality assurance review in future meetings.

Ms. Yates then responded directly to five work products NCFS recently approved.

1. *Recommendation on Root Cause Analysis.* DOJ strongly supports the use of root cause analysis to identify errors and other nonconformities and makes use of them when appropriate (e.g., the FBI plans to undertake a root cause analysis regarding its use of microscopic hair analysis and is expected to solicit bids in the near future). All accredited forensic science providers are required to have corrective action policies, including protocols for root cause analysis. However, not all digital labs are accredited at this point, although they do have their own internal quality assurance policies. The accreditation policy for digital labs will be reviewed in coming months. The specific implementation proposals in the Recommendation are now being circulated to labs to determine how best to incorporate them.
2. *Recommendation on Interoperability of "Automated Fingerprint Identification Systems" (or AFIS).* DOJ strongly supports increased AFIS interoperability and has worked on the issue for some time (e.g., FBI's Biometric Center of Excellence has focused on advancing interoperability and connecting the nation's major repositories at the Departments of Defense and Homeland Security). DOJ has shared the Commission's implementation proposals with the FBI as they continue to identify ways to improve State and local agency access to various Federal fingerprint systems. DOJ also provides significant funding to purchase and upgrade AFISs and will redraft grant solicitations to clarify that DOJ funds are available for purchasing latent fingerprint technology that, wherever possible, should be

used for interoperable systems. In addition, the National Institute of Justice (NIJ), in partnership with the National Institute of Standards and Technology (NIST), formed a Latent Print AFIS Interoperability Working Group, which has produced guidelines for State and local agencies in purchasing or upgrading to interoperable AFISs. In response to this Recommendation from NCFCS, the Office of Justice Programs (OJP) will distribute the materials developed by the working group.

3. *Recommendation to Create a “Medical Examiner and Coroner Electronic Information Network.”* DOJ supports this concept and is committed to working with other Federal agencies to develop such a network, recognizing this will take time. DOJ is working with the White House Office of Science and Technology Policy (OSTP) to create an interagency group that can address this proposal and others.
4. *Views Document on Pretrial Discovery.* Although DOJ only takes actions on Recommendations (not Views Documents), Ms. Yates provided some feedback on this document. DOJ believes the four principles on pretrial discovery outlined in the document establish a useful framework and that advance access to discoverable materials and timely disclosures will enhance the ability to evaluate forensic science evidence, which is often technical and complex. DOJ also supports increasing reciprocal access to discoverable information and ensuring both parties comply. However, substantial advance access may not always be feasible (e.g., due to strict regulations of illegal substances or concerns regarding witness security). DOJ supports finding ways within the current legal structure to ensure disclosure of forensic science evidence and all aspects of pretrial discovery that are meaningful. DOJ looks forward to reviewing a recommendation on this subject should one be approved by the Commission.
5. *Views Document on Increasing the Supply of Forensic Pathologists.* DOJ agrees with this general principle, believing that forensic pathologists play a critical role in public health and safety, and supports NCFCS’s goal to raise awareness of the need for better training, funding, and facilities. Dr. Weedn may be able to help address this issue.

Richard Cavanagh, Ph.D., Director, Special Programs Office, National Institute on Standards and Technology

Dr. Cavanagh spoke on behalf of Dr. Willie May, Director of NIST, and conveyed Dr. May’s regrets he could not be present.

Regarding the Commission’s request to do more with NIST and the Organization of Scientific Area Committees for Forensic Science (OSAC), Dr. Cavanagh said NIST supports the general concepts and looks forward to the documents produced by the Scientific Inquiry and Research subcommittee. He listed several questions on which NIST would like the Commission’s input:

- Is there value in NIST publications on validation issues relevant to forensic science?
- How would anonymity be maintained in interlaboratory reports?
- What kind of resources does NIST need to extend efforts beyond its current research program areas?
- What other Federal agencies and private/international/academic partners might provide additional expertise?

Displaying an OSAC organizational chart, Dr. Cavanagh showed where 29 NIST staff are embedded within OSAC. (Some committees do not have NIST membership because the best expertise for them is outside of NIST.) He also listed NIST’s six areas of forensic research (forensic genetics, ballistics and

associated tool marks, digital and identification forensics, statistics, toxins, and trace) and noted their strong capabilities.

Dr. Cavanagh highlighted DAG Yates' request for input to a quality assurance review of forensic science disciplines, and noted that individual OSAC members could contribute effectively during the public comment period.

However, many NCFs requests for OSAC fall outside its mission, scope, and resources; OSAC's primary purpose is supporting the development and promulgation of documentary standards. Past requests have included prioritizing and conducting forensic science research, defining limitations, enforcing ethics, and developing forensic science training. Although important, these tasks are not what OSAC was designed to do, as reflected in the four purposes stated in its charter and bylaws.

OSAC's first standard came out on the Registry of Approved Standards in January 2016 (E2329-14 "Standard Practice for Identification of Seized Drugs"); a statement subsequently appeared in the OSAC Registry on March 17, 2016, to address the fact that the American Society for Testing and Materials (ASTM) standard states there is "no uncertainty." That statement fails to capture the confidence level of these measurements and illustrated a gap in the process. Learning from these "growing pains," NIST sees the need for input from researchers, metrologists, and statisticians at an earlier stage. Other possible OSAC improvements could include strengthening the technical merit checklist, convening scientists to review documents earlier in the process, and forming a task group of statisticians. But overall, Dr. Cavanagh commends the great effort so far.

The challenge will be to balance the "liberal" perspective toward scientific principles ("protocol protection") from forensic practitioners and the "conservative" perspective ("protocol perfection") from NIST scientists and statisticians. Perfection is a wonderful goal but sometimes not the most important thing. Both sides are learning, and the first standard gave an opportunity to see how to improve the process. NIST is committed to working toward those improvements, despite the difficulty of the challenge.

Dr. Cavanagh welcomed Commissioners to NCFs Meeting 11, which will take place at NIST in Gaithersburg, Maryland, on September 12–13, 2016.

Framework for Forensic Science Discipline Review

Jonathan Wroblewski, Principal Deputy Assistant Attorney General, Office of Legal Policy

Work on the Forensic Science Discipline Review (FSDR) is currently at early stages, but Mr. Wroblewski laid out a framework that will help guide OLP in its effort. The process is intended to be iterative and collaborative, and he welcomed Commissioner input.

FSDR aims to advance the practice of forensic science by ensuring DOJ forensic examiners are testifying in a way consistent with scientific standards and as appropriate and to institutionalize quality assurance beyond what accreditation requires. He emphasized that DOJ does not have suspicions about particular forensic science disciplines but recognizes the value of sampling closed files to check for errors or overstatement and if found, to correct them. If a systemic problem is identified, a secondary review would begin.

OLP will collaborate with other NIJ offices as well as the Bureau of Justice Statistics (BJS) to develop methodology with input from researchers, statisticians, and scientists at DOJ and elsewhere. Mr. Wroblewski described some elements of the framework under discussion and welcomed the Commission's input on them:

1. **Selection of disciplines.** OLP's inclination is to begin with disciplines that require a comparison of two items (e.g., handwriting) because they have the greatest risk of testimonial overstatement. FSDR is not intended to challenge the underlying validity of these disciplines.
2. **Selection of cases.** Where, how many, over what time period? OLP's inclination is to focus on closed cases in which the FBI provided testimonial evidence (regardless of case outcome).
3. **Testimonial standards.** OLP's inclination is to base the standards on FBI Approved Standards for Scientific Testimony and Reports (ASSTRs), but recognizing the importance of using community expertise to adopt the correct standard, have the ASSTRs independently reviewed and critiqued.
4. **Conducting FSDR.** OLP anticipates legal, forensic, administrative, and social science resources as well as physical space and IT infrastructure development.
5. **Addressing testimonial inaccuracies (isolated cases and high rates).** What threshold will trigger a secondary review?
6. **Secondary review.** What would a secondary review look like?
7. **Reporting results.** The process should be as transparent as possible but also protect the privacy of legal practitioners, forensic examiners, defendants, and victims.

OLP plans to develop a methodology over the next months while concurrently beginning a review of testimonial standards and developing a budget and identifying resources. Mr. Wroblewski said he hopes to present an initial methodology at the Commission's June meeting, with the expectation that it will undergo further revision. The methodology may be finalized later in the summer and implementation and deployment can begin.

Shimica Gaskins, Acting Deputy Assistant Attorney General, Office of Legal Policy
Kira Antell, Senior Counsel, Office of Legal Policy

Ms. Gaskins and Ms. Antell invited discussion from the Commission.

- *Comment by Commissioner:* It is not appropriate to limit review to transcripts only; also include reports followed by pleas and convictions.
 - *Response by OLP:* We want to address testimony, but your suggestion to broaden the review may be appropriate, and we'll look into that.
- Discussion on contribution of statisticians.
 - *Comment by Commissioner:* Key players in areas such as case selection, testimonial standards, and secondary reviews are people who specialize in statistics and probability, not so much practitioners or lawyers, although some subject-matter experts (SMEs) will be needed. Statisticians should dominate and be part of the team at inception. They will play a critical role in setting up parameters for reviewing transcripts and reports. Give them a leadership role.
 - *Comment by Commissioner:* Various contributions of statistics: (1) quality control, with enormous expertise found at NIST; (2) survey sampling and assessment, in which DOJ has expertise; and (3) activities related to moving from assessment of evidence relative to databases to actual statements of testimony. The NIST-funded Center for Statistics and Applications in Forensic Evidence (CSAFE) offers help in this regard.
 - *Response by OLP:* Engaging CSAFE would add great value. Our goal is to have statisticians and researchers integrated in developing the methodology.
- Discussion on validity.
 - *Comment by Commissioner:* Concern regarding how to formulate movement from quality assurance to testimonial accuracy if not addressing validity of science and probative value of science in a legal context.

- *Question by Commissioner:* How are we not challenging validity if we are looking for error rate? Isn't validity that something measures what it's supposed to measure?
 - *Response by OLP:* If shown there was no probative value for a discipline, that would be an issue, but we don't think that will happen. We need to identify standards based in science and statistics and then test testimony against those standards. It is not our goal to determine the underlying validity of the science.
- *Comment by Commissioner:* Don't lose sight that forensic examination may still have tremendous investigative lead value even if no probative value.
 - *Response by OLP:* To clarify, this review is about quality assurance of testimony.
- Several Commissioners raised concern about the end product appearing as a statement accepting validity, especially if stakeholders are doing it instead of scientists and statisticians.
- *Comment by Commissioner:* Retrospective review of casework will not be a validity study; it only shows consistency with rules we've made up. Validity study would have samples that mimic casework but where we know ground truth. The Scientific Inquiry and Research subcommittee plans to introduce work products on validity.
- *Comment by Commissioner:* First need to establish a scientific basis for the field before you have statisticians; if not a valid science, fields can creep in that are not sciences.
- *Comment by Commissioner:* Concern for privacy may be overstated as the review will look at public records.
- *Question by Commissioner:* When will FBI ASSTRs be available publicly?
 - *Response by OLP:* Anticipated in the next few weeks.
- *Comment by Commissioner:* Include an evaluation of what happens after deployment in the timeline (i.e., an assessment of how new procedures work). One aspect of the assessment is how jurors perceive probabilistic statements.
- *Comment by Commissioner:* NSF could help OLP gain access to expertise.
- *Comment by Commissioner:* If major errors are found, then we need a mechanism to correct the past. Need to have labs willing to cooperate in reporting errors.
- *Comment by Commissioner:* Not talking about mistakes, but evolution of practice.
- *Comment by Commissioner:* Clearly defining the question asked in the review is important: Are you asking whether a person's testimony is consistent with something in that discipline that has a scientific foundation, or did the person testify in a way that was consistent with expectations of the discipline at the time [of the case]?

Selection of disciplines:

- *Comment by Commissioner:* Suggestion for two criteria for selecting disciplines: (1) which disciplines are most used and (2) which are most critical to a conviction.
- *Comment by Commissioner:* Possible criterion is community's assessment of the quality of science underlying a discipline.

Setup of review:

- *Comment by Commissioner:* Needs to be an absolute about what to look for (i.e., a checklist).
- *Comment by Commissioner:* Needs to be more than one reviewer in each case (maybe call secondary review "advanced review" to distinguish from a second review?).
- *Comment by Commissioner:* Review should involve people at multiple levels—major role for statisticians to collaborate in creating the framework but need substantive experts and legal guidance when evaluating transcripts. Need people who can frame questions at a high level across the domains (for consistency) as well as teams who can go deeply within them about how to implement.
- *Comment by Commissioner:* A multilevel approach is very important.

OLP is pleased with the discussion and reiterates this project is both very important and very difficult. OLP will struggle to find agreement on many of the outstanding questions on methodology and return to the Commission and the community as a whole to continue the discussion. The PowerPoint slides used here will be available on the Web site for public comment.

Commission Priorities

Nelson Santos, Vice-Chair

Mr. Santos reviewed the framework of Commission priorities from the 8th NCFS meeting in December 2015 and the priorities submitted by the subcommittees and proposed a path forward. Looking at the Commission's vision and goals alongside the subcommittee priorities and the recommendations stated in the National Academy of Sciences (NAS) report, he posed the question as to whether the Commission is meeting its goals with the documents it has passed and is considering. The priorities can be grouped to align broadly with the goals as foundational, operational, and application. Grouping the NAS recommendations into the same categories showed that many are operational. Some are foundational (e.g., the issue of validity in NAS Recommendation 3), and some are related to application. Looking at which NAS recommendations remain unaddressed/not sufficiently addressed side by side with a list of subcommittee-identified priorities, Mr. Santos was able to pull out several overlapping areas that serve as one way of prioritizing the Commission's work. He also looked at work products completed/introduced under each goal and suggested gaps that remain.

Considering the Commission has possibly only four more meetings and working backward, Mr. Santos pointed out that any new Recommendation documents should be introduced by the next meeting (Meeting 10), and Views documents can be introduced no later than Meeting 12 (January 2017); he proposed focusing on the priorities that were highlighted by the NAS report, were identified by subcommittees, and will meet Commission goals. He further proposed to sunset the Interim Solutions subcommittee and the Training on Science and Law subcommittee and to create a new subcommittee on Certification. Thus, he proposed distributing the priorities among the subcommittees in the following way:

- Statistical statements/limitations: Reporting and Testimony
- Report content: Reporting and Testimony
- Scientific validity of disciplines: Scientific Inquiry and Research
- Human bias and performance management: Human Factors
- Proficiency testing : Accreditation
- Certification, code of ethics enforcement: New subcommittee
- Medicolegal death investigation priorities: Medicolegal Death Investigation
- FSDR: Full Commission

By the end of this NCFS 2-year term, the Commission's goals may not be met entirely, but great progress will be accomplished. If time permits, or if the NCFS charter is renewed, remaining topics can be addressed.

Discussion

- After voting for universal accreditation, we thought we would come back and look at standards used to accredit. Accreditation does not take care of validity. Also, are the people who do the inspections independent?
- Accreditation as a priority over proficiency—but that can change in this discussion. Just consider what we can get done.

- Separate call for universal accreditation and call for proficiency testing from a review of both programs. They are daunting tasks, doubtful we can do both, but want to avoid sending a message that by calling for universal accreditation and universal proficiency testing, the problem is solved.
- Why separate proficiency from Human Factors, as we were working on it? Perhaps a collaboration between subcommittees could address the topic.
- With proficiency testing, are we talking about developing standards or execution of proficiency testing? Are we talking about making a policy that everyone should do this or what the quality of it should be? If already working on it in Accreditation, let this subcommittee complete its work.
- The Accreditation and Proficiency Testing subcommittee is further along with accreditation (the Attorney General has accepted the NCFs recommendation to apply it to DOJ entities); with proficiency testing, we are only working on a Views document. Because accreditation requires proficiency testing, by working on it, we can touch proficiency testing, but not the other way around.
- Suggestion to take proficiency testing off the priority list—it is very complex.
 - But we should move forward the most important topics, not necessarily the most advanced.
- The Human Factors subcommittee is looking at human performance issues, which addresses aspects of proficiency testing.

Mr. Santos recommended that the Commission agree to focus on the topics listed and encouraged the subcommittees to discuss these priorities in their afternoon meetings. He asked the Human Factors and the Accreditation and Proficiency Testing subcommittees to provide an answer to the Commission and for the certification group to propose a structure.

Subcommittee on Procedures and Operations Status Report

Jonathan McGrath, Ph.D., Commission staff

Dr. McGrath reviewed changes in the Commission’s bylaws.

- Section V has added language about the Commission’s work products and clarification on the number of days by which Commission work products need to be submitted to Commission officials.
- Section VI has added language about establishing a quorum.
- Section VII has a new section regarding voting on subcommittee work products; a simple majority only is required (allowing flexibility to keep products moving), and subcommittee co-chairs record all votes. Changes to the section regarding voting on Commission work products reflects previous discussion, and changes to the section regarding voting related to Commission business now includes *ex-officio* members.
- Section IX has added language allowing the Subcommittee on Procedures and Operations (SPO) to reconcile documents with nonsubstantive changes and allowing subcommittee co-chairs to confirm their continued availability annually.

Discussion clarified that a quorum does include electronic participation. A suggestion was made to add clarification on a quorum for subcommittee votes, but it was thought redundant.

Dr. McGrath then reviewed changes to the Work Product Development Guidance document. High-level changes included:

- “Establishment of Priorities” section: language about abstracts in the template.

- “Initial Draft Work Product” section: statements about a consensus reflecting at least a majority and that the co-chairs shall determine the number of votes necessary. Clarification about the number of calendar days is also added.
- “Final Draft Work Product” section: added language addresses the number of votes required and provides clarification on the number of calendar days.

VOTE TO ADOPT REVISED BYLAWS

- 39 responses (*ex-officios* included); 20 voted needed for majority.
- 100% yes, 0% no.

Matthew Redle, Commissioner

Mr. Redle introduced a reconciliation proposal to reconcile two previously adopted documents, a Recommendation document on “Universal Accreditation” and a Views document on “Defining Forensic Science and Related Terms.” Both documents defined “forensic science service provider,” but because the differences were stylistic only, the reconciliation recommends dropping the definition of “forensic science service provider” in footnote 1 of the “Universal Accreditation” document in favor of the definition given in the Views document.

Some new documents have not maintained fidelity with definitions; this may result in additional reconciliation proposals.

VOTE TO ACCEPT RECONCILIATION PROPOSAL FOR UNIVERSAL ACCREDITATION AND TERMS

- 36 responses (*ex-officios* included); 20 votes needed for majority.
- 94% yes, 6% no.
- Voting no: Jim Gates and Greg Czarnopys.

Organization of Scientific Area Committees Updates and Priorities

Mark Stolorow, Director, NIST OSAC Affairs

Since the last report, OSAC has held several important meetings. In January 2016, OSAC held an all-hands meeting with 543 OSAC members and more than 150 invited guests in Leesburg, Virginia. Also, in conjunction with the AAFS meeting in February, public meetings took place with 5 Scientific Area Committees (SACs) and 25 subcommittees. More information is found at www.nist.gov/forensics/osac/nist-scientific-area-committee-meetings-february-2016.cfm.

OSAC efforts are used to integrate and implement standards. In the overall design, several components work together: OSAC begins with documents and materials (e.g., from ASTM standards), which are cataloged, selected, and reviewed by individual SACs, subcommittees, and task groups. The draft standards are forwarded to standards development organizations (SDOs), and then the resulting standards are considered by OSAC for inclusion in the Registry of Approved Standards. OSAC’s goal is to provide standards and guidelines that accrediting bodies auditing forensic labs can use. To be effective, standards are only effective if they get implemented, and only implemented if they are a value proposition.

John Paul Jones, Associate Director, NIST OSAC Affairs

Mr. Jones provided more detail on deliverables and metrics over the duration of OSAC. Compared to last year, OSAC has improved considerably in broadening its reach. At the February AAFS meeting, OSAC gave 30 presentations. Also, approximately 30,000 public criminal justice agencies have been given free access to ASTM’s Committee E30 on Forensic Science’s Standards, which includes about 48 standards.

OSAC now has 25 subcommittees (with the addition of Crime Scene Investigation) and 210 task groups. Its 543 members represent 49 States; 38 percent are in State and local government. The OSAC Registry of Approved Standards has one standard listed, E2329-14, “under revision.” The OSAC Registry of Approved Guidelines has no documents at this point. E2329-14 is a standard practice for identification of seized drugs. Additional drug standards are coming through the pipeline as well as for other disciplines. A total of 10 standards have been approved by the SACs to move forward for public comment so far; 13 have been turned back or stopped. Currently 144 projects are moving within OSAC processes.

Several worksheets have been launched as well as “How to Work with an SDO Process.” OSAC has also launched a registry approval process with a mandatory period for public comment and a research-needs Web site (where 12 needs will be posted shortly). In addition, a monthly newsletter has been launched, and two interdisciplinary subcommittees have been established, as has a Forensic Science Standards Board (FSSB) statistics task group, which gives support across SACs. Finally, a Conclusions Task Group has been launched to discuss agreement on certain principles across disciplines. Two more major meetings are planned.

What about implementation? One State forensic science laboratory (Kentucky) has decided to implement OSAC standards in its drug chemistry section—it’s a start!

William F. Guthrie, Chief, NIST Statistical Engineering Division

The Technical Merit Worksheet is a tool to vet and document the appropriateness of a standard or guideline for inclusion on the OSAC Registry. It is a living document; version 4 is on the way soon with some tightened language. Its purpose is to guide discussion of the technical strength and scientific underpinning of a standard and provide a record of what people think of it along the review process. If a standard does not go on to the Registry, this worksheet records changes needed. A technical point of contact is assigned (a subcommittee member) as primary shepherd to guide a standard through the process. Once each stage of the discussion concludes, the extent of agreement is documented. Although we aim for consensus, a two-thirds majority vote will rule.

The worksheet asks questions on the standard’s scope and purpose, asks for references, and (if it is a test procedure) provides some additional framework for evaluation. If it is not a test procedure, the task group must determine if all the relevant information is covered. Additional questions ask about limitations, quality control procedures, safety, uncertainty, validation studies, fitness for purpose, and whether it is a generally accepted practice. The SACs will decide whether it will be classified as a “standard” or a “guideline.” The worksheet also captures how much support the standard has, recognizing all points of view. If there is disagreement, the worksheet documents where it is and possibly how it can be addressed. The worksheet has a place to record votes and give the standard an overall rating.

In summary, this worksheet helps harmonize different points of view in a complex decision-making process that involves many people.

Discussion

- It is disappointing to have language such as “effectively results in virtually no uncertainty” in an approved OSAC document. (E2329-14.)
 - The OSAC mission is clear, and we are learning a lot in this growing process. There was a lot of debate, but it became clear that despite the debate, the direction taken needed a course correction, so you see a policy decision made at a high level of NIST. We hope to emerge stronger with a better understanding of how to proceed in the future.

- Is it NIST's intent to issue a statement on every document on the Registry? NIST and FSSB have a process to get a document onto the Registry, and seems as if NIST felt there was something wrong with the document that it had to issue a public comment. That document [E-23291-14] was already flagged to be updated. It had been around a long time, and it's never going to be perfect because of the nature of the consensus process—but better to have a standard up there to improve the identification of these drugs with good lab practice.
 - If a standard makes it to the Registry, it has the tacit approval of NIST. The NIST statement explained why NIST took the exceptional step of issuing a statement. We have taken your observations to heart and will make sure the process is followed.
 - There was no single point of failure; we think the solution is looking upstream.
- On the Technical Merit Worksheet, what would go in the quality control category? Is that retrospective quality control?
 - It is how the correct operation of the standard is monitored and documented during its normal, ongoing use.
- Commissioners accessing OSAC documents—NCFS was not included in the contract offering free access, but a memo of understanding (MOU) said that NCFS and OSAC would work together.
- How is OSAC structure ensuring sufficient scientific basis exists for each area? How will the Commission and the scientific community more broadly see scientific basis on which these standards will build? How will we get an understanding of uncertainty (not just measurement error) and how its bias and variability propagate into the uses of those standards in real forensic science practice?
 - There are vigorous discussions on how to express probative evidence. We are hitting all sources of uncertainty on at least some standards and hope to get more consistent over time.
- More research and development needs identified?
 - Many are not yet formalized but will come in over the next month. New ones will be published in the OSAC newsletter (all Commissioners should receive); the Web site keeps a running tally of all research needs.
 - NIJ works with NIST to coordinate research needs.
- Consider infrastructure to sustain the “liberal-conservative” balance. Look at formalizing the informal statistician task force and the ongoing participation by people not getting paid to do this.
- NIST is doing a great job on something never done before. It will be an iterative process. The standards development world is complicated, but it's about consensus building.
- Not everyone is using the same terminology.

Public Comment Period

Two people made in-person comments to the Commission.

1. Barry Scheck, Innocence Project co-director and member of the Human Factors and Training on Science and Law subcommittees, made a public comment with regard to the seized drug standard. Although commending the hard work of his colleagues at OSAC, he said the Legal Resource Committee had commented on the statistical statement at issue in the standard but only got back “unpersuasive.” Measurement error and limitations still need to be addressed. He hopes OSAC can take to heart the problems in the first standard and do more with the Technical Merit Worksheet.
2. John Kelly, author of *Prevent Your Wrongful Drug Conviction with Simple Science*, made a public comment.

Mr. Bruck adjourned the day's session at 1:40 p.m.

March 22, 2016

Call to Order

Mr. Bruck called the meeting to order at 9:01 a.m.

Dr. John Butler announced that eight documents are up for vote today, and seven more currently open for public comment will be discussed. Commissioner Bill Crane resigned in December due to a new job, and a replacement for him is being sought. Thirty Commissioners are voting today: 28 present, including Carson Guy (proxy for Barbara Hervey) and Wesley Grose (proxy for Dean Gialamas); Sunita Sah voted by e-mail; Arturo Casadevall sent votes previously by e-mail. Twenty votes are needed for a document to pass with two-thirds majority.

Reporting and Testimony Subcommittee Report

Judge Jed Rakoff and Matthew Redle, Co-Chairs

This subcommittee has two more documents in the pipeline on report contents and statistical statements of relevance, and expects to move ahead in the next meeting on them. A statistician has been added to the working group on statistical statements of relevance.

Views Document on Use of the Term “Reasonable Scientific Certainty”

Public comments have been adjudicated for this document, and it is up for final vote. It was noted that in a sidebar on what not to say in the courtroom in the March 7, 2016, issue of *Science* (p. 1132), Commissioner Stephen Fienberg is quoted as urging abandonment of the use of “reasonable scientific certainty.”

Recommendation on Use of the Term “Reasonable Scientific Certainty”

Public comments have been adjudicated for this document, and it is up for final vote.

Recommendation on Pretrial Discovery

This document is intended to supplement the one previously passed. The first recommendation is that the Attorney General should direct Federal prosecutors to provide in advance of trial a report that is broader in certain respects than what is currently required (i.e., the equivalent of Federal Rule 26 of Civil Procedure); the second recommendation is that the Attorney General should allow the defense access to the expert’s case file provided the defense agrees that they will not only provide similar access if there is a defense expert but also that the defense expert will provide a report that repeats the same requirements required of Federal prosecutors. Neither requires a change in Federal law.

Discussion

- How does language already in Rule 16 require a summary to be provided?
 - The main difference between what we propose and the current civil rules is a summary of facts for data considered by the witness in forming opinions. It has not

VOTE TO ADOPT VIEWS DOCUMENT ON USE OF THE TERM “REASONABLE SCIENTIFIC CERTAINTY”

- 30 members voting, 20 votes needed for 2/3 majority.
- 86% yes, 7% no, 7% abstain.
- Voting no: Ted Hunt, Marc LeBeau.
- Abstaining: Fred Bieber, Nelson Santos.

VOTE TO ADOPT VIEWS DOCUMENT ON RECOMMENDATION OF THE TERM “REASONABLE SCIENTIFIC CERTAINTY”

- 29 members voting, 20 votes needed for 2/3 majority.
- 86% yes, 7% no, 7% abstain.
- Voting no: Ted Hunt, Marc LeBeau.
- Abstaining: Fred Bieber, Nelson Santos.
- No response: Peter Neufeld.

been interpreted that facts and data can be obtained under a different rule. Also, the defense typically does not seek the case file, only the report, which can be far less than what the defense needs to adequately prepare for trial. Even if the current rule already covers this, there's no harm in the Recommendation.

- Regarding reciprocity (how can Government barter over discovery?) and giving opinions and reasons for them (how can this be complied with?), the problem seems to be interpretation and practice rather than language and rules, but the Recommendation is not written that way.
 - The underlying premise is to prevent “trial by ambush.” You cannot make material change in your opinion after issuing a final report. This Recommendation makes sure the report is sufficiently full with underlying facts that both sides will know what the facts are.
 - Experts could still be asked, “Would this [new] fact change your opinion?”
- Civil courts have used this language for decades, and it does not seem to be a problem. It will not be retrospective, only prospective. Also we are not recommending a change to include a deposition, as the civil side does.
- If applying only to Federal courts, the document should specify that.
- Reciprocity only triggered if defense makes request of Government, but we do not want the prosecution to be a victim of “trial by ambush” either.
 - We could add language to make the requirement equal on both sides.
- Important to avoid implication that progressive States are wrong. We are saying Federal courts should become more open—not that State courts should become less open—by supporting this document.
- This does not apply until a witness makes trial disclosures (i.e., not the plea bargaining stage). So not every report coming out of a lab has to meet this criteria, only those in advance of a trial.
 - Workload may still be substantial if labs must do such a report every time a subpoena is received.
 - Nothing addressed to early stages in case. In Federal labs, only about 500 appearances per year nationwide.
 - But Federal labs are smaller than State labs; additional report a huge challenge.
 - It will require more work, but not an unfair tradeoff under the circumstances.
 - As labs improve documentation and become more computerized, it will be easier.
- Regarding the “list of cases” in which the expert testified, it could be a lot of cases for a chemist or toxicologist. What happens if a case is left off?
 - Not shown as burdensome—just add one line with name of case, date testified, docket number every time you testify. If left out, judge’s discretion, but likely postpone testimony to allow defense a chance to look at previous testimony to see if you take a different position.
- Labs will need guidance on what the report should look like. It will need to be reviewed and go through a quality system.
 - Depends on the case. Sometimes very little alteration is needed for report to meet this requirement. Report is several pages; prosecutor will review for compliance/completeness.
- Most exhibits have to be prepared in advance of trial, so not burdensome. Language may need to be fine-tuned.

The subcommittee will revise the document according to discussion and present it as a final document for vote at the next Commission meeting.

Views Document on Judicial Vouching

This document says it is improper and misleading for judges to declare a witness is an expert in the presence of the jury (e.g., if asked that the court make a finding on record that the witness is an expert in the field). If such a finding is requested, it would be made outside the presence of the jury.

Discussion

- Should this go to the advisory committee on rules?
 - It's already covered by the Advisory Committee on Rules of Evidence, but this Recommendation is not limited to Federal jurisdictions. The advisory committee notes refer to Judge Richey's position, which is identified in the document.
- "Have you been qualified as an expert before and if so, how often?"
- Challenges to alleged expertise—judge can send jury out; it does not change information going to judge.
- "Opinion witnesses" (instead of "expert witnesses").
- If a Federal rule is being broken, is there another mechanism to handle it?
 - Federal rules do not explicitly state this position; it is only in the advisory committee notes. This is not a rules issue but a norms issue.
 - We are highlighting for the entire legal community the need to improve practice. When an attorney says in the presence of the jury, "I proffer Mr. X as an expert," a judge may think he/she is ruling on admissibility of testimony only and does not realize the jury interprets as "Mr. X is an expert."
 - This is a Views document only.
- This is not intended to be specific to judges—attorneys should also be mindful not to make the finding in the presence of the jury.
- Suggestion to give more explanation if trying to change judicial process.

Views Document on Notice and Demand

This document says that both State and Federal jurisdictions should adopt a provision by which parties going to offer an expert report notify in advance and give an opportunity for the other side to demand or waive the expert's presence at a trial.

Discussion

- Would attorneys ever waive?
 - If a judge thinks an attorney is frivolously requiring witnesses, can retaliate, but with this provision, it would not even be brought to the judge's attention. It's a way of making what's already a burden not a burden.
 - A code section in Virginia has worked well.
 - With respect to the Melendez-Diaz case, that majority opinion talks about notice and demand.
- People can be reasonable, then you do not need notice and demand.

Human Factors Subcommittee Report

Justice Bridget McCormack and Professor Jules Epstein, Co-Chairs

The Human Factors subcommittee has several priorities identified.

- **Proficiency testing.** The subcommittee decided at its meeting on March 21 that proficiency testing as a measure may go to Certification and Accreditation, but it will explore "performance testing" to see what can be learned beyond proficiency by testing skills in the lab. That is, it will find out if there is a testing mechanism for protocols in labs that could

reveal useful knowledge (e.g., inform labs where more training is needed) and understand the limits (e.g., some samples no one can test well).

- **Checklists.** The subcommittee continues to look at industries where checklists can have utility in reducing error and promoting safety (e.g., health care and aviation). Checklists have positive impact in industries with characteristics that include complex, multistep tasks undertaken by individuals or small teams that require coordination and are done in a certain order each time. The subcommittee aims to generate a Views document that will synthesize the characteristics of successful checklist implementation and discuss similarities in the forensic science environment. It will probably suggest that OSAC engage in identifying high-priority areas to develop and test checklists. Publishing the Views document will also inspire public comment to propose areas where checklists may or may not have utility in forensic science.
- **Domain relevance.** As a follow-up to the domain relevance document, the subcommittee will focus specifically on domain relevance in the context of medicolegal death investigation. Members liaise with members of the coroner community.
 - John Fudenberg suggested Dr. Randy Hanzlick and Dr. Andrew Baker. He also requested a forensic pathologist would serve on the Human Factors subcommittee (not just serve as a liaison). Mr. Epstein responded that the subcommittee envisions them as full participants in the discussion and drafting but will need to discuss membership.
- **Lab survey results.** Dr. William Thompson will present. Thanks to Dr. Thompson and the non-Commissioner subcommittee members who have done an astounding amount of work.

Lab Survey Results

Dr. William Thompson summarized the survey results and stated the intention to provide a written report for the Commission. The purpose of the survey was to learn what forensic practitioners are doing about contextual bias. Much discussion has focused on the potential for contextual bias in forensic science and ways to address it, but we thought it useful to have information from the forensic science community about their views to assist us in thinking about ways the field could go forward.

About 36 percent of the membership of the American Society of Crime Laboratory Directors (ASCLD) responded to an e-mail survey (or about two-thirds of those who opened the e-mail). Responses to open-ended questions were very rich. These will be made available, keeping the identification of the respondent and lab confidential. About one-half of the respondents are lab directors; 30 percent are section heads. Two-thirds come from law enforcement labs.

The first set of questions were intended to assess general opinions on contextual bias in forensic science. The consensus was that it is a somewhat important problem, although opinions had a wide array. Opinions also varied about how vulnerable forensic scientists are to contextual bias, although 92 percent of respondents thought contextual bias could occur without the examiner being consciously aware of it. Asked whether blinding procedures might be helpful to reduce contextual bias, opinions were divided (one-third yes, one-third maybe, and one-third probably or definitely not, mostly citing practical difficulties).

The next set of questions asked about steps taken to address contextual bias (training, procedures for shielding analysts from contextual information, and how much analysts can find out about the case). Most responded that training has been provided or is planned, and more than one-half said their lab has instituted procedures to minimize bias. More specifically, 21 percent had implemented a case management system in at least part of the lab, and 21 percent had blinding procedures, with an additional 12 percent considering them. However, it became clear these procedures have not

gone far. For example, asked whether rules or procedures in the lab limit what examiners can know/find out about a case, only 10 percent said yes. Sixty percent reported they had access to police reports; 88 percent said communication with police was allowed. Sequential unmasking is fairly common (49 percent reported procedures had been implemented), particularly in DNA analysis sections, with some in latent print analysis and a few in firearms.

The perceived problems with blinding included that it was unnecessary, that contextual information was needed to decide what to test and how, and that separating task-relevant and irrelevant information is difficult. However, respondents who did adopt blinding procedures perceived benefits (e.g., enhanced credibility). Also, context management procedures facilitate blind testing, making internal or proficiency testing easier.

Discussion

- Patterns as far as what types of labs fall into which categories are still being analyzed; will be included in full report.
- The direction moving forward is to be determined; however, possibly part of human performance testing or recommendations regarding blinded testing procedures.
- Interpret with caution. Some labs think they have implemented a procedure, but looking more closely, they may not have actually done so.
- Blind testing is difficult to create; the experience in Houston is that analysts and examiners have a high probability of identifying which are real cases and which are not. There's a lot to learn from labs trying to do this.
- Dr. Thompson has an NIJ grant to look at how labs are approaching context management and is doing it in an ethnographic way.
- The disparity between empirical evidence and respondents' sentiment that contextual bias is not much of a problem is worrisome. We have some educational tasks.
- Very sympathetic to medical examiners and coroners not having totality of information; without information from the scene, many causes of death might be missed. Not sure how to work out, but very important to discuss.
- The subcommittee, recognizing its own bias, has been cautious and had much discussion before putting out the survey to avoid possible misuse.

Interim Solutions Subcommittee Report

Dean Gialamas and Peter Neufeld, Co-Chairs

Mr. Neufeld introduced Wesley Grose as the proxy for Mr. Gialamas, who was not present. The subcommittee has two final documents up for vote. He asked Julia Leighton and Marilyn Huestis, as the subcommittee members involved in drafting the documents, respectively, to lead the discussion of them.

Directive Recommendation on the Transparency of Quality Management System Documents

Since the last meeting, the subcommittee reconciled public comments and resolved issues with the help of some Commissioners. Details on the 16 public comments received are in the electronic binder, but to summarize the major changes:

- A sentence was moved up so that the document now has four recommendations; this was to address ASCLD's comment wanting discussion on funding. We deferred to DOJ on how to do funding and did not adopt ASCLD's specific suggestions.
- A footnote was added to explain what was meant by "documents."
- A paragraph was moved up on the second page to make the document read better.

- Item 2: a definition suggested by ASCLD was adopted.
- Item 3: a suggestion by both Commissioners and ASCLD to add people was adopted.
- Item 4: ASCLD's suggested language with stylistic tweaks was adopted.
- ASCLD and other commenters did not want to define but refer to local laws about what could be disclosed.
- ASCLD also asked to define "sensitive law enforcement information." We recognize that term could be abused/misused, so we moved up a sentence but declined to define, trusting institutions to follow the spirit of this suggestion.

Discussion

- Spell out root cause analysis on first reference in item 4.
- Although you say changes are not substantial, visually it looks like a lot. Just as a point of order, does the Commission think they are substantial?
 - The procedure is to have co-chairs discuss whether they are substantive; we did and thought they were not substantive and the document could go forward to vote.
 - Most of the changes are just moving language, not adding.

VOTE TO ADOPT DIRECTIVE RECOMMENDATION ON THE TRANSPARENCY OF QUALITY MANAGEMENT SYSTEM DOCUMENTS*

- 30 members voting, 20 votes needed for 2/3 majority.
- 83% yes, 13% no, 3% abstain.
- Voting no: Nelson Santos, Ted Hunt, Greg Czarnopys, Linda Jackson.
- Abstaining: Sunita Sah.

**With root cause analysis spelled out on first reference.*

Directive Recommendation on a National Code of Professional Responsibility for Forensic Science and Forensic Medicine Service Providers

In the original charter for the Commission, this is one of the few specific tasks given, and it was one of the first projects the subcommittee worked on. The document has gone for public comment twice and has received more public comments than any other. In the first time for public comment, a great deal of concern was expressed about requirement #16 in the Code section, so description was added at the beginning to clarify that requirements #1–15 apply to individuals and #16 specifically refers to management. Also in response to public comments, sentences have been turned around as positive statements. We do need to add forensic medicine into a few places. Most concern was for #15 and #16, although no comments were received on #16 in the second round.

Discussion

Commissioners discussed #15 and #16 at length. One Commissioner suggested removing #15 and #16 to pass the document, in recognition of its importance; however, it was thought this would be a substantive change when the subcommittee had endorsed the document with #15 and #16 in it. One Commissioner suggested withdrawing the document from a vote today and thinking more on it; however, the Commission decided to vote.

Major themes for #15 included:

- Disagreement over whether it adequately addresses cases where an analyst should not talk about the case (e.g., ongoing investigations). Cases could be jeopardized.
- Insufficient protection (e.g., danger for witnesses).
- It does not have a limitation that it applies after charges are filed. Could be applied to pre-judicial phases.
- Making it party neutral.

Major themes for #16 included:

- Unclear who is responsible to make disclosures.
- Vague on knowing when ethical obligation is fulfilled.
- How can it be implemented? Burdensome/impractical responsibility for labs.
 - Duty to inform is limited to affected recipients. It's a narrow subset of cases.
 - It is burdensome, but being professionally responsible means accepting the burden.
- Confusing language: "either directly or through proper management channels," "encourage others," "professional standards," "affected recipients."
 - "Encourage others" (i.e., prosecutors, commissions) carefully chosen in the event the lab does not have all the information to make contacts to show it has made a good faith effort to reach those affected.
- How can an individual analyst sign something he or she does not have control over?

A revised version of #15 was proposed:

"Once a report is issued and the adjudicative process has commenced, communicate fully when requested with the parties through their investigators, attorneys, and experts, except when instructed that a legal privilege, protective order, or law prevents disclosure."

A revised version of #16 was proposed:

"Appropriately inform affected recipients (either directly or through proper management channels) of all nonconformities or breaches of law or professional standards that adversely affect a previously issued report or testimony and make reasonable efforts to inform all relevant stakeholders, including affected professional and legal parties, victim(s) and defendant(s)."

A vote was first taken to decide whether the revised versions constituted nonsubstantive, "friendly amendments" that clarified the intent of the statements, then a vote was taken to adopt the document.

VOTE TO ACCEPT REVISIONS AS FRIENDLY AMENDMENTS

- 36 responses (*ex-officios* included).
- 83% yes, 17% no, 0% abstain.
- Voting no: Ted Hunt, Marc LeBeau, Deirdre Daly, Greg Motta, Gerry LaPorte, and Patricia Manzolillo. No response: Stephen Fienberg.

VOTE TO ADOPT THE DIRECTIVE RECOMMENDATION ON A NATIONAL CODE OF PROFESSIONAL RESPONSIBILITY FOR FORENSIC SCIENCE AND FORENSIC MEDICINE SERVICE PROVIDERS

- 30 members voting, 20 votes needed for 2/3 majority.
- 77% yes, 20% no, 3% abstain.
- Voting no: John Fudenberg, Nelson Santos, Ted Hunt, Marc LeBeau, Deirdre Daly, Greg Czarnopys. Abstaining: Suzanne Bell.

Scientific Inquiry and Research Subcommittee Report

Suzanne Bell, Ph.D., and Jeff Salyards, Ph.D., Co-Chairs

This subcommittee has two final documents for voting and two draft documents for discussion.

Views Document on Identifying and Evaluating Literature that Supports the Basic Principles of a Forensic Science Method or Forensic Science Discipline

A few comments were received on this document, all supportive, and were adjudicated. One comment on definitions was addressed.

Discussion

- To what audience is this directed?

- Are the bullet points in the document mandatory or illustrative?
 - These points were derived from our experience and general references. If you survey literature, you should ask these questions.
 - A problem in many articles in forensic science are published without peer review or are not citable.
- This document defines “foundational research.”
- Retrospective versus guidance for going forward—or both.
 - Not toss out, but rank importance in the field.
 - If directed as retrospective, we could identify gaps better.
 - Could we work with journal editors to look at reviews?

VOTE TO ADOPT VIEWS DOCUMENT ON IDENTIFYING AND EVALUATING LITERATURE THAT SUPPORTS THE BASIC PRINCIPLES OF A FORENSIC SCIENCE METHOD OR FORENSIC SCIENCE DISCIPLINE

- 29 members voting, 20 votes needed for 2/3 majority.
- 97% yes, 0% no, 3% abstain.
- Abstaining: Jules Epstein.
- No response: Greg Champagne.

Directive Recommendation to Fund Pilot Projects to Facilitate Translation for Research into Forensic Science Practice

This document aims to work on the culture of forensic science labs by having researchers present. Only a few comments were received (three from ASCLD, only one related to the document), and the subcommittee adjudicated them.

Discussion

- Regarding resources, where does this fall as a priority for the Commission? When we direct the Attorney General to set priorities for funding, must look at alternatives.
 - We have to help the culture of science. In our view, it is a priority. Building the future. We’re not creating a new category, just asking for pilot program.
 - May not be an important topic to some, but important to our community.

VOTE TO ADOPT DIRECTIVE RECOMMENDATION TO FUND PILOT PROJECTS TO FACILITATE TRANSLATION FOR RESEARCH INTO FORENSIC SCIENCE PRACTICE

- 30 members voting, 20 votes needed for 2/3 majority.
- 100% vote yes.

Recommendation to Request for NIST to Evaluate Developmental Validation Studies for Forensic Science Test Methods in Advance of Documentary Standards Setting and Views Document on Validation of Forensic Science Methodology

Definitions of validation differ, so to clarify language: If the scientific method area is on the bottom of a pyramid, applied research is next moving up, then method used in a lab on top. Validation in scientists’ mind is at the top of the pyramid, but the subcommittee thinks there is a real need to address the validity of core science. “Internal validation” (i.e., making sure a method works in a lab) has nothing to do with core science. “Developmental validation” gets to the validity of the core science.

Discussion

- The MOU between NIJ and NIST formally delegates to NIST the responsibility of validating selected disciplines. Beyond that, if not NIST, a trusted player, then who? Evaluating the

strength/weakness of forensic science disciplines would help both the scientific community and the criminal justice system.

- The gatekeeper has changed. What does “scientific independent evaluator within the justice system” mean?
 - Independence from DOJ. We’re trying to build a bridge acceptable to both science and legal communities.
- Terminology/definitions (“valid,” “validation,” “assessment and evaluation,” “test methods”)—need more specifics.
- Feasibility and impact on OSAC.
- Don’t designate exactly how to run a specific method and prevent taking advantage of new technologies.
- Replicability is a hallmark of science—need to address replicability of core [forensic science] issues to determine if they are valid science.
- At the next meeting, NIST will be prepared to present plans to the Commission.

The subcommittee welcomes additional comments on these documents.

Accreditation and Proficiency Testing Subcommittee Report

Linda Jackson and Patricia Manzolillo, Co-Chairs

This subcommittee will meet tomorrow to work on projects associated with Commission priorities. The subcommittee did talk yesterday about having a new subcommittee for certification; however, because the act of creating a new subcommittee would take time, creating a new subgroup was preferred. Marc LeBeau and Cecilia Crouse will lead the work on certification and invite others who are interested to join.

The subcommittee has two documents up for final vote and is introducing one draft work product.

Views Document on Critical Steps to Accreditation

This final document provides information for forensic science service providers (FSSPs) working toward accreditation on steps they can take to improve quality and reliability. The subcommittee received six public comments, addressed them all, and released an adjudicated version of the document that has some stylistic changes and some changes to improve clarity and address comments:

- In item 1, clarity on evidence transfer sequence;
- In item 2, clarity that the report elements listed are merely examples to point FSSPs in the right direction;
- In item 6, clarity on the list and added language to address comments that technical procedures should be based on method validation;
- In item 7, clarity on when competency testing is done and what it is;
- In item 9, clarity on corrective and preventive action; and
- Clarity that this is one method to achieving accreditation and there are others.

Discussion

- The list of elements seems incomplete without including a quality management system.
 - Creation of a quality management system is addressed under the

VOTE TO ADOPT VIEWS DOCUMENT ON CRITICAL STEPS TO ACCREDITATION

- 29 members voting, 20 votes needed for 2/3 majority.
- 96% yes, 0% no, 4% abstain.
- Abstaining: Peter Neufeld.
- No response: Vincent Di Maio.

Statement of the Issue section.

Views Document on Proficiency Testing in Forensic Science

This final document received six public comments that the subcommittee adjudicated. One comment expressed concern about practitioners not working in traditional labs, but because we already had a bullet item to address that, we made no change. Another comment pointed out the document did not address improvement, but we agreed that was not its role, and responded that we anticipate future documents to address the topic. The remaining comments suggesting clarifying language were nonsubstantive and accepted.

Discussion

- Concern that without language about “work to be done,” the document might be misread as “end all.”
- The document doesn’t address core validity issues, but as long as we appreciate its purpose is different and it only indirectly gets at validity issues, it’s easy to be supportive.
 - The definition of proficiency testing in the document is clear that it doesn’t answer those overall discipline questions.
- If the Commission sunsets, how do we modify documents like this if it’s our last word on the topic?
 - The subcommittee has written an abstract on what to do next.

VOTE TO ADOPT VIEWS DOCUMENT ON PROFICIENCY TESTING IN FORENSIC SCIENCE

- 29 members voting, 20 votes needed for 2/3 majority.
- 97% yes, 0% no, 3% abstain.
- Abstaining: Jules Epstein.
- No response: Vincent Di Maio.

Recommendation on the Accreditation of Digital and Multimedia Forensic Science Service Providers

This initial draft document is intended to address a need. With the departure of Bill Crane from the Commission, the subcommittee recognized a need for more SMEs and put together a group of Federal, local, and private digital evidence experts who will come to the subcommittee’s meeting tomorrow. Thirty-four comments have been received so far; more comments are invited, so the subcommittee can work through them tomorrow.

Subcommittee Update on NCFS Priorities

The priorities for the subcommittee laid out yesterday during the Commission meeting included accreditation of digital evidence, proficiency testing, opportunities for improvements in accreditation programs, and certification. As previously stated, instead of standing a new subcommittee for certification, the subcommittee proposed to form a new task group. Also, as previously stated, the Human Factors subcommittee is looking at proficiency testing (or “performance testing,” in their case) in a different way—this subcommittee will consider a more narrow day-to-day type—but both subcommittees have agreed to share work products to give mutually beneficial input.

Discussion

- Regarding whether the subcommittee can work on all four work products—it’s not a matter of can do or not, but which are most important. Consider the entire process and consider importance, not just the one that can be done quicker.

- Regarding accreditation for digital and multimedia, caution was raised on language used. The methodologies used to make statements of probability and statistics in machine learning is very close to “black box.” Be careful to distinguish that kind of assessment and the role of labs in that kind of production work and how it ties to accreditation. Do we have the expertise?
- Propose to let subcommittee decide order of presentation. Better to have record show they were in the works if the Commission is sunsetted. Also, documents on proficiency and accreditation are Views documents only, since the Deputy Attorney General already said that DOJ does not necessarily need to act on those.

The subcommittee will take to heart a discussion of priorities but remains committed to producing work products on these topics.

Medicolegal Death Investigation Subcommittee Report

Vincent Di Maio, M.D., and John Fudenberg, Co-Chairs

The subcommittee posed questions for the Commission:

- The subcommittee has been in discussion with OSTP, which intends to stand up a group that may not include a non-Federal member according to rules. Can there be an exception, so that this subcommittee can work directly with OSTP on implementation strategies with the 1) Directive Recommendation on Certification of Medicolegal Death Investigators, and 2) Policy Recommendation on Accreditation of Medical Examiner and Coroner Offices, and advise them?
 - The Commission will look into this.
- If the first two Recommendations are converted to Views documents, do they still need public comment?
 - The Commission already voted to adopt them as Recommendations; all that would do is take away the funding aspect. It’s not changing the documents.
 - Better to refer them to the SPO to develop a Reconciliation document.

No public comments have been received on the initial draft Recommendation to the Attorney General National Disaster Call Center; the subcommittee plans to submit the document for a vote at the June meeting. The subcommittee also introduced an Abstract on Next of Kin Communication and Interactions during Medicolegal Death Investigations.

At the June meeting, the subcommittee plans to introduce three more documents: A Recommendation on Model Legislation for Medicolegal Death Investigation Systems, a Views document on Medicolegal Autonomy and Independence, and another document not yet named.

Training on Science and Law Subcommittee Report

Carson Guy (proxy for Judge Barbara Hervey) and Jim Gates, Ph.D., (not present), Co-Chairs

The subcommittee has introduced abstracts on tools to assess training and on notification training. Additional issues may need to wait until the Commission makes decisions on sunseting the subcommittee and overlap with other subcommittees; however, the subcommittee considers survey assessment tools very important to address. The subcommittee does not want the public to think that it is not developing assessment tools but may need to wait. Although they could be addressed in other ways, the subcommittee wants to continue working on important issues related to training.

Wrap-Up: Complete Priorities Discussion

Regarding the next Commission meeting, Mr. Santos suggested the time would best be used to address subcommittee reports and work products but asked if Commissioners had topics they'd like to see covered. (The agenda would include an OSAC update.)

Suggestions included:

- A speaker on terrorism and the criminal justice system;
- A compilation of topics that remain, so that if sunsetted, the Commission would not waste all the discussion that's gone on and could come out at the end with a list of "what's left to be done";
- Black box issues (Mr. Epstein had speaker suggestions);
- Recommendations for a framework for States to set up their own commissions (especially if NCFS is sunsetted);
- An update on the BJS FSSP survey (Dr. McGrath will follow up); and
- A speaker on licensing (how implemented in other fields).

Comments about meeting structure:

- Not enough time to interact/dialog with each other if working lunches are included. Even one day without a working lunch would be valuable.
 - But working lunch helps us finalize as many documents as we can before taking on new topics.

Other comments:

- The Scientific Inquiry and Research subcommittee would like to be kept updated on happenings at NIST to shape its next steps.
- To inform discussion, a good source for information on research may be found on the Interpol Forensic Science Web site.
- The Commission has accomplished much; don't forget that what we do impacts how people are treated in the criminal justice system, and keep a high level of professional discourse.

These topics will be brought up at the SPO meeting. The next Commission meeting is June 20–21, 2016, in Washington, DC, and an agenda will be put out soon; the following meeting will be at NIST on September 12–13, 2016.

Fifteen days are left for work products posted for public comment. Mr. Wroblewski's PowerPoint presentation on a framework for the FSDR will be available for comment on the Regulations.gov Web site. Also, a completed report on MDI data requirements on medicolegal death issues involving capacity building and data for coroners offices and medical examiners from OSTP and the National Science and Technology Council will be available for public comment in the next few weeks and will be circulated to the full Commission at that time.

Public Comment Period

Three people from the Consortium of Forensic Science Organizations (CFSO) provided comments by phone.

1. Jody Wolf, president of ASCLD, commended NIST for its monumental achievement on ASTM E-2329-14, despite criticism the standard has received, and for NIST's transparency. In addition, she expressed appreciation for efforts to help improve forensic science.
2. Matthew Gamette, chair of CFSO, offered CFSO resources to assist with the FSDR process. CFSO believes there is a role for members to lend expertise to assist DOJ and is eager to be included so that best practices can be communicated to its membership. CFSO believes

practitioners should be represented on subcommittees and a balanced team of experts and other stakeholders will help establish a framework for reviews.

- Ken Martin, vice-chair of CFSO, asks DOJ to create grant programs to assist all public forensic service providers to attain and maintain the required accreditation and urged DOJ to support CFSO's request to Congress to fund FSSPs.

Adjournment

Mr. Bruck closed the 9th National Commission on Forensic Science meeting at 4 p.m.

Final Attendee List

Last Name	First Name	Attendee Type	Organization	Title
Albright	Thomas	Commissioner	The Salk Institute	Professor
Ambrosino	Michael	Subcommittee Member	U.S. Attorney's Office	Special Counsel for DNA and Forensics
Antell	Kira	Speaker	U.S. Department of Justice, Office of Legal Policy	Senior Counsel
Barretta	Michelle	Public	American Association for the Advancement of Science	Project Assistant
Bell	Suzanne	Commissioner	West Virginia University	Associate Professor
Bieber	Frederick	Commissioner	Harvard Medical School	Associate Professor
Bordner	Pam	Subcommittee Member	American Society of Crime Lab Directors/Laboratory Accreditation Board	Executive Director
Brown	Catherine	Public	Collaborative Testing Services	Vice President, Operations
Bruck	Andrew	Designated Federal Official	U.S. Department of Justice	Senior Counsel to the Deputy Attorney General
Bryant	Jennifer	Public	Government Accountability Office	
Bunn	Nelson	Public	National District Attorneys Association	
Butler	John	Vice-Chair	National Institute of Standards and Technology	Special Assistant to the Director for Forensic Science
Cariola	Mike	Subcommittee Member	Bode Cellmark	General Manager
Cavanagh	Richard	Speaker	National Institute of Standards and Technology	Director, Special Programs Office
Celeste	Eleanor	Public	Office of Science and Technology Policy	Policy Analyst for Medical and Forensic Sciences
Champagne	Gregory	Commissioner	National Sheriffs' Association	Vice President
Chu	Sarah	Subcommittee Member	Innocence Project	Senior Forensic Policy Advocate
Conlon	Paul	Public	Federal Housing Finance Agency, Office of Inspector General	Assistant Inspector General for Investigations
Cooper	Glinda	Public		
Crandall	Laura	Subcommittee Member	SUDC Foundation	President
Crouse	Cecelia	Commissioner	Palm Beach County Sheriff's Office	Crime Laboratory Director

Last Name	First Name	Attendee Type	Organization	Title
Czarnopys	Gregory	Commissioner	Bureau of Alcohol, Tobacco, Firearms and Explosives	Deputy Assistant Director, Forensic Services
Daly	Deirdre	Commissioner	U.S. Department of Justice	U.S. Attorney
DeLone	Maddy	Public	Innocence Project	Executive Director
Denton	M. Bonner	Commissioner	University of Arizona	Professor
DePalma	Lindsay	Commission Staff	National Institute of Justice	Contractor
DePaolo	Frank	Subcommittee Member	Office of Chief Medical Examiner, City of New York	Assistant Commissioner for Forensic Operations
de Ribeaux	Mary Beth	Note-taker	CSR, Incorporated	
Di Maio	Vincent	Commissioner	Texas Forensic Science Commission	Retired forensic pathologist
Drosback	Meredith	Subcommittee Member	Office of Science and Technology Policy	Assistant Director for Education and Physical Sciences
Epstein	Jules	Commissioner	Temple Beasley School of Law	Professor
Ferrell	Rebecca	Public	National Science Foundation	Program Director
Feucht	Thomas	Public	U.S. Department of Justice, Office of Justice Programs	
Fienberg	Stephen	Commissioner	Carnegie Mellon University	Maurice Falk University Professor
Fudenberg	Anna	Public		
Fudenberg	John	Commissioner	Clark County Office of the Coroner	Coroner
Gaskins	Shimica	Speaker	Acting Deputy Assistant Attorney General	
Gates, Jr.	S. James	Commissioner	University of Maryland	Professor
Giannelli	Paul	Commissioner	Case Western Reserve University	Distinguished University Professor
Goldsmith	Andrew	Public	U.S. Department of Justice	
Grose	Wesley	Proxy	Los Angeles Sheriff's Department	Crime Lab Director
Guthrie	William	Speaker	National Institute of Standards and Technology	Chief, Statistical Engineering Division
Guy	Carson	Proxy	Texas Court of Criminal Appeals	Research Attorney
Kristine	Hawaur	Public	Prosecutor's Center for Excellence	
Hanzlick	Randy	Subcommittee Member	Fulton County, GA	Chief Medical Examiner
Higgins	Peter	Public	HAI	Consultant
Higley	Jason	Public	U.S. Department of Justice	Senior Special Agent
Hollway	John	Subcommittee Member	Quattrone Center, University of Pennsylvania	Associate Dean and Executive Director
Honey	David	Commissioner	Office of the Director of National Intelligence	Director, Science and Technology
Howley	Susan	Commissioner	National Center for Victims of Crime	Public Policy Director
Hsu	Spencer	Press	Washington Post	
Huestis	Marilyn	Commissioner	University of Maryland	Professor
Huffman	Katharine	Public	The Raben Group	Principal
Hunt	Ted	Commissioner	Jackson County (Kansas City) Prosecutor	Chief Trial Attorney

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Jackson	Linda	Commissioner	Virginia Department of Forensic Science	Director
Johnson	Steven	Public	Ideal Innovations	Senior Vice President
Jones	Robin	Public	U.S. Army, Defense Forensic Science Center	Forensics Technical Representative
Jones II	John Paul	Speaker	National Institute of Standards and Technology	Associate Director of OSAC Affairs
Kafadar	Karen	Subcommittee Member	University of Virginia	Professor
Kassirer	Jerome	Subcommittee Member	Tufts University	Distinguished Professor
Kaye	David	Subcommittee Member	Penn State University	Professor
Kelly	John	Public	Self-employed	Research Scientist
King	Kerry	Public	Spark Street Digital	Webcast Producer
King	Pam	Commissioner	Minnesota 3rd Judicial District	Judge
Kobilinsky	Lawrence	Subcommittee Member	John Jay College	Chairman and Professor
LaPorte	Gerald	Commissioner	National Institute of Justice	Office Director
LeBeau	Marc	Commissioner	Federal Bureau of Investigation	Senior Forensic Scientist
Leighton	Julia	Commissioner	The Public Defender Service for DC	General Counsel
Leiserson	William	Public	National Institute of Justice	American Association for the Advancement of Science (AAAS) Science and Technology Policy Fellow
Manzollilo	Patricia	Commissioner	U.S. Postal Inspection Service	Laboratory Director
May	Willie E.	Co-Chair	National Institute of Standards and Technology	Director
Mayes	Mark	Public	Kentucky State Police	Lieutenant
McCormack	Bridget Mary	Commissioner	Michigan Supreme Court	Justice
McGrath	Jonathan	Commission Staff	National Institute of Justice	Senior Policy Analyst
Meissner	Christian	Subcommittee Member	Iowa State University	Professor
Merkel	Warren	Public	National Institute of Standards and Technology	Standards Coordination Office
Nerheim	Michael	Subcommittee Member	Lake County State's Attorney's Office	Lake County State's Attorney
Neufeld	Peter	Commissioner	Innocence Project	Co-Director
Nolte	Kurt	Subcommittee Member	Office of the Medical Investigator, University of New Mexico School of Medicine	Chief Medical Investigator, Professor of Pathology and Radiology
Oien	Cary	Public	Federal Bureau of Investigation	Senior Level Scientist
Pankevich	Diana	Public	Office of Science and Technology Policy	AAAS Science and Technology Policy Fellow
Penchina	Daniel	Public	The Raben Group	Principal
Peters	Gary	Public	U.S. Department of Justice	Office of Enforcement Operations

Last Name	First Name	Attendee Type	Organization	Title
Philpott	Kate	Subcommittee Member	Self-employed	Independent consultant
Pulaski	Phil	Commissioner	Muttontown Police Department	Chief of Police
Rakoff	Jed	Commissioner	U.S. District Court, S.D.N.Y.	U.S. District Judge
Rappaport	Daniel	Public	Precision Solutions	Digital Forensics Examiner
Reczek	Karen	Public	National Institute of Standards and Technology	Program Manager
Redle	Matthew	Commissioner	Sheridan County Attorney's Office	Prosecuting Attorney
Reid	Lerone	Public	U.S. Government Accountability Office	Senior Analyst
Roberts	Maria Antonia	Public	Federal Bureau of Investigation	Research Program Manager
Roberts	Laughlin	Public		
Runkle	Deborah	Public	American Association for the Advancement of Science	
Salyards	Michael "Jeff"	Commissioner	Defense Forensic Science Center	Director
Santos	Nelson	Vice-Chair	U.S. Drug Enforcement Administration	Deputy Assistant Administrator
Schechter	Marvin	Subcommittee Member		
Scheck	Barry	Subcommittee Member	Innocence Project	Co-Director
Schrotter	Frances	Commissioner	American National Standards Institute	Senior Vice President and Chief Operating Officer
Schwarting	Dawn Elizabeth	Public	Booz Allen Hamilton	Associate
Sheehan	Jack	Public	U.S. Government Accountability Office	Analyst
Simoncelli	Tania	Public	The Broad Institute	Senior Advisor to the Director
Spriggs	Jill	Subcommittee Member	Sacramento County District Attorney's Office Crime Lab	Laboratory Director
Stolorow	Mark	Speaker	National Institute of Standards and Technology, Organizations of Scientific Area Committees	Director, OSAC Affairs
Sudkamp	Laura	Subcommittee Member	Kentucky State Police	Laboratory Director
Taylor	Chris	Subcommittee Member	Defense Forensic Science Center	Supervisory Chemist
Taylor	Melissa	Public	National Institute of Standards and Technology	Program Manager
Thompson	William	Subcommittee Member	University of California, Irvine	Professor
Tomberlin	Jeffery	Subcommittee Member	Texas A&M University	Associate Professor
Turman	Kathryn	Commissioner	Federal Bureau of Investigation	Assistant Director
Wagstaff	Iris	Public	National Institute of Justice	AAAS Science Policy Fellow
Wampler	Randall	Public	Indigent Forensics Network, Inc.	Director of Scientific Affairs

Last Name	First Name	Attendee Type	Organization	Title
Weedn	Victor	Subcommittee Member	George Washington University	Professor and Chair
Weiss	Danielle	Commission Staff	National Institute of Justice	Contractor
Weiss	Mark	Commissioner	National Science Foundation (retired)	
Wilson	Justin	Public	The Raben Group	Senior Associate
Word	Charlotte	Subcommittee Member	Consultant	Consultant
Wroblewski	Jonathan	Speaker	U.S. Department of Justice, Office of Legal Policy	Principal Deputy Assistant
Wulff	Paula	Subcommittee Member	Federal Bureau of Investigation	Acting Unit Chief
Yates	Sally Q.	Co-Chair	U.S. Department of Justice	Deputy Attorney General