

Appendix C. Recommendations and Views

Foundational Recommendations

Recommendation on Survey of Forensic Capabilities	
Recommendation	On August 27, 2014, the Commission recommended that the Attorney General direct the Bureau of Justice Statistics to create a proposal for the development of a nationally representative survey to determine forensic capabilities for those who write reports and offer testimony within federal, state, and local law-enforcement agencies and for medical examiner and coroner offices.
Attorney General Response	DOJ responded on September 8, 2014, by adopting the recommendation. To date, this survey has not been completed.
Recommendation on Post-Doctoral Projects to Facilitate Translation of Research into Forensic Science Practice	
Recommendation	On March 22, 2016, the Commission recommended that DOJ develop and implement a grant program specifically directed toward funding multiyear post-doctoral fellowships at federal, state, and local forensic science service providers (FSSPs) and forensic medicine service providers (FMSPs).
Attorney General Response	DOJ responded on September 6, 2016, directing the National Institute of Justice to explore the possibility of implementing a grant program to fund multiyear post-doctoral fellowships at federal, state, and local FSSPs and FMSPs.
Recommendation on National Code of Ethics and Professional Responsibility	
Recommendation	On March 22, 2016, the Commission recommended that DOJ adopt the National Code of Professional Responsibility for Forensic Science and Forensic Medicine Service Providers developed by the Commission (set forth within the Recommendation).
Attorney General Response	On September 16, 2016, DOJ adopted a new code of professional responsibility for DOJ forensic laboratories based on the recommendation.
Recommendation on Technical Merit Evaluation of Forensic Science Methods and Practices	
Recommendation	On September 12, 2016, the Commission set forth three recommendations for the Attorney General. First, the Attorney General should encourage NIST to establish an in-house entity to evaluate the technical merit of test methods and practices used in forensic science disciplines. Second, the results of NIST's evaluations should be made publicly available. Third, OSAC leadership should share consensus documentary standards for only those forensic science test methods and practices where NIST has established technical merit.
Attorney General Response	[Response is due by April 2017]

Recommendation on Formation of a National Office for Medicolegal Death Investigation

Recommendation On September 13, 2016, the Commission recommended that the Attorney General work with the White House Office of Science and Technology Policy to develop a permanent National Office of Medicolegal Death Investigation to improve quality and consistency, and to meet criminal justice and public health needs. The Commission also recommended that the Attorney General, through the proposed National Office and the National Institute of Justice, provide ongoing funding and support to improve the recruitment of forensic pathologists, modernization of facilities, accreditation of medicolegal offices and certification of its personnel, and the establishment of a national information network for the nation’s medical examiner and coroner offices.

Attorney General Response [Response is due by April 2017]

Foundational Views

View on Scientific Literature in Support of Forensic Science and Practice

View On January 30, 2015, the Commission adopted a Views document proposing criteria by which scientific literature in support of forensic science can be assessed for consistency with principles of scientific validity.

View on Ensuring that Forensic Analysis Is Based upon Task-Relevant Information

View On December 8, 2015, the Commission adopted a Views document proposing that forensic analysis be based upon task-relevant information.

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

View On March 22, 2016, the Commission adopted a Views document suggesting that scientific literature be evaluated and vetted through an objective and critical review process using tenets based on general scientific principles and practice.

View on Technical Merit Evaluation of Forensic Science Methods and Practice

View On June 21, 2016, the Commission adopted a Views document proposing that all forensic science methodologies should be evaluated by an independent scientific body that will characterize the methodology’s capabilities and limitations; that NIST should assume the role of independent scientific evaluator within the justice system; and that additional resources should be made available to support this new capacity.

View on Facilitating Research on Laboratory Performance

View On September 13, 2016, the Commission adopted a Views document that outlined steps FSSPs should take to assure the accuracy and reliability of their analysis and the overall quality of their work.

Operational Recommendations on Accreditation and Certification

Recommendation on Accreditation of Medicolegal Death Investigation Offices

Recommendation On January 30, 2015, the Commission recommended that all offices, facilities, or institutions performing government-funded, official MDI activities for a medical examiner or coroner system become accredited by 2020.

Attorney General Response	DOJ responded on November 23, 2015, to refer the recommendation to the Office of Science and Technology Policy at the White House to establish an interagency working group aimed at bringing higher levels of scientific rigor and reliability to the field of medicolegal death investigation.
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Recommendation on Certification of Medicolegal Death Investigators

Recommendation	On January 30, 2015, the Commission recommended that all medicolegal death investigators and coroners obtain professional certification by 2020.
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Attorney General Response	DOJ responded on November 23, 2015, to refer the recommendation to the Office of Science and Technology Policy at the White House to establish an interagency working group aimed at bringing higher levels of scientific rigor and reliability to the field of medicolegal death investigation.
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Recommendation on Universal Accreditation

Recommendation	On April 30, 2015, the Commission recommended that all FSSPs become accredited.
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Attorney General Response	DOJ responded on November 23, 2015, by: requiring its non-digital DOJ-run forensic labs to obtain and maintain accreditation; requiring DOJ prosecutors to use accredited labs to process forensic evidence when practicable; and announcing that DOJ will use its grant-funding mechanisms to encourage other labs around the country to pursue accreditation.
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Recommendation on Proficiency Testing

Recommendation	On September 13, 2016, the Commission recommended that the Attorney General require all DOJ FSSPs to participate in a proficiency testing program that provides rigorous samples within 3 years, encourage all FSSPs to participate in proficiency testing programs by providing grant funding and training, and encourage external vendors that provide proficiency tests to DOJ to share their aggregate data with entities doing research and analysis.
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Attorney General Response	[Response is due by April 2017]
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Recommendation on Root Cause Analysis in Forensic Science

Recommendation	On August 11, 2015, the Commission recommended that the Attorney General direct the adoption of appropriate root cause analysis protocols for all FSSPs or FSMPs who are part of the federal government or are receiving federal funds, and to establish policy for restoration procedures that comply with the recommended root cause analysis process.
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Attorney General Response	DOJ responded on March 17, 2016 by requiring Department entities that provide non-digital forensic science services to establish or maintain protocols and policies to address when a mistake or non-conforming event occurs. Department entities that provide forensic science services should review their policies in light of the NCFS’s research to determine if any change to them might be appropriate to create even more robust protocols and policies.
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Operational Views on Accreditation and Certification

View on Critical Steps to Accreditation

View	On March 22, 2016, the Commission adopted a Views document suggesting that the creation of quality management systems not only improves the quality and reliability of forensic work but also facilitates the Commission’s ultimate goal of universal accreditation.
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View on Proficiency Testing in Forensic Science

View On March 22, 2016, the Commission adopted a Views document proposing that proficiency testing be implemented by non-accredited FSSPs.

View on Accreditation of Medicolegal Death Investigation Offices

View On June 21, 2016, the Commission adopted a Views document supporting its earlier recommendation on the accreditation of MDI offices.

View on Certification of Medicolegal Death Investigators

View On June 21, 2016, the Commission adopted a Views document supporting its earlier certification of MDI personnel recommendation.

View on Accreditation Program Requirements

View On September 12, 2016, the Commission adopted a Views document proposing that strengthening the accreditation programs, in addition to the universal accreditation recommendations to the Attorney General, will improve the quality of FSSPs and promote standardization across forensic science.

View on Certification of Forensic Science Practitioners

View On September 12, 2016, the Commission adopted a Views document proposing that FSSPs should encourage certification of practitioners through specific means and that practitioners should become and maintain certification.

View on Accreditation of Forensic Science Certification Bodies

View On September 12, 2016 the Commission adopted a Views document proposing that certification bodies should seek to comply with conformity assessment standards and requirements, gain accreditation from a third-party accreditation body, collaborate with other certification bodies to develop uniform certification requirements, and ensure that certification examinations are continually reviewed to incorporate new technologies.

Operational Recommendations on Improving Infrastructure and Increasing Capacity

Recommendation on Automated Fingerprint Information Systems Interoperability

Recommendation On August 11, 2015, the Commission recommended that the Attorney General support, recommend, and fund interoperability of Automated Fingerprint Identification Systems (AFIS) to improve public safety.

Attorney General Response On March 17, 2016, DOJ announced its intention to continue to work with federal, state, local, and tribal law enforcement agencies to reduce barriers to widely accessing fingerprint systems.

Recommendation on Electronic Networking of Medical Examiner Coroner Offices in the United States

Recommendation On August 11, 2015, the Commission recommended that the Attorney General establish an electronic communication network for all medical examiner and coroner offices in the United States by 2017.

Attorney General Response DOJ responded on March 17, 2016, announcing its belief that communication among medical examiners and coroners is critical to advance the practice of medicolegal death investigation and expressing its willingness to work with other federal agencies to support it.

Recommendation on National Disaster Call Center

Recommendation On June 21, 2016, the Commission recommended that the Attorney General develop, establish, and maintain a National Disaster Call Center.

Attorney General Response [Response is due by January 2017]

Recommendation on Documentation, Case Record, and Report Contents

Recommendation On September 13, 2016, the Commission recommended that the Attorney General require DOJ FSSPs to develop written policies for documenting the examination, testing, and interpretation of evidence and for reporting results. These policies should require that: records be created contemporaneously with the examination of evidence; reports accurately and clearly convey a statement of the purpose, testing methods, and interpretation of evidence; and the case record be organized and made available in a manner consistent with the Commission’s discovery recommendations.

Attorney General Response [Response is due by April 2017]

Recommendation on Transparency of Quality Management System Documents

Recommendation On March 22, 2016, the Commission recommended that the Attorney General direct all DOJ FSSPs to make quality management system documents readily accessible to the public in an electronic format upon request and available on the department’s website within one year of the passage of this directive. Furthermore, the Attorney General should require that federal prosecutions, in cases in which federal prosecutors request forensic testing, shall only use FSSPs and FMSPs that make quality management system documents available in an electronic format upon request by either the defense or the prosecution. The Attorney General should encourage the universal publication of quality management system documents from all non-DOJ FSSPs and FMSPs through any means available including providing funding or information technology support and infrastructure where possible to state and local FSSPs and FMSPs.

Attorney General Response DOJ responded on September 6, 2016, announcing that the Department’s forensic laboratories that support criminal investigation and prosecution will post current quality management system (QMS) documents and existing summaries of internal validation studies online within 18 months. QMS documents and existing summaries of internal validation studies may be posted in a format of each laboratory’s choice and redacted for security, investigative, intelligence, and other statutory exemption reasons. This mandate does not alter existing discovery obligations.

Operational Views on Improving Infrastructure and Increasing Capacity

View on Increasing the Number, Retention, and Quality of Board-Certified Forensic Pathologists	
View	On August 11, 2015, the Commission adopted a Views document discussing the need to raise awareness of the shortage of forensic pathologists and to consider mechanisms that will ensure an adequate supply of forensic pathologists.
View on Documentation, Case Record, and Report Contents	
View	On December 7, 2015, the Commission adopted a Views document regarding written policies for documenting the examination, testing, and interpretation of evidence, and for reporting results.
Views on Communication with Next of Kin and Other Family Members	
View	On September 13, 2016, the Commission adopted a Views document regarding the lack of policies and procedures relating to the communication and interactions MDI offices have with next of kin and other family members during death investigations.

Relational Recommendations

Recommendation on Forensic Science Curriculum Development	
Recommendation	On December 8, 2015, the Commission recommended that the Attorney General fund the creation of a national curriculum on forensic science issues expected to be brought before courts. The Commission recommended that the curriculum be completed within 1 year and developed initially for judges and lawyers but with a design permitting future adaptability to other audiences.
Attorney General Response	DOJ responded on June 7, 2016, by instructing litigating entities to review the forensic science training available to DOJ prosecutors to determine if new training should be developed or if training protocols should be instituted. DOJ also stated that it would share the recommendation broadly with various legal and scientific entities.
Recommendation on Use of the Term “Reasonable Scientific Certainty”	
Recommendation	On March 22, 2016, the Commission recommended the Attorney General ensure that DOJ employees do not use the phrases “to a reasonable degree of scientific certainty” or “to a reasonable degree of [discipline] certainty.”
Attorney General Response	On September 6, 2016, the Attorney General instructed DOJ forensic laboratories to review their policies and procedures to ensure that forensic examiners are not using the expressions “reasonable scientific certainty” or similar terms in their reports or testimony and instructed DOJ prosecutors to abstain from use of these expressions when presenting forensic reports or questioning forensic experts in court unless required by a judge or applicable law.

Recommendation on Pretrial Discovery

Recommendation	On June 21, 2016, the Commission recommended that the Attorney General should (1) direct federal prosecutors, when they intend to offer expert testimony, to provide the court and defense counsel a report prepared by the expert containing a summary of all opinions the expert will express, the facts or data considered by the expert, any exhibits, and the expert’s qualifications and past cases; (2) direct federal prosecutors to allow the defendant full access to the expert’s case record; and (3) authorize federal prosecutors to condition these disclosures on the defense’s agreeing to provide the same disclosures if the defense intends to offer forensic expert testimony.
Attorney General Response	[Response is due by January 2017]

Relational Views

View on Inconsistent Terminology

View	On April 30, 2015, the Commission adopted a Views document suggesting that the forensic science community should strive to make terminology more consistent within a particular discipline and across disciplines.
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View on Defining Forensic Science and Related Terms

View	On May 1, 2015, the Commission adopted a Views document defining terms (such as “forensic science,” “forensic medicine,” and “forensic science agency”) for the purposes of its work. To facilitate implementation, the Commission required all subcommittees to adopt these definitions, cite them as footnotes in their work products, and take the scope of the definition into account when developing their own recommendations.
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View on Judicial Vouching

View	On June 21, 2016, the Commission adopted a Views document proposing that the practice of judicial vouching (i.e., requesting trial judges to declare a witness to be an expert in the presence of the jury) be discontinued.
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View on Notice and Demand Provisions

View	On June 21, 2016, the Commission adopted a Views document proposing that jurisdictions should adopt notice-and-demand provisions for securing the presence of FSSPs at trial.
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Views on Use of the Term “Reasonable Scientific Certainty”

View	On March 22, 2016, the Commission adopted a Views document proposing 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.”
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Views on Use of Pretrial Discovery of Forensic Material

View	On August 11, 2015, the Commission adopted a Views document proposing that when a party gives notice of the use of forensic evidence in a criminal case, the adversary party should be provided with access to the underlying items examined (if reasonably available) as well as detailed information about the kinds of analyses conducted and methods used to evaluate those items; the testing conducted on those items; the observations made; the opinions, interpretations,
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and conclusions reached; and the bases for those observations, opinions, interpretations, and conclusions.

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