NATIONAL COMMISSION ON FORENSIC SCIENCE

National Institute of Standards and Technology
U.S. Department of Commerce

Adjudication of Public Comments on the View of the Commission on Report and Case Record Contents

Type of Work Product:

Adjudication of Public Comments on Draft Document

Public Comment Summary:
Eight comments were received. Three were submitted by organizations (The Innocence Network, the American Society of Crime Lab Directors Board, and the Legal Aid Society of New York City). Three came from named individuals, and two were anonymous. The comments have been included below in full (excluding introductory information about the organizations providing them).

Adjudication Process Used by Subcommittee:

Public comments were reviewed and discussed via email among the subcommittee's working group. A draft adjudication document (including an addendum sample drug report, along with a modified views document) was prepared and disseminated to the entire subcommittee. Both documents were then subject to an email vote starting March 23 and closing on March 27, 2017. The subcommittee obtained a more than two-thirds majority affirmative vote to move this work product forward to the full Commission.

Itemized Issues and Adjudication Summary:

Each public comment (I–VIII) received is provided below along with a response. Because the first two comments were similar in nature, we provide a single response to both.

I. Comment # DOJ-LA-2017-0004-0011

The document acknowledges a distinction that can be made between a "preliminary" report, and other, presumably more "final", reports. It also acknowledges that there can be varying purposes for reports. However, the requirements are the same for all— and are quite extensive. I would submit that if there are different categories of reports, that the requirements for them should probably differ more than what they do here. There's not much point in going into such great detail in a report if we're all conceding that the case record will need to be reviewed anyway. I would propose that a report should be tailored to the customer, while the case record retains the necessary detail for an independent assessment.

When considering that a significant amount of lab reports issued are done so as basically an official notification of findings so that an investigator can take certain action(s) within an

ongoing investigation, that the need for the level detail proposed in this document is unnecessary. Also, that if the issued report already has what is supposed to be a highly visible invitation to review the case record in order to effectively review what was done, the level of report detail proposed here is highly superfluous.

For instance, if the report is serving as a notification to investigative elements that a DNA profile was identified on a firearm, so that they know it is and can take action (obtain warrants, file charges, etc.), it is difficult to see why the level of detail required in this document is necessary. How does it help the investigators, in this instance, to have "a brief description of the condition of item(s) tested or compared" or to have deviations from SOP's noted? It doesn't.

Now, this would help someone conducting an independent review of the work performed, but in conceding that no report is sufficient for such a task, it's difficult to see why someone would need to spend so much time and effort building such a detailed report only to end up saying "see case record for the rest of the relevant info" at the end. Why not just state that the relevant information is there, and leave it there, available for review to whoever wants it?

I think the flaw here is in trying to compile the requirements from a vast assortment of standards organizations and trying to make a one-size-fits-all report requirements document. The bodies consulted for this document serve different client's/organizations, who in turn have different needs. I think the general requirements can be summarized as follows:

1. The report should be suitable for its purpose, which is explicitly stated
2. The report is tailored to meet the customer's needs.
3. The case record should be available for review and contain sufficient detail for a proper, independent assessment of the work performed.
4. Any conclusions issued should be properly qualified.
5. The report should explicitly state that not all information is present in the report and that additional material that justifies the conclusion (if applicable) is available to review upon request.

II. Comment #DOJ-LA-2017-0004-0004

While this document provides some useful suggestions for "things" that the customer should be aware of, our underlying responsibility is to the customer. If all of these things were provided in a single report, the customer would be unable to find our conclusion amongst all of the additional items this document is suggesting that are added. Rather than see these in a report, I think it would be perfectly acceptable to have these available in the case record. As a forensic practitioner, I was asked routinely what certain things meant in my report. They were only interested in whether or not I developed additional evidence, if I made any conclusions about a fingerprint examination, and how that related to the listed suspect, victim(s), or any other subjects. The extra 'stuff' was causing too much confusion. I removed it from my report and kept it available in my case file.

If this information was available in the case record or, as your previous document suggested, available online or at least readily available upon request, this would reduce the burden of a

forensic examiner from customizing every single report they generate based on the factors of the examination. Is it not practical to add these additional items to every report as they would likely comprise 75% or more of the actual report. Some things are important for the report (including the ones that ISO 17020 and ISO 17025 spell out--customer name and address, etc.) but this additional burden is unnecessary and better located in case files, not reports. If the committee would like to contact me for follow-up, please do so. My contact info will be added below.

Response

This views document was generated with the ongoing participation of the subcommittee, which includes lab directors, practitioners, law enforcement, lawyers, and other stakeholders. The subcommittee also included individuals with experience in a variety of forensic disciplines.

When delineating the contents of a report, the subcommittee recognized that the report is rarely used by investigators alone or by a single "customer" as suggested in these comments. Instead, prosecutors, defense attorneys, retained experts, judges, and other criminal justice stakeholders often rely on these reports. With this understanding, the subcommittee balanced the needs of all stakeholders to allow for sufficient information for stakeholders to make reasoned decisions, including the decision of whether to seek review the case record, after reviewing the report. While the Commission has issued documents encouraging ready access to the case record (and it appears both commenters support this type of access), this is not the case in many jurisdictions, and, more importantly, the resources involved for a production of and review of the case record by stakeholders in every case would be significant and ultimately burdensome to FSSPs. Making the report robust enough to allow meaningful decision-making to occur by multiple stakeholders without accessing the entire case file in every cases seems to strike an appropriate balance.

This Views document does not dictate the organization of the report. However, the subcommittee can imagine an FSSP designing its reports to start with a brief summary of the information most important to investigators or to another principal customer. If a summary is impractical or not easily produced, then an FSSP might design a report in such a manner that the most important information is either highlighted to bring it immediately to the attention of the reader and/or positioned at the beginning of the report so it can be readily identified and easily understood. Further, many reports will still be quite short and simple, particularly as FSSPs make greater use of the Internet and post quality management documents, which then can be referenced in the report. See, for example, the sample drug report in the addendum to this document.

The document requires that the reports be labeled "preliminary", "supplemental", or "amended" as applicable, to make clear to the reader that there may be subsequent or earlier reports. There is no need to repeat the information, if it remains unchanged, from report to report so long as the reports in total contain the required information and the reader is alerted by the labeling to the possibility of additional reports.

III. Comment # DOJ-LA-2017-0004-0008

"If any database searches were conducted to identify a possible source of an item or a list of candidate matches (e.g., searches of DNA or fingerprint databases), the report should list which databases were searched and provide the results of the search."

Not all DNA profiles are entered into CODIS prior to issuance of the report.

Would this recommendation require the issuance of a second report just to update the results of a CODIS search? Customer agencies are already notified by the laboratory of CODIS offender hits and case-to-case hits, but not necessarily through a formal report. What happens if a sample hits in CODIS multiple times following the issuance of the initial report? Will supplemental reports need to be generated?

Response

This section generated discussion at the previous Commission meeting. Upon review of the transcript of that discussion, it was clear that the discussion ended with the decision that the issuance of additional reports would only be required when a subsequent search produced a positive association. As a result, to clarify the language about an initial search and to address the question of subsequent searches the relevant portion has been changed as follows:

"If any sample is entered into a database and searched ~~searches were conducted~~ to identify a possible source of an item or a list of candidate matches (e.g., searches of DNA or fingerprint databases), the report should list which databases were searched and provide the results of the search. If the sample is retained in the database and automatically searched against the database on a routine basis, a follow-up report should be generated in the case of a subsequent positive association."

IV. Comment # DOJ-LA-2017-0004-0005

Some of the source materials you listed for this document are more than two years old. Perhaps you should review the age of the document(s) used and either revise the list or use an updated copy. For example, the document titled "Forensic Quality Services, American National Standards Institute-American Society for Quality (FQS ANSI-ASQ) FQS ANSI-ASQ Document 11, ISO/IEC 17025, Accreditation and Supplemental Requirements for Forensic Testing, including FBI QAS" is more than three years old; it was published in Jan. of 2014. FQS isn't even an entity anymore (their new name is ANAB).

Response

This appendix lists the resource materials that were used by the White House subcommittees. The references are not cited as authority, only as an appendix of some of the materials that guided the White House subcommittee and our discussion in devising this Views Document. More recent iterations of the materials cited may be available. We have added a note to the appendix to this effect.

V. Comment # DOJ-LA-2017-0004-0017

Because the vast majority of cases are resolved by negotiated pleas before complete discovery has occurred I think it is critical that the following also be included in the report:
1. A clear statement of any limitation to the opinion being rendered.
2. A statement describing any disagreement between the examiner and peer reviewer.
3. A statement describing any changes made by the administrative reviewer.
4. Email address and telephone number of all individuals who signed the report.
5. A description of any deviations from the protocol.
6. The condition of the items examined
7. A list of items that were not analyzed.
8. A summary of the information that the examiner had when she conducted the analysis e.g. the suspect confessed.

Response

The subcommittee shares the concern that the vast majority of cases are resolved before discovery is complete, and therefore there is a need for robust reports that provide substantive information useful to all users. The exclusion of some of this information from the report itself was made to try to strike a balance between the needs of multiple stakeholders for critical information and the limited resources of FSSPs. Where possible, while not requiring the details about, for example, a deviation or a disagreement, we have required that the fact of a deviation or disagreement be noted so the stakeholder can make an informed decision about trying to access the case record before entering a plea. Although report writers can certainly add additional information, the subcommittee believes that, at this time, this recommendation strikes an appropriate balance. More specifically, with respect to #1, the views document requires that the report contain "figures of merit," which we used to cover the range of approaches used in method development and validation for describing a method or test performance. The importance of including "figures of merit" in the report is to fully inform the reader of the value and limitations of the results. If not in the report, we allow for this and other available items to be referenced by providing the web address or by identifying the other document location. And with respect to #4, this raises privacy concerns, which we believe are best addressed at the local level between institutions.

VI. The Legal Aid Society New York City (Comment # DOJ-LA-2017-0004-0024)

It is critical that the government provide forensic evidence discovery to the defense at the earliest possible opportunity. Unlike some other forms of evidence that can be discovered through investigation by the defense, the government ordinarily has exclusive control of crime scene evidence and its testing. In Buffey v. Ballard, the West Virginia Supreme Court ruled the government violated the defendant's due process rights when the government failed to disclose exculpatory evidence (favorable DNA evidence) they possessed during plea negotiations. Given the technical nature of forensic evidence, particularly DNA evidence, and given that reasonable disputes exist concerning the testing results, adequate disclosure is critical for

defendants to make informed plea decisions and for attorneys to make decisions concerning investigation, motion practice, and hiring experts.

The Legal Aid Society supports the views of the Commission concerning the information that must be included in the case file and case record as the minimum required for adequate review by an expert and replication of results.

In addition, the Legal Aid Society strongly supports that the following be included in the case report and record because it is critical for a defense lawyer to advise a client on the strengths and weaknesses of the government's case against him or her:

1. A "list of all items received by the FFSP whether or not they were tested or compared" should be included in the case report.

The New York City Office of Chief Medical Examiner ("OCME") routinely includes a list of all items sent to the lab for DNA testing in their case reports and specifically notes if the item was not examined. This information should be included because it provides the defense with a clearer idea of existing and potential evidence in the case, including evidence that the defense may wish to have tested, and should not present an undue burden on the FSSP.

Sometimes additional items of evidence are submitted to the lab for testing after the Case Report is generated. In such an instance, the FSSP should amend the initial Case Report to include a notation that additional evidence was sent to the lab for DNA testing.

Response

The views document sets for the minimum requirements for report contents. We applaud institutions that provide additional information. This item was the subject of considerable discussion within the subcommittee. However, in weighing the burden on FSSPs, we determine that requiring that the fact that additional items were received instead of a list of what was received was the appropriate balance at this point in time.

2. We strongly support the Commission's recommendation to include disagreements between examiners in the Case Record and Case Report.

In New York City, our understanding is that disagreements between examiners are documented in the OCME's internal electronic database called the Library Information Management System. However, these disagreements are not included in the case record or the case report, so the defense will not necessarily know about the disagreement unless the defense asks about disagreements in a pre-trial conference with the OCME. It is imperative this information be included in the report because the report must reflect the strength of the evidence, an evaluation of which is directly impacted by disagreement over interpretation.

Response

In the Views document, the fact of a disagreement is included in the case report, and the nature of the disagreement is included in the case record.

3. The Case Record should contain any electronic files concerning testing results. With DNA evidence, this is known as electronic raw data (for example, with DNA testing, this is also known as the .fsa or .hid files), and should include positive and negative controls and standards.

In New York City, these electronic files are not provided with discoverable case record and attorneys must make discovery demands or subpoena the information. Courts rule inconsistently on the right of the defendant to this data. However this data is the foundation for the interpretation and conclusions reached in DNA analysis and is critical for an independent review of the testing. Additionally, it is necessary for the running of some probabilistic genotyping programs.
In the context of fingerprint cases, digital files of the latent print(s) that were created by the New York City Police Department (NYPD) fingerprint examiner are not automatically provided by the Queens County District Attorney's Office. Instead, the defense has to hire an experienced photographer or have its own fingerprint expert meet the NYPD fingerprint examiner at the Queens County District Attorney's Office in order to obtain the digital files of the latent print and the defendant's known prints.

Response

The views document requires that "[a]ll work products—including notes produced during the examination, testing, or comparison—should be maintained along with all data, electronic images, and observations resulting from the examination." Other Commission documents also address discovery.

4. The Case Report should include the unique identifiers for the electronic files so that the attorney is aware that they exist and are part of the case record.

Response

The views document requires a notification that not "all the documentation" is in the report and that "all data" be maintained in the case record. Previously, the Commission expressed the view that "[t]he case record should be organized; and made available in a manner consistent with the discovery recommendations of the National Commission on Forensic Science." While the report could contain more information to better educate the stakeholders, this imposes a burden on FSSPs. This views document strikes a balance between these competing interests, requiring effort on the part of both FSSPs and stakeholders.

5. If any database searches were conducted to identify a possible source of an item or a list of candidate matches (e.g., searches of DNA or fingerprint databases), the Report should list which databases were searched and provide the results of the search.

Response

This is a quote from the document, and therefore no response is provided.

VII. The Innocence Network (Comment # DOJ-LA-2017-0004-0022)

The Innocence Network strongly supports the proposed Views document on Report and Case Record Contents developed by the Reporting and Testimony Subcommittee of the National Commission on Forensic Science (NCFS).

One of the most important challenges facing forensic science service providers (FSSPs), investigators, prosecutors, and defense attorneys is the need to effectively use available resources. This challenge is exemplified by the issues influencing decisions regarding what information is included in reports and in case records. It is our experience that the case record is not always available in a timely manner through the discovery process, and the competing demands from caseloads and resource constraints necessitate reliance on the report as the basis for making the critical decisions that must be made.

As organizations that litigate post-conviction cases, we find the current state of laboratory reports, as a general matter, to be insufficient in detail and clarity. Laboratory reports that are one or two pages and include simple single-sentence conclusions do not help attorneys advise defendants on whether or not to hire an expert, or to seek more records, additional testing, or a different approach to testing. Comprehensive reports with the criteria as specified in this Views document would provide the type of information required for attorneys to make informed decisions. Importantly, a report should also contain the information needed for a defense attorney to determine the level of effort and resources that should be expended to obtain the case record. The same need arises for a prosecutor, too, for example, in determining the obligation to inform the defense of disagreements or deviations in the analysis. Comprehensive reports also protect FSSPs and individual practitioners by making the forensic process transparent, which helps fulfill an FSSP's Brady obligations.

The following laboratory report criteria from the Views document's Appendix A would provide information that would help attorneys understand critical information about the nature of the evidence, promote scientific practices (reporting uncertainty, for example), or is needed to evaluate the interpretation of the evidence and the expert's opinion:

- Brief description of the condition of item(s) tested or compared
- Brief description or table of the method(s) or process(es)
- All deviations from, additions to, or exclusions from the test method
- Disagreements between examiners occurring during verification and review regarding the reported conclusion(s)
- Description of the results, including the underlying data or a description of the underlying data and observations that form the bases of any conclusions, opinions, or interpretation
- Estimation of uncertainty or error for quantitative results (or other "relevant figures of merit") or a reference to electronically available quality management documents containing the information (e.g. measures of uncertainty or error)
- Brief description or table of the method(s) or process(es)

- Glossary or explanation of technical terms necessary for stakeholder understanding.

Other information in a laboratory report is needed in situations in which databases were used:

- If any database searches were conducted to identify a possible source of an item or a list of candidate matches (e.g., searches of DNA or fingerprint databases), the report should list which databases were searched and provide the results of the search.
- If the interpretation, opinion, or conclusion relied on a database, the report should include any known limitations in the database.

The following items in a report would also promote transparency and assist post-conviction attorneys in locating and evaluating the body of forensic evidence available in a case:

- Full name of the person performing the verification or the technical review
- Identifying the work of subcontractors
- Statement regarding items received but not tested
- Disposition of the evidence by the report author

We understand that FSSPs may be concerned about the burden that producing this information may impose, and one proposition we have encountered is to simply provide the case record. However, case records are not always easily accessible or provided in a timely manner. This Views document simply broadens, to a small extent, the requirements for what is contained in a laboratory report under accreditation standards. All of this information is required to be documented in the laboratory in some form. In today's digital age, we believe this transition can be made without undue difficulty. Many components of these reports can be made boilerplate or available online (e.g., laboratory policies and protocols) to facilitate their inclusion in the laboratory report. Other components are required to be documented in the case record already and can be documented instead in the laboratory report. Lastly, laboratory information systems can and should be programmed to produce more comprehensive laboratory reports and reduce the burden on the FSSP.

We also note that one of the hallmarks of science is the need to provide the details necessary for an outside party to completely review and understand all methods and procedures, and to be able to replicate the analysis. This should be the standard for what should be contained in a case record.

We understand that it would take time for FSSPs to implement a laboratory report of this kind and to implement the laboratory processes (technical and procedural reviews) to ensure the fidelity of these reports, but we believe that the criteria outlined in this Views document are achievable and would support more just and more scientific reporting of forensic science testing.

Response

This comment is supportive of the views document, and thus no response is provided.

VIII. ASCLD Board (Comment # DOJ-LA-2017-0004-0023)

Reporting the results of laboratory testing is of paramount concern to the provider and the customer. This is evidenced by the multitude of documents which have been developed to address what a laboratory report should and must contain. It is also internationally recognized as an essential requirement as a work product that culminates from laboratory testing. ISO/IEC 17025:2005 standard 5.10 is dedicated to, "Reporting the Results."

The ASCLD Board of Directors thanks the NCFS and appreciates its obvious efforts to provide a view on the contents of laboratory reports and corresponding case records in the forensic science industry. It is clear a lot of effort was committed to developing the list included in Appendix A and it incorporates the contents of ISO/IEC 17025:2005 standard 5.10. "Reporting the Results." ASCLD commends the NCFS for recognizing the importance of this international standard and recommending its compliance.

Unless specifically addressed in this 'comment,' the ASCLD Board of Directors supports the items identified in Appendix A for inclusion in the 'Report' and 'Case Record.'

Items included in Appendix A that should be revised or moved from 'Report' to 'Case Records':

1) "Report Content," p. 4 – "Include the full name of the person performing the verification or the technical review."

The full name of the technical reviewer and administrative reviewer should be moved to the *'Case Record.'* The current statement in the 'Case Record' associated with this item is sufficient and does not require any additional revision.

Note: Given the NCFS recommendation and the DOJ's mandate for laboratory accreditation, laboratory policies will be compliant with accreditation standards addressing the technical and administrative reviews of these records.

Although there was considerable support for including the name of the person conducting the technical review in the report, we agree that in balance it should be moved to the case record. There are challenges to including the name of the person conducting the technical review compared with including the name of the person conducting the verification. Over time, technology should be leveraged to change this calculus.

2) "Report Content," p. 5 "Include the purpose and nature of the activities performed (i.e., the request made to the FSSP)."

This statement should be revised to read, "Identify the forensic analysis performed, i.e. latent print comparison, controlled substances analysis, etc." It is not practical nor necessary to include the customer's detailed request made to the FSSP in the report. In many jurisdictions, the customer's request is a hand-written document. The only option available to FSSPs is to either

embed a scanned image in the report or transcribe the request. Either solution is problematic due to technology costs to add this capability to FSSP's record management systems (RMS) or laboratory information management systems (LIMS). This is assuming the FSSP has an RMS or LIMS in place within their agency.

In the case of transcription, an additional burden is created for the FSSP to incorporate this information within the report. Requests for very complex investigations can be incredibly lengthy and would require an administrative review as part of the FSSP's quality assurance program for each case file. This will be a timely process that will reduce the amount of time each analyst will have available to process evidence from criminal investigations reducing the analytical capacity of FSSPs and impacting the public safety of the communities they serve.

The ASCLD Board of Directors, however, recognizes the importance of providing the suggested information and therefore recommends the customer's request be moved to be included in the 'Case Record'.

Response

We agree and have changed the wording accordingly by requiring that the report include a statement of "the analysis performed" and requiring that "all requests of the FSSP be maintained and documented in the case record."

3) "Report Content," p. 5 – "Provide a glossary or explanation of technical terms necessary for stakeholder understanding. This glossary should also contain definitions for the following if the FSSP used the term: "result," "opinion," "conclusion," and "interpretation." This glossary should be included in the report or posted on the Internet with a link to it in the report."

The ASCLD Board of Directors agrees this information is important to the user and should be made available to them to assist them in reading and understanding the scientific and technical reports that are produced by FSSPs. However, it is also recognized that this should be included in the case record. There are multiple avenues that an FSSP can utilize to meet this recommendation if it's provided in the case record and made readily available to the user.

Additionally, not every FSSP has the access to the information technology assistance and resources needed to support a standalone web site that could host this information. Implementing and maintaining a website that meets the security measures required for the FSSPs is very costly and requires expertise such as a web master or other IT professional. Additionally, if an FSSP needed to build this using existing resources it would take a forensic professional away from their primary duties analyzing crime scene evidence to support a technology solution. This is not an effective utilization of resources.

If the FSSP provides this as an addendum to every report, it creates a significant burden on the FSSP both on the authoring analyst and the personnel completing the technical and

administrative reviews of their reports and case records. This creates a productivity bottleneck and reduces the number of criminal investigations that can be aided by forensic science resulting in a public safety threat for the communities the FSSP serves.

Response

Absent the development of national standardized definitions for terms; terms used in a forensic report must be defined. Requiring that stakeholders access the case record to interpret the report defeats the purpose of a report and imposes a significant burden on all stakeholders, including FSSPs, to secure and review the entire case record. While some changes may take time, technology offers ample opportunities for posting material like a glossary that is static and not confidential.

4) "Report Content," p. 5—"The applicable standard operating procedures (SOPs) should be referenced and readily available either electronically upon request or on the Internet."

The ASCLD Board of Directors agrees this information is important and should be available to the customer. SOPs and other quality documents can be available online or available upon request. Placing them in the report is burdensome to the analyst preparing the report and can be an extensive set of protocols and procedures depending on the analyses performed.

Ultimately, this may result in significantly complicating, rather than clarifying the information provided to the customer based on the sheer volume of material.

The ASCLD Board of Directors offers the following revision, "A list of the applicable standard operating procedures and other quality documents should be maintained by the laboratory and readily available upon request or on the Internet."

Response

As with the comment above, technology offers opportunities to address this concern. Scanning is a one-time task. It is more efficient than copying an SOP every time it is requested or requiring that a stakeholder come to the FSSP to review the material. While some changes might take some time, technology should be leveraged in support of the goals of this views document.

5) "Report Content," p. 6—"Identification of methods and processes must include: identification of published test methods used (e.g., ASTM E1967, SWGFAST Standard for Friction Ridge Detail Imaging [Latent/Tenprint], ver. 1.1) and type of instrumentation used (e.g., elemental analysis by inductively coupled plasma mass spectrometry [ICP-MS])."

The ASCLD Board of Directors also agrees that this is important information, but is typically already located within the technical protocols and procedures which support the utilization of the procedure for its intended end purpose. The methods and processes are detailed in the case record and placing it in the report is redundant information and for the efficiency and quality reasons previously explained, is counter to a high performing FSSP organization.

Response

This item calls for the inclusion of descriptive information that is high level and does not vary on a daily or monthly basis. For example, in the case of DNA analysis telling the reader of the report that "testing was performed using the XYZ kit." This information, however, is critical to stakeholders who may be, for example, deciding whether and which expert to hire or whether to do additional testing.

6) "Report Content," p. 7—"All conclusions, opinions, and interpretations should be attributed to the individual who generated them."

This is a redundant statement unless the authoring analyst is different than the one drawing the conclusion. The statement should read as follows, "If the authoring analyst is different than the one responsible for any of the conclusion(s), opinion(s), and interpretation(s) then they should be attributed to the individual who generated them."

Response

The wording will be changed as follows: "***If the authoring analyst is different than the one responsible for any of the conclusion(s), opinion(s), and interpretation(s) in the report then they should be attributed to the individual who generated them".***

Items included in Appendix A that require clarification or additional guidance/examples:

7) 'Report Content,' p. 6 – "Provide information on examination(s) conducted and the results. Describe the results, including the underlying data or a description of the underlying data and observations that form the bases of any conclusions, opinions, or interpretations reported. Relevant figures of merit should be referenced. References to electronically available quality management documents containing the information will suffice."

The ASCLD Board of Directors is unclear what is meant by "figures of merit." Examples are needed to fully understand the intent of this phrase and how FSSPs would be able to include this information within the report.

Additionally, the requirement for a description of the results, "…including the underlying data or a description of the underlying data…" needs additional discussion and examples to demonstrate the intent of this recommendation such that FSSPs could meet it. The examples should encompass several disciplines including both analytical and comparison disciplines.

Alternatively, the ASCLD Board of Directors suggests that data and observations that support interpretations should be contained in the case record.

Response

As explained in the views document "[t]he NCFS recognizes that definitions relating to method performance (e.g., accuracy, sensitivity, error rate, measurement uncertainty) vary among disciplines and FSSPs. Instead of imposing definitions, this document simply requires that FSSPs define the terms used in its reports. For purposes of stating that information on method performance must be in the report we use the term "figures of merit" to cover the range of approaches used in method development and validation for describing a method or test's performance. The importance of including "figures of merit" in a report is to fully inform the reader of the value and limitations of the results. As with any item listed in Appendix A, if the information is already available (for example in a SOP posted on line or separate reports) the information need not be repeated and can instead simply be referenced by providing the web address or by identifying the other report." To provide greater clarity, we have added the text in red—"[r]elevant figures of merit describing method performance/limitations should be referenced."

Requiring that the case report included either "the underlying data or a description of the data and observations" allows simple data to be presented in full in the report and more complicated data and observations to be described in the report with additional documentation in the case record. To not include either "the data or a description of the data and observations" is to turn a case report into a certificate of analysis and not a report. The language used here allows each FSSP to determine which approach best suits its stakeholders, its process, and the disciplines or methods it employs. It is not acceptable for a report to contain a statement, for example, that a substance tested is cocaine or that a latent fingerprint matches a known print without any data or a description of the data and observations that support those statements. To the extent that the forensic science community believes it would benefit from a standardized approach to presenting data and observations for each discipline or method, and we agree that this is a preferred approach, the appropriate body for developing standardized approaches for specific disciplines is the OSAC.

Items included in Appendix A that should be eliminated:

8) 'Report Content', p. 7 – "Conclusions, opinions, and interpretations that are based on training and experience of an analyst or expert should be so identified."

In laboratory testing, conclusions, opinions, and interpretations are an integral component of all analyses. Regardless if it's interpreting a mass spectral pattern from a questioned sample to a known standard or affecting an identification of an individual from the comparison of a latent print to a known individual, all are a function of the training and experience of the analyst or expert. To include this statement for only those analyses in which the analyst is also the instrument, i.e. comparison disciplines, is misleading.

The ASCLD Board of Directors recommends that this statement be removed from Appendix A. The requirement to identify the testing being performed meets the intent of this recommendation as it clearly identifies the analyses being completed. Subsequently the reader will know if it is an analytical or comparison analyses.

Response

We agree the sentence is too broad. This sentence was intended to address conclusions, opinions, and interpretations based on methods for which there are currently no empirical measures of performance and in which key procedures involve significant human judgment. As a result, the sentence is modified as follows: "If a report includes conclusions, opinions, and interpretations for methods for which there are currently no empirical measures of performance and in which key procedures involve significant human judgment, this should be stated in the report".

Impact of the Views Document on FSSPs:

The ASCLD Board of Directors applauds the work of the NCFS on the Views document '*Report and Case Record Contents'.* The majority of the items included in Appendix A are expected for those FSSPs who meet international standards such as ISO/IEC 17025:2005 and we recognize and support this quality standard. Additionally, mandatory accreditation is the most significant step to improving the quality of service delivery of FSSPs in the criminal justice system.

Additional resources, however, are sorely needed in the forensic community to help build the quality infrastructure, information technology, and human capital in order to implement the NCFS recommendations and views on forensic science. Without additional resources, many of the FSSPs will have a difficult time adopting and implementing these measures. The end result may be the closure of many FSSPs because they will not be able to meet these requirements thereby reducing the capacity for forensic science in the United States. This would be detrimental to the safety of the citizens in the US.

Response

This comment addresses the body of work produced by the Commission and therefore is not addressed here.

Appendix to the Adjudication of Public Comments on the View of the Commission on Report and Case Record Contents

Sample Forensic Science Report
January 3, 2017

Acme Forensic Laboratory
123 Main Street
Big City, State 12345

Lab Number 2017-99999

Officer John Smith
Small Town PD
999 Elm Street
Small Town, State 12456

Evidence Submitted by: John Smith Date Submitted: November 2, 2016

Evidence received for Controlled Substances analysis:
Item 1 One plastic bag containing white, chunky powder
Item 2 One glass smoking device with residue
Item 3 Twenty-five glassine packets containing clumpy brown powder

Test results and interpretations:

Item 1 25.93 ± 0.07 grams of solid material, found to contain Cocaine (Schedule II), 35.6 ± 8.2% pure.
Item 2 Not analyzed.
Item 3 Heroin (Schedule I); total net weight of the sixteen: 1.427 ± 0.319 grams of powder, purity not determined. Sixteen packets were sampled and tested separately utilizing the hypergeometric sampling plan. Based on these results, there is a 95% level of confidence that at least 90% of the packages contain Heroin. The gross weight of the remainder was 3.332 gram(s) including innermost packaging.

Items 1 and 3 were analyzed utilizing color tests, thin layer chromatography and gas chromatography/mass spectrometry. In addition, Item 1 was analyzed for purity using gas chromatography. Measurement uncertainty of weight and purity measurements is reported at a 95.45% level of confidence.

Analytical procedures and definitions of the terms used in this report are available on the laboratory website:

Upon receipt of this report, the evidence is available for personal pickup.

NOTE: This report does not contain all of the information needed to independently evaluate the work performed or independently interpret the data. Such an evaluation requires a review of the case record.

I certify that I performed the above analysis or examination as an employee of the Acme Forensic Laboratory and that the above is an accurate record of the results and interpretations of that analysis or examination.

Jane Smith
Jane Smith
Forensic Scientist