National Commission on Forensic Science (NCFS)

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

8th Meeting: December 7-8, 2015
Outline of Topics Before the First Break

• Co-Chairs
  – DAG Yates
  – Director Willie May

• DOJ Office of Legal Policy (Alex Krulic)

• Vice-Chairs

• Andrew Bruck
  – Subcommittee on Procedures and Operations
Opening Remarks from DAG Sally Yates

Attorney General actions on NCFS work products

• Universal Accreditation

• Medicolegal Death Investigation (MDI)
  – Accreditation of Medical Examiner and Coroner Offices
  – Certification of Medicolegal Death Investigators

• Views Documents
  – Scientific Literature in Support of Forensic Science and Practice
  – Inconsistent Terminology
  – Forensic Science and Related Terms
Update on NIST Forensic Science Activities

Willie E. May, PhD
NIST Director
Under Secretary of Commerce for Standards and Technology
Questions?

Discussion with NCFS Co-Chairs
NCFS Accomplishments and Upcoming Priorities:

A glance back and a gaze forward

NCFS Vice-Chairs
Nelson A. Santos
John M. Butler
Vice Chairs Opening Remarks

John
- Congratulations to Pam King on being appointed a judge in Minnesota
- Review of agenda for this meeting
  - Subcommittee report expectations
  - Work products at this meeting (3 planned for a vote)
  - Establishing a quorum for voting (business voting on December 7-8 to include ex-officio members)
- Brief review of accomplishments so far

Nelson
- Baby news… 😊
- Further review of accomplishments and a gaze forward
Subcommittee Report Expectations

1. Meetings (virtual or in-person) held since August 10-11, 2015 Commission meeting
2. Introduce final work products prior to a vote
3. Discuss adjudication of public comments received
4. Introduce draft work products for discussion
5. Brief review of overall activities and priorities
Documents Up for a Potential Vote at this Meeting (December 7-8, 2015)

1. Report Content (views) [Reporting and Testimony]

2. Ensuring that Forensic Analysis is Based Upon Task-Relevant Information (views) [Human Factors]

3. National Forensic Science Curriculum (directive) [Training on Science and Law]

Public comment received from July 28 to August 31, 2015
Documents Out for Public Comment that will be discussed at this meeting

Dec 7

1. Using the Term “Reasonable Degree of Scientific Certainty” (views) [Reporting and Testimony]

Dec 8

2. Recommendation to Fund Post-Doctoral Projects to Facilitate Translation of Research into Forensic Science Practice (directive) [Scientific Inquiry and Research]

3. Establishing the Foundational Literature within the Forensic Science Disciplines (views) [Scientific Inquiry and Research]

4. National Code of Professional Responsibility for Forensic Science and Forensic Medicine Service Providers (directive) [Interim Solutions]

5. Transparency of Quality Management System Documents (directive) [Interim Solutions]

6. Proficiency Testing in Forensic Science (views) [Accreditation and Proficiency]

7. Critical Steps to Accreditation (views) [Accreditation and Proficiency]
Timeline for Commission Activities

- Announcement at AAFS 2013 meeting (February 21, 2013)
- Commission charter filed (April 23, 2013)
- Commission membership named (January 10, 2014)

**Term 1** (April 23, 2013 – April 23, 2015):
- *First* meeting (February 3-4, 2014)
- *Second* meeting (May 12-13, 2014)
- *Third* meeting (August 26-27, 2014)
- *Fourth* meeting (October 28-29, 2014)
- *Fifth* meeting (January 29-30, 2015)

**Term 2** (April 23, 2015 – April 23, 2017):
- *Sixth* meeting (April 30-May 1, 2015)
- *Seventh* meeting (August 10-11, 2015)
- *Eighth meeting* (December 7-8, 2015)
- *Ninth* meeting (March 21-22, 2016)
- *Tenth* meeting (June 20-21, 2016)
- *Eleventh* meeting (Sept 12-13, 2016)
- *Twelfth* meeting (January 9-10, 2017)
- *Thirteenth* meeting (April 10-11, 2017)

Federal Advisory Committees exist on a 2-year renewal cycle

New Commission charter signed on April 23, 2015

Includes digital evidence

While we hope that a new charter will be signed in April 2017 extending the NCFS, a new administration will begin January 20, 2017 and may have different priorities
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Objectives

• To examine what we have accomplished thus far

• To propose a framework to better organize what NCFS is doing

• To create discussion about our path forward
Glance Back: First Meeting

“We are building this plane as we are flying it”

-Pat Gallagher

Patrick D. Gallagher
NIST Director (2009-2014)
So What Does our Plane Look Like so Far?

- 12 Work Products adopted by NCFS
- 3 Work Products to be voted on 12/7-8
- 7 Work Products out for Public Comment
- Approximately 20 Work Products in various stages of development
- Total = 42 Work Products
Closer Look at Work Products

- **Foundational**: underlying science, validation, research, etc.

- **Operational**: systems within a laboratory to include proficiency testing, methods, management systems, certification, etc.

- **Application(al)**: reporting, testimony, transparency, clarity, understanding, etc.
Where Do We Stand?

• 12 Products Adopted By Commission
  – Foundational: 3
  – Operational: 7
  – Application: 4
  – Not assigned: 1

• Remaining 30 Work Products
  – Foundational: 5
  – Operational: 9
  – Application: 13
  – Not assigned: 4

Total numbers may not add up because some work products may fall into more than 1 category
Distribution of NCFS Work Products

Work Products* (completed or in the pipeline)

- Foundational: 5
- Operational: 17
- Application: 16
- Not assigned: 8

*This list reflects information collected by NCFS staff and may not be a complete list of current subcommittee activities or plans
Gaze Forward: What is our Destination?

• Stated from an Organizational Management Perspective:
  – What is our Vision?
  – What are Goals and Objectives?

• What are our priorities?

• Do we have a structured and chronological plan for accomplishing our objectives?

• What will NCFS be remembered for contributing to the advancement of forensic science?
How to we get to our destination?

• “Reverse Strategic Planning”: use what we have to build a roadmap for the future

• Let’s define a Vision (destination) and build upon what we have done to get there!

• …..in other words let’s “better” organize ourselves and prioritize our work
Proposed Framework

Vision: For all forensic evidence to support the equal and impartial application of justice

Goal 1: Improve the Underlying Science and Validity of Forensic Evidence and Methods

Goal 2: Improve Operational and Management Systems of FSSP

Goal 3: Improve Clarity and Understanding of Forensic Evidence
Goal 1: Improve Underlying Science and Validity of Forensic Evidence

- **Work Products** (completed or in development):
  1. Accessibility to Scientific Literature
  2. Effectiveness of Procedures and Practices
  3. Post Doctoral Projects
  4. Validation of Test Methods
  5. Foundational Literature
  6. Universal Accreditation
  7. MDI Accreditation
  8. Scientific Literature in Support of Forensic Science and Practice

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Goal 2: Improve Operational and Management Systems

- Work Products* (completed or in development):
  1. Universal Accreditation
  2. Procedures for Accreditation
  3. Critical Steps to Accreditation
  4. Proficiency Testing
  5. Collaboration with Proficiency Test Providers
  6. Analyst Certification
  7. Organizational Best Practices
  8. Checklist to Reduce Bias
  9. Task Relevant Information
  10. AFIS Interoperability
  11. Root Cause Analysis
  12. Code of Ethics
  13. MDI Certification
  14. MDI Accreditation
  15. MDI Electronic Networking
  16. Increasing Number of Pathologists

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Goal 3: Improve Clarity and Understanding of Forensic Evidence

• Work Products* (completed or in development):
  1. Transparency of Quality Documents
  2. Presentation of Expert Testimony
  3. Inconsistent Terminology
  4. Pre-Trial Discovery of Forensic Materials
  5. MDI Accreditation
  6. Universal Accreditation
  7. Pre-Trial Discovery(initial)
  8. Access to Expert Witnesses by Defense
  9. Judicial Vouching
  10. Notice and Demand Statues
  11. Probabilistic Statements
  12. Report Content
  13. Reasonable Scientific Certainty
  14. National Forensic Science Curriculum
  15. Notification
  16. Assessment Tools
  17. Evidence Preservation and Retention

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Realities/Assumptions to Consider and Questions to Ponder

1. Current charter expires in 14 months (5 more meetings)
2. Funding for implementation of work products is limited
3. Not all work products (objectives) are of equal importance to achieve goals and vision

So……

– Do we enough time/money to complete remaining products (objectives)?
– Are there other objectives we have yet to consider? Should we consider new objectives?
– Should we focus and prioritize our objectives on those that will get us to the goal and vision quicker?
– What will implementation look like?
Path Forward?
Members Here & Establishing a Quorum

32 voting members and 8 *ex-officio* members

*Ex-Officio* Members May Vote on Commission Business Matters

**8 Ex-Officio Members**

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

**Voting Members Not Here**

- Jim Gates
  – Online in Australia
- Arturo Casadevall
  – To be here on Dec 8 afternoon
- Justice McCormick
  – Proxy on Dec 8 (John Hollway)
- Suzanne Bell
  – Proxy Jeff Tomberlin

http://www.justice.gov/ncfs/members
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23. Marc LeBeau (left early on Dec 7; provided vote to JMB)
24. Julia Leighton
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27. Phil Pulaski
28. Matt Redle
29. Sunita Sah

Votes emailed to John Butler
Arturo Casadevall (provided vote to JMB)
Jim Gates (has been online from Australia)
1. Yes
2. No
3. Abstain
Public Comment Follow-up from Our Last NCFS Meeting

• ASCLD President Jody Wolf invited Commissioners to visit forensic laboratories to better understand issues faced

• Specific Commissioners may have been invited due to outreach from ASCLD, AAFS, or others

• Did any Commissioners visit a forensic laboratory and if so, what was your experience?
Dr. Barbara A. Sampson, Chief Medical Examiner of New York City, kindly provided a tour of their facility and operations on Nov. 4, 2015 to Dr. Richard Cavanagh (Acting NIST Deputy Director) and Dr. John Butler (Vice Chair of the National Commission on Forensic Science).

Visited both 520 First Avenue and 421 East 26th Street facilities

Met OCME leadership and engaged in many informative discussions with Frank DePaolo (director of forensic operations) and Dr. Sampson.

Discussed accreditation challenges (five organizations accredit OCME: ASCLD/LAB, ANAB, CAP, ABFT, NAME), implementation of root cause analysis program, the need for more standards at the national level for medicolegal death investigation, the need for more forensic pathologists (NYC has 30 of ~450 in the United States), certification issues with forensic anthropologists, and ongoing process improvements with Lean Six Sigma.
Additional Forensic Laboratory Visits by NCFS Vice-Chair John Butler

With Phil Kinsey (Montana Lab Director)

With Forensic Biology staff members at MSP Northville Laboratory

With Forensic Science Ireland Laboratory Director Sheila Willis as part of the 40th anniversary activities

- Montana State Crime Laboratory (August 18)
- Southwestern Institute of Forensic Sciences (Dallas, TX) (September 18)
- Northville lab in Michigan (October 22)
- Ireland (November 11-12)
Opening Remarks

- DOJ Press Release
- OSAC Availability of ASTM Standards
- Re-Vote on Report Content to Capture Names
- Wrap-up discussion (Nelson)
- Panel – 15 minutes each then 15 minutes for Q&A
- Human Factors Subcommittee following Panel
OSAC Proposed Standards

- Correction -

prepared by Mark Stolorow

• All 5 standards currently being considered by OSAC for posting on the Registry of Approved Standards were made available to the general public by ASTM for free during the 30-day public comment period which ended September 13, 2015.
• These 5 ASTM standards are no longer available to non-members of the general public.
• ASTM copyright requires non-members to purchase standards ($39) or join ASTM for $75 annual membership fee.
• NIST is negotiating an annual fee to ASTM to make all ASTM forensic science standards available to stakeholders for free.
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*Ex-Officio* Members May Vote on Commission Business Matters

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Report Content
Views Document
[comma in title, semi-colon after organized]

1. Yes
2. No
3. Abstain

87%
10%
3%
Report Content
Views Document
[comma in title, semi-colon after organized]

1. Yes
2. No
3. Abstain

90%
7%
3%

Cecelia Crouse voted yes
PANEL: Translation of Scientific Research into Forensic Practice

• **Molly Dix**, B.S.M.E, M.I.P.
  – Director, Innovation Advisors, RTI International, Forensic Technology Center of Excellence

• **Fen Zhao**, Ph.D.
  – Staff Associate, Strategic Innovation, National Science Foundation, Directorate for Computer & Information Science & Engineering

• **Peter Marks**, M.D., Ph.D.
  – Deputy Director, Food and Drug Administration, Center for Biologics Evaluation and Research

• **Jennifer Shieh**, Ph.D.
  – Small Business Coordinator & Program Director, National Institutes of Health, Office of Translational Alliances and Coordination, National Heart Lung Blood Institute
Task-Relevant Information

Views Document

[additional comments]

1. Yes
2. No
3. Abstain

93% Yes
7% No
0% Abstain
Brief Demonstration of SharePoint and Regulations.gov Websites

Jonathan G. McGrath, Ph.D., M.S.F.S.
(interim) NCFS Program Manager
Senior Policy Analyst, National Institute of Justice
DRAFT WORK PRODUCTS OPEN FOR PUBLIC COMMENT

Reporting and Testimony Subcommittee
Views Document on using the term “Reasonable Degree of Scientific Certainty”

Scientific Inquiry and Research Subcommittee
Views Document on Establishing the Foundational Literature within the Forensic Science Disciplines
Post-Doctoral Projects to Facilitate Translation of Research into Forensic Science Practice

Interim Solutions Subcommittee
Views document on a National Code of Professional Responsibility
Recommendation on Accessibility of Quality Management System Documents

Accreditation and Proficiency Testing Subcommittee
Views Document on Proficiency Testing in Forensic Science
Views Document on Critical Steps to Accreditation

SUBMITTING OR VIEWING WRITTEN PUBLIC COMMENTS

Individuals wishing to view or submit written public comment regarding draft work products should do so by going to www.regulations.gov and entering Doctype No. ODAG 156. Public comments may be submitted at any time, but to ensure your comments are taken into consideration in the work product development process, they must be submitted during an open public comment period.

In accordance with the Federal Records Act, please note that all comments received are considered part of the public record, and shall be made available for public inspection and posted on the Department of Justice’s website. The comments to be posted may include personally identifiable information (such as your name, address, etc.) and confidential business information, as authorized by the Act.

Public comment period now open! Visit regulations.gov.
Remaining Subcommittee Reports

1:30-2:00pm **Scientific Inquiry & Research**

2:00-2:30pm **Training on Science and Law**

2:30-3:00pm **BREAK** (will shorten as needed)

3:00-3:45pm **MDI**

3:45-4:30pm **Accreditation and Proficiency Testing**

4:30-5:00pm **Wrap-Up (Bylaws, Prioritization)**

5:00-5:30pm **Public Comment**
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- Suzanne Bell
  - Proxy both days Jeff Tomberlin
- Jules Epstein
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- Jim Gates
  - Clicker with Jules → Bill T.

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29. Sunita Sah
30. Jeff Salyards
31. Arturo Casadevall

Jim Gates (clicker with Jules E. ➔ Bill T.)
National Forensic Science Curriculum Directive Recommendation

[remove “to be perceived as neutral”, add “analysis”, insert OSAC]

1. Yes
2. No
3. Abstain

97%
3%
0%
Wrap-up Session

• Discussion of Bylaws Revisions (Andrew)
  – Vote on Acceptance of Revised Bylaws

• Discussion for Future Work Activities (Nelson)

• Topics for Future Meetings (John)

• Acknowledgments
Cecelia Crouse Provided Comments on the Revised Bylaws

Here are my comments regarding the By-Laws:

1. The "Report" status template document has the term "Abstract" on it but this word and definition does not exist in the By-Laws.
2. Not sure why 15 days before a commission meeting was changed to 14?
3. Not sure how a work product passes through sub-committee since the 2/3 requirement was deleted. Does this mean a Chair could push something forward without a majority support?
Proposed Framework

Vision: For all forensic evidence to support the equal and impartial application of justice

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Public comment open through December 22, 2015
Potential Topics for the Next Meeting

- Victims’ Rights Issues
- Digital Evidence Issues
- Certification in Forensic Science

The ninth meeting of the National Commission on Forensic Science will be held March 21 - 22, 2016 in Washington, DC. Optional NIST visit planned for Wednesday, March 23.
Thank you!

- Subcommittee co-chairs and subcommittee members for their hard work

- Note takers for Commission and subcommittee meetings

- Robin Jones → Jonathan McGrath and Danielle Weiss and other support staff for making meeting support and arrangements

- House of Sweden for an excellent venue

- Please leave the clickers on your desk and I will pick them up at the end of the meeting