

National Commission on Forensic Science

Meeting #7

August 10–11, 2015

**House of Sweden
Washington, DC**



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

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August 10, 2015

Call to Order/Opening Remarks

Andrew Bruck opened the meeting at 12 p.m.

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

Ms. Yates announced the six new commissioners: Thomas Albright, Ph.D.; Arturo Casadevall, M.D., Ph.D.; Gregory Champagne; William Crane; Deirdre Daly; and Sunita Sah, M.D., M.B.A., Ph.D.

The National Institute of Standards and Technology (NIST) and the U.S. Department of Justice (DOJ) have signed a revised memorandum of understanding (MOU) on their respective roles, to include digital (computer) forensics; the MOU was circulated and is posted on the National Commission on Forensic Science (NCFS) Web site (<http://www.justice.gov/ncfs>).

Attorney General Loretta Lynch is committed to considering every recommendation adopted by the Commission and responding promptly. The Department will reach a determination on the process by which work products of the Commission will be processed by the December meeting. It is anticipated in the future, the Department will respond to recommendations within two meetings of documents being approved by the Commission.

One of the Commission's challenges is inconsistencies on how subcommittees are drafting their work products. There is also confusion about the three types of documents, and DOJ wants to begin a conversation with the Commission about this and perhaps provide guidance. The Commission has established the Subcommittee on Procedures and Operations (SPO) to support clarifying these matters, act as liaison among commissioners, and to advise on procedural and operational matters. This will allow the vice-chairs to continue running day-to-day activities.

We must consider that while some recommendations fall within the direct authority of the Attorney General, some may need to be coordinated with other federal agencies. The Office of Science and Technology Policy (OSTP) will continue to be a resource for this kind of interagency coordination.

Willie E. May, Ph.D., Director, National Institute of Standards and Technology

Dr. May reported that the renewed MOU (distributed to commissioners) addresses two areas: this Federal Advisory Committee Act (FACA) group (DOJ takes the lead with NIST coordination); and Organization of Scientific Area Committees (OSAC) (NIST takes the lead with DOJ coordination). NIST is responsible for coordination of the OSACs; conducting research to support the stakeholder community; and to test existing methods when warranted. The OSAC structure has been delineated and is fully operational.

In July, NIST sponsored the first International Symposium on Error Management, which attracted 430 participants from around the world. The technical program covered 8 tracks in 42 sessions. All presentations will be posted on the NIST website by mid-August.

NIST's 3,000 employees and 3,500 associates work on two main campuses—one in Gaithersburg, Maryland, and one in Boulder, Colorado. NIST focuses on research in physical standards and measurement issues related to contemporary society (e.g., building materials, advanced communications, manufacturing, materials, cyber-security). But NIST also addresses forensic sciences including genetics, ballistics and associated tool marks, arson and fire debris, crime scenes, evidence management, nuclear forensics, trace evidence, and image analysis. As part of this effort, NIST has established the Forensic Science Center of Excellence in cooperation with four universities.

Discussion

- Implementation sometimes falls outside the purview of DOJ, and DOJ is trying to come up with a process for such recommendations (e.g., they have sent two recommendations to OSTP). This is one of the matters DOJ wants to discuss with NCFS as part of figuring out how to facilitate the work NCFS does and then get it to the appropriate agency. Given the amount of work that goes into these products, it is not acceptable to focus only on things that can be done within DOJ. DOJ and NIST want to find ways to address the things the Commission thinks are pertinent.
- NIST's sample OSAC newsletter will be distributed electronically.
- Problems occur in the public as well as Federal spheres: We want to know how to provide the Code of Professional Responsibilities to all providers and not limit distribution of the findings to DOJ. It may be necessary to bifurcate between DOJ policy and broader policy.
- One recommendation was implementation via a grant, however additional information specific to grant programs will need to be considered to make an informed decision. Ethics Training

Janice Rodgers, Director, and Cynthia Shaw, Deputy Director, DOJ Office of Ethics

Ms. Rodgers distributed copies of "The 14 Principles of Ethical Conduct" and explained each.

Discussion

- Conflicts may be waived, except for 18 U.S. Code § 203 (compensation) & 205 (legal representation), and the financial conflict under 18 U.S.C. § 208 (personal financial interest). See www.oge.gov/Laws-and-Regulations/Statutes.

Bylaws Subcommittee Status Report

Members

Dean Gialamas, Commissioner
Marilyn Huestis, Commissioner
Pam King, Commissioner
Matt Redle, Commissioner
Nelson Santos, Vice-Chair
John Butler, Vice-Chair
Meredith Drosback, OSTP
Andrew Bruck, DFO

The Subcommittee on Procedures and Operations (SPO) has been created as a standing committee to advise the NCFS co-chairs and vice-chairs on administrative and procedural matters.

In general, the bylaws are working well, but some areas need attention. The SPO wants to create a mechanism to address additional issues going forward while maintaining flexibility. They want to focus on the gaps, recognizing that there are still areas where the language should be improved.

Proposed Bylaws Changes

In the current bylaws (copies were distributed to commissioners), Section IV, Commissioners, was rewritten regarding replacement of commissioners in a way that will maintain balance, using a transparent and timely process. *Ex officio* commissioners can vote on business, but not on work products. The SPO invited discussion on whether to include abstentions in the total number of voters.

Section V, Commission Work Products, will be left as is for now, so subcommittees can continue working under the current procedures.

Panel: Exploring Issues Related to Proficiency Testing

Proficiency Testing from a Large Laboratory System Perspective

Brady W. Mills, Deputy Assistant Director, Law Enforcement Support–Crime Lab Service, Texas Department of Public Safety

A Proficiency Test Provider’s Perspective

Christopher J. Czyryca, President, Collaborative Testing Services, Inc.

Defense Forensic Science Center Blind Proficiency Testing

Jesse Brown, Program Manager–Training, Office of Quality, Initiatives, and Training, Defense Forensic Science Center

To view PowerPoint presentations presented by the panel, visit <http://www.justice.gov/ncfs/meeting-materials#s7>.

The presentations enumerated issues associated with standards (ISO 17025 and 17043) – while the two share many commonalities, many factors are left to the discretion of the provider. However, scenario- and conclusion-based proficiency tests are not specifically addressed.

Challenges to a robust proficiency test program include producing case-like scenarios while producing uniform test components, setting the appropriate level of challenge for each test, and the interaction of proficiency testing with individual laboratory policies. Proficiency testing provides valuable external and independent lab performance assessment. Test design, interaction with individual lab policies, and level of challenge are among the most important and nuanced considerations.

Issues related to blind proficiency testing were also considered. Evidence types that could cause problems with the blind proficiency test process include: found crime scene evidence, evidence that requires processing, antiquated evidence types (not many labs perform these analyses), evidence containing unknown profiles (including conforming to CODIS and AFIS requirements), and novel evidence types (e.g., LED light bulb analysis). Blind proficiency testing programs can offer distinct advantages and can reveal valuable data. Financial and logistical obstacles are real, but not insurmountable. Smaller pilot programs can be used to test and evaluate such a program. Multiple lab participation is key to success.

VOTE ON COUNTING ABSTENTIONS

- 25 of 37 agreed that an abstention changes both the numerator and denominator in the vote count.
- 35 of 37 agreed that a minimum, as defined by SPO, is required for a yes/no vote.

VOTE TO APPROVE THE BYLAWS

- 34 of 35 (34 yes, 0 no, 1 abstention from David Honey’s proxy) approved the bylaws changes in principle, leaving line-by-line revision for later.

Accreditation and Proficiency Testing Subcommittee Report

Linda Jackson and Patricia Manzolillo, Co-Chairs

The Accreditation and Proficiency Testing Subcommittee plans to meet on September 22 & 23 in Washington, DC. At that meeting, they will incorporate comments regarding proficiency testing from this meeting into a revised document that will be presented at the December meeting. They also want to prepare a document on the critical steps to accreditation, draft an abstract for accreditation programs, and begin an initial discussion on certification. Three subcommittee members have stepped down, and three commissioners have asked to join the subcommittee. They want to add a few more in addition to the three volunteers, especially those with experience in certification.

Public Comment Period

Jody Wolf, President of the American Society of Crime Laboratory Directors, as well as IFSA (International Forensic Strategic Alliance)

Ms. Wolf invited commissioners to visit a local crime lab to learn from employees and stakeholders. She recommended that impact must be assessed in addition to the facts under consideration, and the crime lab world must learn how to be effective in this milieu. She would like to ensure that support is open and transparent, and she requests more transparency in how commissioners adjudicate public comments.

Barry Scheck, Co-Director, Innocence Project

Mr. Scheck commented on how blind proficiency testing should be used more frequently.

Adjournment

Robin Jones announced forthcoming meeting dates: December 7 and 8, 2015; March 21 and 22, and June 20 and 21, 2016. NIJ and NIST are considering organizing a tour of NIST for commissioners on March 23, 2016.

Mr. Bruck adjourned the day's sessions at 5 p.m.

August 11, 2015

Call to Order

A number of documents are being brought to the floor for a vote (the public comment period for these documents occurred April 15 – May 15, 2015):

1. Automated Fingerprint Identification System (AFIS) Interoperability (directive)
2. Root Cause Analysis (RCA) in Forensic Science (directive)
3. Pretrial Discovery of Forensic Materials (views)
4. Testimony using the Term “Reasonable Scientific Certainty” (views)
5. Increasing the Number, Retention and Quality of Board Certified Forensic Pathologists (policy)
6. Electronic Networking of Medical Examiner and Coroner Offices in the United States (policy)

Twenty votes will be needed for a two-thirds majority of the Commission to adopt these work products.

Scientific Inquiry and Research Subcommittee Report

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

The mission of the Scientific Inquiry and Research Subcommittee is to promote the culture of science across all disciplines within forensic science. The subcommittee is considering the following issues:

Status Report: Core Literature

The subcommittee has laid out the basic tenets for what constitutes core literature (e.g., peer review is part but not all of it). They are drafting a work product, “Foundational Literature within the Forensic Science Disciplines,” a document that addresses evaluating and reviewing literature.

Status Report: Accessibility of the Forensic Literature

“Accessibility of the Forensic Literature” will be ready for the December meeting. Accessibility is a major challenge for people who work in labs not affiliated with a university, and the primary literature is useless if you cannot access it. The subcommittee will develop a views document and include an appendix of a model that suggests that employees of state and local labs should be given faculty privileges to use the library at state universities. Also, anything NIH publishes is free.

Status Report: Post-Doctoral Path and Funding

Funding post-doctoral research is commonly used to facilitate a career path in medical and scientific research, but not in forensic science. The subcommittee will ask for a program where NIJ funds post-doctoral fellowships in crime labs, maybe in partnership with an academic institution. The lab would not be responsible for funding, nor would it be under any obligation to hire the post-doctoral researcher.

Status Report: Funding for Internships

It is becoming increasingly difficult to fund internship positions, but internships are vital to careers in forensic science. The subcommittee wants to set up an internship program within NIJ that would involve a cohort of people who meet once a year for an integrated program, similar to Master’s students.

Status Report: Technical and Scientific Reviews

One hurdle to translation is admissibility. How can the scientific community facilitate judges' evaluation of evidence (e.g., new spectrometry technology, or rapid DNA)? The subcommittee wants to provide a mechanism for top-level scientific review: They have a concept in mind, but not the mechanism. However, the Food and Drug Administration (FDA) offers a model where things are presented and subjected to high-level review. It would be very useful for gatekeepers to be initially coordinated by NIST. This effort should not be vendor-driven, nor should it dictate how to apply the science, but the goal would be to know whether the science itself is reliable. The subcommittee plans to present a draft at the December meeting.

Status Report: Directive Recommendation on Blind Proficiency Testing

Rather than traditional proficiency testing, this subcommittee is interested in benchmarking and data/metadata analysis. Dr. Salyards is working on this document.

Ideas for a Panel: Translation of Research into Practice

The subcommittee is working on ideas for a panel of representatives from various agencies (National Science Foundation [NSF], FDA, Department of Homeland Security, Department of Defense). European models exist but are very different from those in the United States. Dr. Bell would welcome suggestions of models that might apply.

Discussion

- Labs can validate new technology, but how do we translate that to a lab that has to get things done and where its primary purpose is not validation?
- The other side of the post-doctoral model is that many post-doctoral researchers want to go into forensics labs, but it's more expensive. Recent Ph.D. graduates offer another opportunity. We should include a management plan for the lab director who wants them to do a specific thing, and NIJ should fund it for 2 to 3 years.
- It is clear that the earlier you approach a budding scientist, the better. Increasingly we see that bringing in high school or younger students to science, technology, engineering, and mathematics is paying off, and NSF has programs that address this (e.g., Research for Undergraduates). NSF uses two criteria to review proposals: the broader impact the work will have on society, and the potential to advance knowledge.
- An enduring problem in translation and advancement in all the sciences is how to reach labs that do not have a research component. One survey revealed that only 5 of 58 labs actually had research plans. The DNA community is an exception.

Interim Solutions Subcommittee Report

Dean Gialamas and Peter Neufeld, Co-Chairs

The subcommittee has met twice since the last Commission meeting. After they finish documents on Code of Professional Responsibility, and Transparency of Quality Records, they expect the subcommittee to "sunset," but they will consider other matters if asked.

Final Document for Vote: Views Document on AFIS Interoperability

Comments included the criticism that cost and implementation strategy were omitted; these were deferred to OSAC to work on with the Attorney General because their expertise is more appropriate. Another comment was that references listed at the end of the document should be cited in the body. Citation to the ANSI/NIST ITL standard will be added.

VOTE TO ACCEPT THE VIEWS DOCUMENT ON AFIS INTEROPERABILITY

- 29 of 29 approved. No abstentions.

Final Document for Vote: Directive Recommendation on Root Cause Analysis

Public comments have been adjudicated. The subcommittee wants to extend the philosophical awareness required by ISO 17025. They standardized the use of “nonconformity” instead of “adverse event,” “error,” or “mistake.” Similarly, “intervention” was changed to “corrective action.”

VOTE TO ACCEPT “DIRECTIVE RECOMMENDATION ON ROOT CAUSE ANALYSIS”

- 27 of 29 approved. 27 yes, 2 no, 0 abstain (“no” votes from Phil Pulaski and John Fudenberg)

Status Report: Views Document on a National Code of Professional Responsibility

The subcommittee received numerous public comments, including complete rewrites. These have been grouped by number and type, and the subcommittee is close to settling on 15 of the code requirements, but the 16th is contentious: “Appropriately inform affected scientific and legal parties (either directly or through proper management channels) of breaches of ethical, legal, and scientific standards that affect a previously issued report or testimony.” Everyone agrees that notification is fair; the difficulty is in the logistics of who will do it and how. Does the lab report to the prosecutor and the court, or does the lab have to notify every defender and defendant? Is it the lab’s responsibility, the prosecutor’s, or the court’s responsibility to do that? A major complaint is that there is no enforcement mechanism.

- First and foremost in a code of professional responsibility for people who work in labs and those who manage them is the importance of labs being independent of the District Attorney’s office and the police department. The 2009 National Academy of Sciences (NAS) report states this, and the subcommittee’s effort is a move toward independence. Is the customer the submitting agency that pays the fee or all the stakeholders in the criminal justice system affected by the lab work?
- The notification process is troubling. There is agreement that there is a duty to notify about an adverse event that affects the individual, but it is still very vague about what qualifies as notifiable. The problem is that it puts the duty on the lab manager. This is a nightmare that will set up analysts and labs for failure (and lawsuits). The prosecutor has a duty to do this. Labs and analysts don’t have the capability to identify defense attorneys and defendants. It is the lab’s ethical duty to correct and to notify about the error and the correction. One lab working with DOJ has sent notifications to prosecutors and 1,000 defense attorneys nationally. A national organization will identify unknown defense attorneys. This addresses rigid limitations of time, and it works. There is a difference

between the legal duty of the prosecutor and the ethical duty of the lab to correct and to notify.

- Texas deals with the problem areas via a series of letters for notification. Labs report to the Texas Commission and to the prosecutors in a combined effort. Prosecutors notify defense attorneys and work together with defense, courts, law enforcement, and prisons.

Status Report: Recommendation on Transparency of Quality Records

The subcommittee's final document will be ready for the December meeting. They are focusing on non-case-specific information, forensic casework, constraints, and the scope of discovery work.

Human Factors Subcommittee

Justice Bridget McCormack and Jules Epstein, Co-Chairs

The Human Factors Subcommittee met once. Troy Duster stepped down from the subcommittee, and Bill Thompson took over his work.

Introduction of Draft Work Product Open for Public Comment: Views Document on Ensuring that Forensic Analysis Is Based upon Task-Relevant Information

This is a work in progress. It addresses a critical issue for forensic science, namely the proper evidentiary base for a forensic scientist to consider. This is a fundamental issue that involves both science and policy. A document is needed because of confusion in the forensic community about what should be included. The document's aim is to prevent cognitive and contextual bias. The usual approach is to blind the examiner or analyst to the potentially biasing context. Forensic scientists need a clear idea of what is and is not extraneous to forensic analyses; relevant or not relevant depends on what task is being performed. We do not want investigators to inadvertently (or otherwise) influence the forensic scientist's interpretation of the evidence being analyzed. At a later phase, more information may be relevant. This document focuses specifically on the analytic phase. The problem arises if the same person is involved in different tasks, in which instance a manager would have to negotiate the problem of what different factors are needed at different phases. There must be a standard for relevancy for the task of forensic analysis.

Beyond defining "task-relevant," the document urges forensic scientists to think specifically about what is relevant to common tasks being performed. Then consider management of task-relevant features so the analyst is not unnecessarily exposed to irrelevant information or evidence.

This is a problem because contextual effects elicit potentially dangerous assumptions on cognition. The human brain is a pattern-finding machine, which is valuable for our survival; the problem is that the brain does this without our awareness or control. Contextual effects are often used to make people perceive things that are not real (e.g., in entertainment or advertising). They contaminate our ability to assess "noisy" evidence (e.g., latent fingerprints). So we must block access to extraneous pieces of information. This sort of blinding is used in medicine (e.g., when a radiologist reads an x-ray without knowledge of the internist's diagnosis).

- The subcommittee wants to find out what labs are doing already, how well their procedures are working, and what works best. The subcommittee could then add to that.
- The definition of forensic analysis should add that it applies equally to both state and defense experts.
- Multiagency investigations raise special problems.
- It would be good to highlight the distinction between task-relevant information for forensic science, for a crime scene, and for crime scene reconstruction. Forensic science

should rely solely on task-relevant information. We need specific language so as not to create an overbroad umbrella.

- The subcommittee is not taking a position on any particular field. The issue of the medical examiner or coroner who feels he needs to know is a topic to be discussed. Medical examiners sometimes have the official duty under the law to determine cause of death, for which they need to consider all the evidence. Medical examiners are physicians first; they make their diagnosis on history and lab tests. Otherwise, they are guilty of malpractice.

The subcommittee awaits public comments and intends to have a final draft for the December meeting.

Status Report: Eliciting Anecdotal or Experiential Information

The subcommittee plans to gather information that can be used to inform the development of current or future work products.

Status Report: The Use of Checklists to Reduce Bias

The subcommittee is beginning to consider whether checklists are valuable. They will propose a commission-wide presentation on checklists—good, bad, the literature, what we can do for forensic disciplines.

Status Report: Systems Approach

Mike Ambrosino has drafted a document on using a systems approach to handle evidence. This may be presented within a human factors approach.

Status Report: Education

The subcommittee wants to get more information and proposes an online vehicle to present that information to make it widely accessible.

The Netherlands Register of Court Experts: Experiences and Challenges toward a Forensic Science Quality System

Michael Smithuis, Managing Director, Netherlands Register of Court Experts

Mr. Smithuis presented the Netherlands' experience with establishing a register of court experts. To view the PowerPoint presentation, visit <http://www.justice.gov/ncfs/meeting-materials#s7>.

- To avoid conflicts of interest, assessors can decline to assess, or those to be assessed can decline to have a particular person assess them.
- The expert who signs off is responsible for all the work that was done.
- About 40 percent of applicants who apply to be listed as experts are rejected. Those who appealed with an independent judge have tended to receive similar, or sometimes worse, rulings.
- This is an open system: judges and defense attorneys do not have to pick an expert from the register, but they have to explain why if they did not. (Those who failed the application are not named in the registry.)
- The law states that they must do their assessments independently. A seven-member board is established: one from the prosecution, one from the defense, one from the police, three independent scientists, and a judge as president.
- Some working groups are considering the gap in reporting requirements; their report was to be released last month.

- The Netherlands is trying to develop a system to handle breaches. Judges don't come forward. If someone accuses someone of negligence—usually its experts accusing other experts—an investigation will be started. A government review committee, which reports to the highest court, looks into it case by case and advises that court.

Reporting and Testimony Subcommittee Report

Judge Jed Rakoff and Matt Redle, Co-Chairs

Final Document for Vote: Views Document on Pretrial Discovery of Forensic Materials

The subcommittee wants everyone to have timely and equal access, which the courts enforce.

Public comments said the report is not specific, but this is a views document that sets forth basic principles. More specific proposals will be made in a second document to be presented at the December meeting. Federal Rule 16 is the same in principle, but not in practice because of variable interpretations. Public comments received before the subcommittee's last meeting were discussed at the most recent meeting (yesterday morning) and in teleconference. Most comments were requests

for more specificity. The subcommittee is strongly of the opinion that this is a general principles document. The next document will be more specific. Only one comment disagreed in principle.

VOTE TO ACCEPT THE VIEWS DOCUMENT ON PRETRIAL DISCOVERY OF FORENSIC MATERIAL

- 25 of 29 agreed to accept the document with editorial changes to correct typos and misspellings. There were 25 yes votes, 3 no votes, and 1 abstention. "No" votes came from Greg Champagne, Marc LeBeau, and Greg Czarnopys. Nelson Santos abstained.

Final Document for Vote: Views Document on Testimony Using the Term "Reasonable Scientific Certainty"

Of the 17 public comments received, 8 were in agreement and the others were not, which was discussed at the July 7 conference call. The subcommittee is aware of ongoing work on this topic.

While Federal law does not require reasonable scientific certainty, the laws of several states do require it by way of foundation for the testimony of the expert. We need to consider the misleading nature of the phrase itself when relayed to a jury. "Reasonable" is an objective standard, and "scientific" implies some kind of metric, but the law is context-based and judge-based.

This must be taken one step at a time. Therefore, the subcommittee added Section V. The minimum is that something be more likely than not; the difference between speculation and not speculation is simply "more likely than not."

For a scientist, the phrase necessitates talk about error rates, but error rates are not assessed in forensic science. If it is not possible to measure the error rate, it is not a scientific certainty.

A views document without solutions can be very problematic; the proposed solutions should be added.

Forensic experts are asked (not required) to testify whether the expert thinks something is true with "reasonable scientific certainty." It's a phrase of the lawyers who use it, and it creates confusion and uncertainty and doesn't advance the judge's or jury's determination of the truth. The whole point is to educate the judicial system not to use this phrase.

In some disciplines, you can offer a level of certainty; in others you cannot. The subcommittee should address these issues and revise the document.

Paragraph 2 is the meat of the document, and no one disagrees with it, but there are lots of extraneous material in this document. These documents should be kept as brief as possible.

VOTE TO AGREE WITH THE CONCEPTS AND REQUEST THAT THE SUBCOMMITTEE ADDRESS COMMENTS/CONCERNS FOR THE VIEWS DOCUMENT ON TESTIMONY USING THE TERM “REASONABLE SCIENTIFIC CERTAINTY”

- 28 of 29 voted to accept the basic concepts in the document and request it go back to Subcommittee to address concerns raised by the Commission. 28 voted “yes”, 1 voted “no” (Jules Epstein), and there were no abstentions.

Based on discussions of the Commissioners, a motion was made to vote to agree with the concepts described in the document and request that the subcommittee address comments and concerns raised in this discussion. This document was not voted for Commission adoption at this time.

Introduction of Draft Work Product: Views Document on Report Content

Public comments were received and adjudicated. We need a consensus view of what a report should look like (e.g., the level of documentation required by accreditation standards would never be in a report). Access to documentation is critical, and reports need to identify that additional documentation is available. Additional comments should be sent to Julia Leighton.

Status Report: Probabilistic Statements

Work continues on this document.

Status Report: Evidence Preservation and Retention

Work continues on this document.

Compliance with Federal Civil (Rule 26) and Criminal Rules (Rule 16)

At the December meeting, the subcommittee will introduce a work product.

Medicolegal Death Investigation Subcommittee Report

Vincent DiMaio, M.D., and John Fudenberg, Co-Chairs

Final Document for Vote: Increasing the Number, Retention, and Quality of Forensic Pathologists

Ten public comments were adjudicated: six were accepted and two rejected.

VOTE TO ACCEPT THE DOCUMENT INCREASING THE NUMBER, RETENTION, AND QUALITY OF FORENSIC PATHOLOGISTS

- 27 of 28 voted to accept the views document. 27 voted “yes”, 0 “no”, and 1 abstained (Mark LeBeau).

Final Document for Vote: Electronic Networking of Medical Examiner and Coroner Offices

One public comment was received. The purpose of the document is mainly for the dissemination of information, but only about 700 people subscribe to the one listserv available. Concepts for accreditation and certification were discussed.

The Health Insurance Portability and Accountability Act (HIPAA) will not be affected because deceased persons are not protected; this is just about getting needed information to medical personnel.

Change “develop policy that recommends” to “policy for the implementation.”

Page 2: change the completion date to 2017, and the start date to an amount of time after approval. The Attorney General now intends to have a response within two meetings, which could be a few months.

Cost estimates are based on development costs of other systems that do not require extensive bidding.

We should use agreed-upon terminology, such as “forensic medicine agency” (an organization in the public or private sector that provides forensic science services). This can be worked into the document.

VOTE ON ACCEPTANCE OF ELECTRONIC NETWORKING OF MEDICAL EXAMINER AND CORONER OFFICES

- 27 of 27 voted to accept the document with minor edits. 27 voted “yes”, 0 voted “no”, and there were no abstentions.

Status Report: National Call Center

A national call center would be deployed following a mass casualty to collect data on missing persons; the call center would be specific to the medical examiner’s or coroner’s office to make identifications. A draft recommendation should be ready for the December meeting.

Status Report: Model Legislation

A draft of model legislation will be prepared for the December meeting; it may be one for medical examiner systems and one for coroner systems.

Training on Science and Law Subcommittee Report

Judge Barbara Hervey and Jim Gates, Co-Chairs

Introduction of Draft Work Product: National Forensic Science Curriculum

Robust conversations have been held, and the subcommittee has drafted a recommendation that DOJ fund the development of a national forensic science curriculum.

This curriculum would be directed to officers of the court, but it will also be relevant for law enforcement and for scientists.

Assessment tools should be part of the delivery.

Entities that will help with the curriculum include, but are not limited to, NIST, NAS, and NSF. It was suggested that professional organizations, such as ASCLD and AAFS, be included. Science is moving faster than law, and ultimate delivery in the justice system has to be a joint effort.

The curriculum should be developed neutrally and independently of DOJ.

Ad Hoc Survey Subcommittee: Forensic Science Services Provided by Law Enforcement Agencies

Marilyn Huestis, Ph.D.

This *ad hoc* subcommittee has met several times. The Bureau of Justice Statistics (BJS) and RTI developed the Law Enforcement Rapid Information System (LERIS) data collection tool and will disseminate results within a few months. They received 151 comments from people initially contacted. The second draft was due August 5.

Survey questions include the number of employees, whether the lab is accredited, whether employees are certified, and where they get the work done if they do not offer lab services. Definitions are provided throughout the document.

The draft cover letter to accompany the survey will address who should complete the survey sections. The goal is to send the survey in January 2016 with the expectation of receiving data shortly thereafter.

Wrap Up

John Butler announced that slides will be posted on the NCFS Web site. He asked that commissioners let NCFS staff know if they have suggestions for future meeting topics.

Subcommittee on Procedures and Operations

The SPO (formerly the Bylaws Subcommittee) proposes to keep the membership as is. Issues for SPO to work on begin with: formulating an agenda for the December meeting; appointing a co-chair to the Human Factors Subcommittee; improving facilitation of discussion; refining the abstention floor and the number of yes/no votes permissible; clarifying the work product development process (views documents, policy directives, and recommendations); reviewing the adjudication of the public comments process; the reconciliation process or committee; and revising the bylaws.

Meetings and Reports

Next meetings are December 7–8, 2015; and March 21–22, 2016, with a NIST visit March 23; and June 20–21, 2016. Monday–Tuesday dates were preferred. Possible dates will be set through 2017.

Possible topics include:

- Implementation of Commission documents;
- A panel on research transition challenges and models;
- A panel on pros and cons of checklists;
- A panel on systems approaches; and
- Civil compared with criminal evidence issues.

Subcommittee co-chairs should estimate the amount of time that should be built in for the discussion period for reports. They could also state a preference for the day their subcommittee presents. As the agenda is being developed, SPO wants to be sure they have an accurate list of what will be introduced, voted on, and given a status report.

Furthermore, we need to consider implementation—how to put forward a recommendation, and how to make it happen.

Consistency among documents is another issue, such as if the Commission votes to accept certain definitions, they should be used; the approach to appendices; and the adjudication process for public comments.

Public Comment

Jody Wolf, President of American Society of Crime Laboratory Directors, as well as IFSA (International Forensic Strategic Alliance)

The community is very interested in the work of this Commission. Her organizations fund members to attend so they can be part of the process. Once a work product has been approved by the Commission, they would like to know how the key components will be implemented. Furthermore, if the work product has been substantively changed, it should be sent out for public comment again.

Adjournment

The seventh NCFS meeting was adjourned at 4:30 p.m.

Participants

Last Name	First Name	Attendee Type	Organization	Title
Albright	Tom	Commissioner	The Salk Institute	Professor
Ambrosino	Michael	Sub-committee	U.S. Attorney's Office	
Antell	Kira	OLP	Department of Justice	
Athanas	Karin	Sub-committee	American Association for Laboratory Accreditation (A2LA)	Program Manager, Forensics
Barretta	Michelle	Public	AAAS	
Becnel	Adam	Sub-committee	Louisiana State Police	
Bell	Suzanne	Commissioner	West Virginia University	
Berry	Jasmine	Public	OJP USDOJ	
Bitter	Julie	Public	NIST	
Bieber	Frederick	Commissioner	Harvard Medical School	
Bordner	Pamela	Sub-committee	ASCLD/LAB	
Brown	Alex	Public		
Brown	Alicia	Public		
Brown	Catherine	Public	Collaborative Testing Services	
Brown	Jesse	Speaker	Defense Forensic Science Center	Program Manager - Training
Bruck	Andrew	Commission Staff, Designated Federal Officer	DOJ	Counsel to the Deputy Attorney General
Bunn	Nelson	Public	National District Attorneys Association	Director of Policy and Government Affairs
Butler	John	Commissioner	NIST	NIST Fellow, Special Assistant to the Director for Forensic Science
Cariola	Mike	Sub-committee	Bode Cellmark	
Casadevall	Arturo	Commissioner	Johns Hopkins Bloomberg School of Public Health	Chair and Professor
Cavanaugh	Richard		NIST	Acting Associate Director of Laboratory Programs
Celeste	Eleanor	Public	OSTP	
Champagne	Greg	Commissioner	St. Charles Parish Sheriff's Office	Sheriff
Chu	Sarah	Public	Innocence Project	Sr. Forensic Policy Advocate
Christensen	Angi	Public	FBI Laboratory	
Cole	Simon	Sub-committee	University of California, Irvine	
Crandall	Laura	Sub-committee	SUDC Foundation	
Crane	William	Commissioner	Champlain College	Associate Professor & Program Director
Crouse	Cecelia	Commissioner	Palm Beach County Sheriff's Office	Crime Laboratory Director
Czarnopys	Gregory	Commissioner	DOJ/ATF	Deputy Assistant Director Forensic Services

Czyryca	Christopher	Speaker	Collaborative Testing Services, Inc.	President
Daly	Deirdre	Commissioner	DoJ/U.S. Attorney's Office	U.S. Attorney
Denton	M. Bonner	Commissioner	University of Arizona	Professor
Di Maio	Vincent	Commissioner	National Commission on Forensic Science	Commissioner
Downs	Jamie	Subcommittee	forensX, LLC/ GBI	Medical Examiner
Drosback	Meredith	SPO Subcommittee	OSTP	
Epstein	Jules	Commissioner	Widener U School of Law	Professor
Fudenberg	John	Commissioner	Clark County Office of the Coroner/Medical Examiner	Coroner
Gamette	Matthew	Public	Idaho State Police Forensic Services	Laboratory System Director
Gaskins	Shimica	OLP	DOJ	Senior Counsel
Gates, Jr.	James S	Commissioner	University of Maryland	Professor
Gialamas	Dean	Commissioner	Los Angeles County Sheriff's Department	Chief
Giannelli	Paul	Commissioner	Case Western Reserve University	Distinguished University Professor
Gratz	Ric	Public	RCI	
Hanzlick	Randy	Sub-committee	Fulton County Medical Examiner	
Hamann	Kristine	Public	BJA	
Hervey	Barbara	Commissioner	Texas Court of Criminal Appeals	Judge
Hollway	John	Sub-committee	Quattrone Center, University of Pennsylvania Law School	Assoc. Dean & Exec. Director
Howley	Susan	Commissioner	National Center for Victims of Crime	Public Policy Director
Huestis	Marilyn	Commissioner	National Institute on Drug Abuse, NIH	Chief, Chemistry & Drug Metabolism
Hunt	Ted	Commissioner	Jackson County (Kansas City, MO) Prosecutor's Office	Chief Trial Attorney
Inge	Cori	Public	NCIS	
Jackson	Linda	Commissioner	Virginia Department of Forensic Science	Director
Jones	Robin	Commission Staff	US Department of Justice	
Kassirer	Jerome	Sub-committee	Tufts University School of Medicine	
Kaye	David	Sub-committee	Penn State Law	Professor
King	Kerry	Support staff	Spark Street Digital	
King	Pam	Commissioner	Minnesota Public Defender	
Kobilinsky	Lawrence	Sub-committee	John Jay College of Criminal Justice	Prof. and Chairman
LeBeau	Marc	Commissioner	FBI Laboratory	Chief Scientist
Leben	Deborah	Sub-committee	US Secret Service	

Levick	Sandra	Public	Public Defender Service for the District of Columbia	
Leighton	Julia	Commissioner	Public Defender Service for the District of Columbia	
Livingston	Emily	Public	U.S. Senate Judiciary Committee	Counsel
Manzollilo	Patricia	Commissioner	US Postal Inspection Service	Laboratory Director
Marone	Pete	Sub-committee	Retired Director Virginia Department of Forensic Science	
Martin	Kenneth	Public	International Association for Identification	
May	Willie	NCFS Co-chair	NIST	–NIST Director
Mayer	Mark	Public	Kentucky State Police	Lt.
McCormack	Bridget Mary	Commissioner	Michigan Supreme Court	
McGrath	Jonathan	Commission Staff (proxy for Gerry LaPorte)	National Institute of Justice	Senior Policy Analyst
Mills	Brady	Speaker	Texas Department of Public Safety	Deputy Assistant Director
Motta	Thomas Gregory	Proxy	Proxy for David Honey	
Nashelsky	Marcus		National Association of Medical Examiners	President
Nerheim	Michael	Sub-committee	Lake County State's Attorney's Office	State's Attorney
Neufeld	Peter	Commissioner	Innocence Project	Co-Director
Nolte	Kurt	Sub-committee	Office of Medical Investigator, Univ of NM School of Medicine	Chief Medical Investigator
Pankevich	Diana	Public	OSTP	AAAS Science & Technology Policy Fellow
Penchina	Daniel	Public	The Raben Group	Principal
Philpott	Kate	Sub-committee	Self employed consultant	
Pulaski	Phil	Commissioner	Retired NYPD	Retired Chief of Detectives
Rakoff	Jed	Commissioner	U.S. Courts	U.S. District Judge
Redle	Matthew	Commissioner	Sheridan County and Prosecuting Attorney's Office	County and Prosecuting Attorney
Rodgers	Janice	Speaker	DOJ	
Runkle	Deborah	Public	AAAS	
Santos	Nelson	Commissioner	Office of Forensic Sciences, Drug Enforcement Administration	
Scheck	Barry	Sub-committee	Innocence Project	Co-Director
Schrotter	Frances	Commissioner	American National Standards Institute	Sr. VP & COO
Shaw	Cynthia	Speaker	DOJ	
Smithuis	Michael	Speaker	Netherlands Register of Court Experts	MD, LLM
Song	Sam	Support staff	Spark Street Digital	

Sudkamp	Laura	Sub-committee	Kentucky State Police Forensic Laboratories	Laboratory Director
Thompson	William	Sub-committee	University of California, Irvine	Professor
Thurston	Jonathan	Public	NCIS	
Triplett	Jeremy	Sub-committee	Kentucky State Police	
Turman	Kathryn	Commissioner	Federal Bureau of Investigation	Assistant Director
Tyrangiel	Elana	OLP	DOJ	
Waltke	Heather	NIJ	DOJ	
Weedn	Victor	Sub-committee	George Washington University	Professor and Chair
Weiss	Danielle	Commission Staff	Booz Allen Hamilton	
Weiss	Mark	Commissioner	National Science Foundation	Expert
Wilson	Justin	Public	The Raben Group	
Wolf	Jody	Public	ASCLD	President
Word	Charlotte	Sub-committee	Charlotte Word	
Wulff	Paula	Sub-committee	FBI	Attorney
Yeatman	Dustin	Sub-committee	Palm Beach County Crime Laboratory	Chemistry/Toxicology Manager