

# National Commission on Forensic Science (NCFS)

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



U.S. Department of Commerce

**8<sup>th</sup> 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]

**Posted November 23**

**Public comment open  
through December 22, 2015**

# 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**

# NCFS Outside Speaker Panel Discussions

Meeting	Topics
1	Background on NRC 2009 report, 2009 census of public labs, & SoFS efforts
2	Ethics and Forensic Science
2, 3	Cognitive Bias and Human Factors (part 1 & part 2)
3	Latent Print Automated Fingerprint Identification System (AFIS) Interoperability
3	Role of Accreditation in Forensic Science
4	Assessing Eyewitness Identification (NRC report)
5	Documentary Standards
5	Judicial Training
5	Accreditation and Certification within the MDI Community
6	Evidence Preservation and Retention
6	OSAC Update and Priority Action Report
6	Disaster Victim Identification within the MDI Community
7	Exploring Issues Related to Proficiency Testing
8	Translation of Scientific Research into Forensic Practice
8	AAAS Forensic Science Assessments: A Quality & Gap Analysis

**International Perspectives**

**Meeting 3: UK Regulator**

**Meeting 7: Netherlands Register of Court Experts**

# 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)



EUGENE KIM AND THE WONDERS OF INFLIGHT CONSTRUCTION

# 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
- } **15**
- 7 Work Products out for Public Comment
  - **Approximately 20 Work Products in various stages of development**
- } **27**
- Total = 42 Work Products

# Closer Look at Work Products

- Grouped into the following categories
  - 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

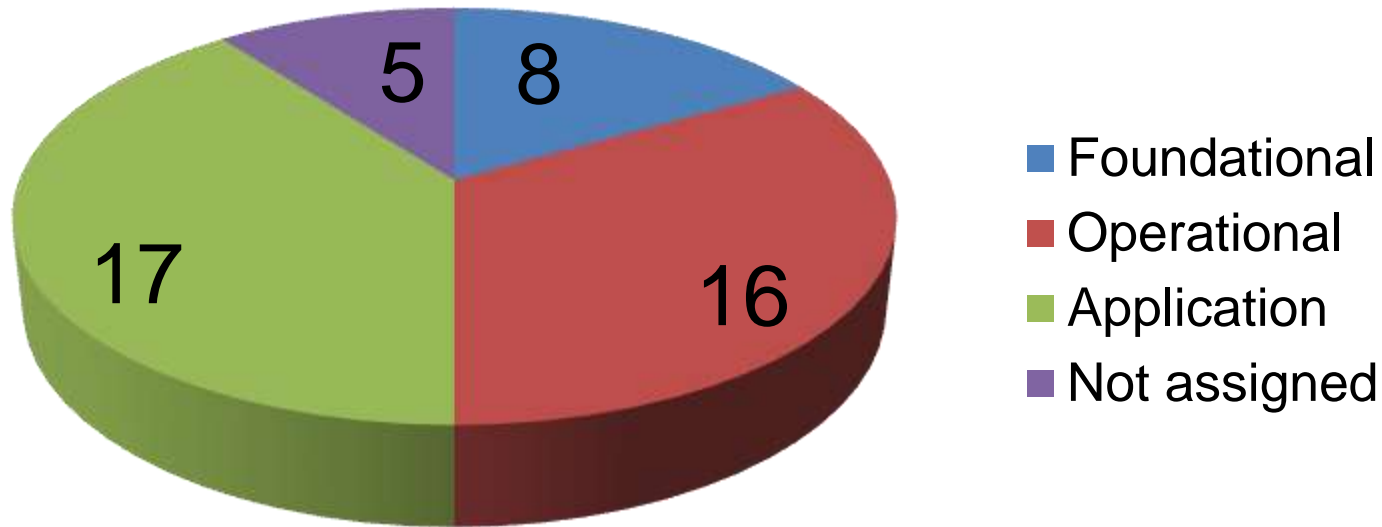
***Total numbers may not add up  
because some work products may  
fall into more than 1 category***

- Remaining 30 Work Products

- Foundational: 5
- Operational: 9
- Application: 13
- Not assigned: 4

# Distribution of NCFS Work Products

**Work Products\***  
**(completed or in the pipeline)**



*\*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**

*\*This list reflects information collected by NCFS staff and may not be a complete list of current subcommittee activities or plans*

# 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
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- Suzanne Bell
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<http://www.justice.gov/ncfs/members>

# Those Voting Today

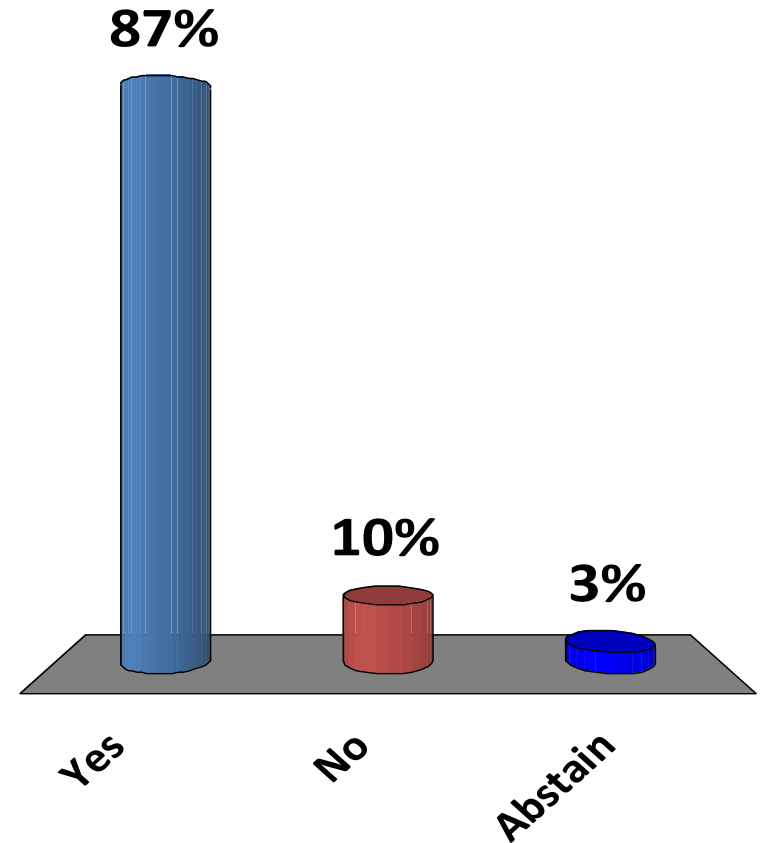
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  23. Marc LeBeau (left early on Dec 7; provided vote to JMB)
  24. Julia Leighton
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  28. Matt Redle
  29. Sunita Sah
- Votes emailed to John Butler  
Arturo Casadevall (provided vote to JMB)  
Jim Gates (has been online from Australia)

# Report Content Views Document

[comma in title, semi-colon after organized]

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?**

# NIST Forensic Leadership Visits NYC OCME



**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 26<sup>th</sup> 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



## Areas seen included

- DNA casework
- Molecular genetics
- Toxicology
- Histology
- Anthropology
- Morgue
- Operations Center

# 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 40<sup>th</sup> 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
  - <http://www.justice.gov/opa/pr/justice-department-announces-new-accreditation-policies-advance-forensic-science>
  - <http://www.justice.gov/opa/file/797541/download>
- 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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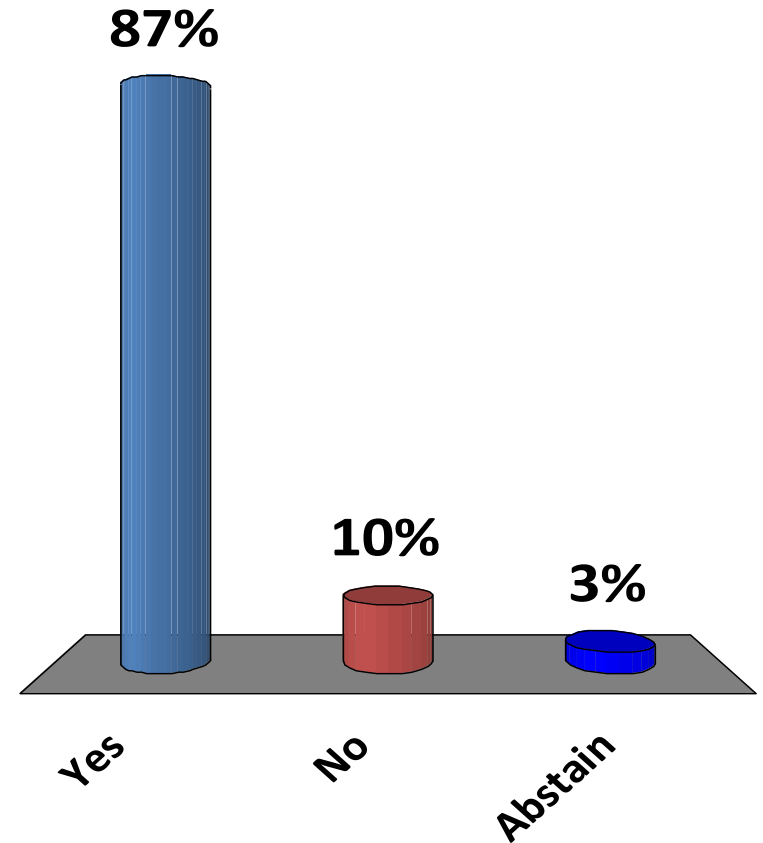
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# Report Content Views Document

Original  
Vote

[comma in title, semi-colon after organized]

1. Yes
2. No
3. Abstain

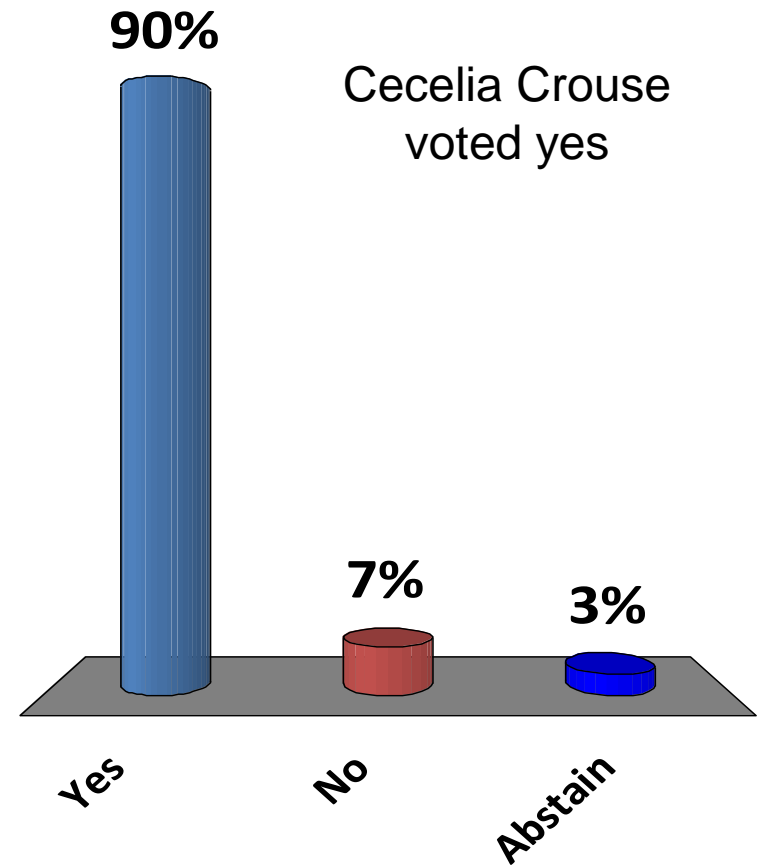


# Report Content Views Document

Re-Vote to  
capture  
names

[comma in title, semi-colon after organized]

1. Yes
2. No
3. Abstain



# **PANEL:** *Translation of Scientific Research into Forensic Practice*

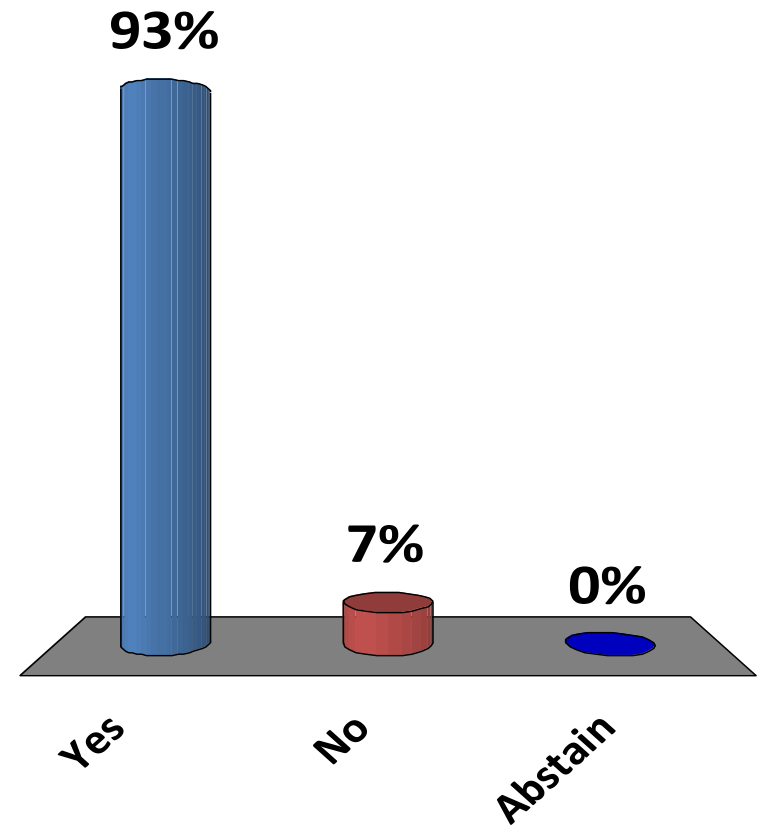
- **Molly Dix**, B.S.M.E, M.I.P.
  - Director, Innovation Advisors, RTI International, Forensic Technology Center of Excellence
- **Fen Zhao**, Ph.D.
  - Staff Associate, Strategic Innovation, National Science Foundation, Directorate for Computer & Information Science & Engineering
- **Peter Marks**, 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





# **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



Home » National Commission on Forensic Science » Work Products

National Commission  
on Forensic Science  
Home

Members

▶ Meetings

▼ Work Products

Work Products  
Adopted by the  
Commission

Draft Work  
Products Open for  
Public Comment

Operational  
Documents

▶ Subcommittees

Press Room

Contact the  
Commission

## 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](http://www.regulations.gov) and entering Docket 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](http://www.justice.gov). The comments to be posted may include personally identifiable information (such as your name, address, etc.) and

## GENERAL INFORMATION NATIONAL COMMISSION ON FORENSIC SCIENCE

### CONTACT

**Jonathan McGrath, Ph.D.** [✉](mailto:jmcgrath@ncfs.gov)

Public comment period now  
open! Visit [regulations.gov](http://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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  - Proxy both days Jeff Tomberlin
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- Jim Gates
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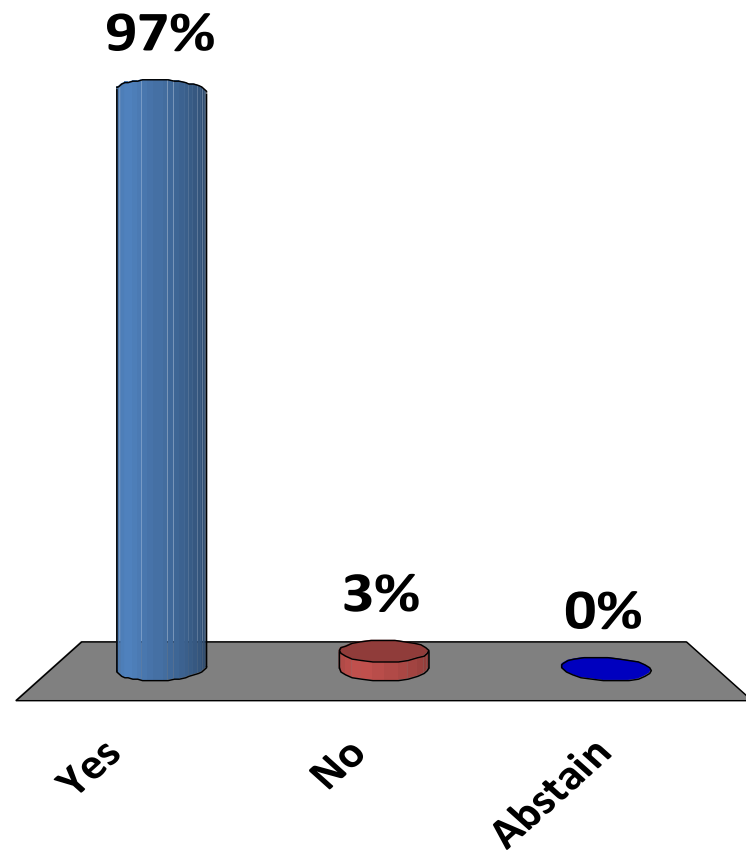
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31. Arturo Casadevall

**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



# 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**

**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**

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[Reporting and Testimony]

## Dec 8

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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]

**Posted November 23**

**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*