

National Commission on Forensic Science

Meeting #2 – May 12-13, 2014

Day 1 – Monday, May 12, 1:00pm – 5:00pm

- 1) Discussion of topics for future meetings (what do the commissioners want to hear presentations on and discuss?)
 - a) Role of Commission in the long term
 - i) Patrick Gallagher: Put NIST/DOJ in alignment on forensic science
 - ii) Stephen Feinberg: Concerned with the Commission waiting on NIST OSACs to identify issues / waiting for things to “percolate up.” Commission should lead and direct the priorities.
 - iii) Cecelia Crouse: Is anyone keeping track of current pending legislation that could affect Commission
 - (1) Patrick Gallagher: NIST and DOJ are both keeping a close eye on legislation
 - b) Jules Epstein – “Forensic Literacy” is a critical issue to discuss
 - i) Commission needs to be talking about “what people in forensic practice need to know about science.”
 - c) Julia Leighton – Need to bring in academic scientists to advise on science issues
 - i) Mentioned something about the Innocence Project definition of “relevant science” or “relevant scientists” (couldn’t hear)
- 2) Panel discussion on Cognitive Bias
 - a) The science of cognitive bias
 - i) Explained the concept of cognitive bias
 - ii) Showed visual examples of how bias occurs
 - iii) Cognitive bias is unintentional, not a product of bad people
 - b) Cognitive Bias in the forensic laboratory – John Collins
 - i) Cognitive bias is a real thing – want to talk about bias from a practitioner standpoint
 - ii) Discussed instances in prior labs where the lab personnel discovered a bias (one particular pattern evidence case). Luckily before any conclusions were made. The discovery was illuminating to the reality of bias.
 - c) Sequential Unmasking
 - i) Sequential Unmasking is controlling the order in which potential biasing information is presented
 - ii) Domain-irrelevant information must be filtered out before making it to analyst (confessions, criminal history, etc.)
 - d) Expert Systems to combat cognitive bias
 - i) There can be expert systems implemented to reduce the cognitive bias of making conclusions
 - (1) “chemometrics” can be used for drug id instead of subjective data comparisons (??)
 - (2) Research paper on-screen was not discussed, but involved a handheld Raman instrument for drug ID
 - e) Comments/Questions
 - i) Jerry LaPorte
 - (1) Sometimes background information is important in forensic science.
 - (2) Doctor visit example (“Doc, I don’t feel well but I won’t describe medical history or give you symptoms in order to prevent biasing your diagnosis.)

- (a) Sequential Unmasking speaker calls the analogy a dramatic caricature and not relevant
- (3) Jerry asks if there is any validated basic research showing that training of subjects in cognitive bias reduces it and if any validated basic research exists that shows sequential unmasking can reduce cognitive bias.
 - (a) Question wasn't answered.

3) Ethics

- a) Jules Epstein – An ethical command on post-conviction information is missing in forensic science
- b) Peter Neufeld – ½ the cases of wrongful convictions have been based on misuse of forensic science – “this information is available and has never been refuted.”
- c) Nelson Santos – What are some ethics ideas to have future discussions on?
 - i) Develop national code of ethics
 - (1) Start with ASCLD/LAB's and develop further from there
 - ii) Evaluate ethics training
 - iii) Evaluate ethics enforceability

Day 2 – Tuesday , May 13, 8:00am – 5:00pm

1) General Information

- a) New website should be online very soon – www.justice.gov/ncfs/
- b) Subcommittees can be populated with non-commission members (appointed by co-chairs)
- c) Three types of work products can come from commission
 - i) Policy Recommendation (to the AG to endorse)
 - ii) Directed Recommendation (to the AG to direct another agency to do something)
 - iii) Views Document (to the AG, but not necessarily a recommendation)

2) Accreditation and Proficiency Testing Committee Report

- a) Need more people on the subcommittee
- b) Starting point is the IWG document
- c) Universal accreditation is the goal
 - i) Committee is struggling with who the “universe” is in universal accreditation
 - (1) One thought is to direct BJS to do a survey
 - ii) Committee discussing if implementation of a deadline for accreditation is a goal
 - iii) Committee also discussed recommending labs do certain portion of accreditation requirements prior to requiring full accreditation
 - (1) Proficiency testing
 - (2) QA program with policies/manuals
 - (3) Formal training program
- d) May write a views document to define the vocabulary
- e) *Comments/Questions*
 - i) Julia Leighton – need a regulatory scheme; existing accreditation programs don't withdraw accreditation / have no teeth
 - ii) Stephen Feinberg – forensic lab accreditation should go well beyond that of an industrial or clinical lab
 - iii) Jules Epstein – universal accreditation goes beyond the scope of the Commission – the commission's scope is the AG's labs

- (1) Discussion on whether the starting point is to require the 3 labs under the US AG (FBI, DEA, ATF) to be accredited
- (2) Nelson Santos mentions that recommendations can go beyond AG labs, as the commission will use the AG's influence to encourage broader adoption of recommendations
- iv) Various discussion on whether defense work should have to be done in accredited labs if "universal accreditation" is recommended
 - (1) Variety of viewpoints here.

3) Reporting and Testimony Committee Report

- a) Committee sees 3 types of testing being performed
 - i) Traditional science backed: DNA, drug ID, toxicology
 - ii) Not extremely rigorous science, but essential: firearms/toolmark examination
 - iii) Controversial scientific basis: handwriting
- b) Looking at report uniformity
 - i) Terminology
 - ii) Content (information in report vs. information in case notes)
 - (1) Discussing if this matters, as long as all information is available/accessible
 - iii) Suggested report models
 - (1) Rule 26a2 of Federal rules of evidence in civil procedure
 - (a) As opposed to Rule 16 of Federal rules of evidence in criminal procedure
- c) *Comments/Questions*
 - i) Cecelia Crouse asks if these are "standards" or "policy" recommendations
 - (1) Answer: Both.

4) Medicolegal Death Investigation Committee Report

- a) Need to know how many medicolegal examiners are out there
- b) Devise a 4-tier system based on the services they provide
 - i) *NOTE: Apologies – I lost some of this. Primarily based on medical examiners, credentials, whether they have an actual lab/toxicology or just do coroner work, etc.*
- c) Critical issue is that medical examiners offices/labs are inadequately funded
 - i) Well funded operation is \$2.50-\$3.50/person of population served, some are at \$0.45/person.
 - ii) Can't do research, get equipment, etc. due to insufficient funding

5) Training on Science and Law

- a) Committee is not in 100% agreement on some things, but are working on several items
- b) Looking at different methods of training for judges/attorneys
 - i) Webinars are decent, but limited
 - ii) Discussing the development of a "National College" for judges/attorneys?
 - (1) What is the "core curriculum" that we want to be taught / critical piece of education to be delivered?

6) Scientific Inquiry and Research

- a) Interested in reviving TAP partnerships that lost funding
- b) Looking at ways to link practitioners to academic institutions
- c) ASCLD research committee that would be a good resource and willing to collaborate
- d) Big issue is how do we get research into practice?

- e) Looking at a workshop with NSF on evaluating the quality of the existing science
 - i) The idea here is about developing a criteria for the evaluation/grading of published articles that lay the foundation for each forensic science discipline.

7) Interim Solutions

- a) There is a sense of urgency to get something done; committee is looking at things we can do right now
- b) Developed 2 tiers of priority
 - i) Primary – things that can be resolved today (May 13) or by the next commission meeting (August 2014)
 - ii) Secondary – things that will take 2 or more meetings to accomplish
- c) Primary Issues
 - i) Establish a Commission subcommittee on Human Factors/Cognitive Bias (will propose a vote today)
 - ii) Recommend that AG/DOJ assist NIST in funding 6 or more full-time positions to staff the OSACs (will propose a vote today)
 - (1) Interim employee solution can be used, basically a special detail for a period of time from one agency to another – proposed example: 2 from DOJ, 2 from NIST, 1 from NIH, 1 more (dept?)
 - iii) Establish Core Definitions in the field
 - (1) What is a forensic laboratory?
 - (2) Who are the customers?
 - (3) “Results,” “Conclusions,” “Opinions”
 - (4) “Match,” “Consistent with,” etc.
 - iv) Consider implementing a temporary limitation on disciplines that lack fundamental scientific underpinning (comparative sciences)
 - v) Establish a date/course of action for fingerprint database interoperability
 - vi) Establish the events that trigger a root-cause-analysis
- d) Secondary Issues
 - i) Establish minimum requirements for test reports
 - ii) Establish deadline for developing a National Code of Ethics
 - iii) Develop an enterprise level set of proficiency tests
 - (1) Developed by consortium of federal forensic laboratory directors
 - (2) Blind testing
 - (3) Compare all the lab reports
- e) *Questions/Comments*
 - i) Pamela King suggests committee look at implementing a deadline for all federally-funded crime laboratories to post their Quality Management System documents / procedures / manuals online.
- f) *VOTES*
 - i) Motion to create subcommittee for human factors/cognitive bias
 - (1) Votes were 14-9 in favor
 - ii) Motion to recommend AG/DOJ look for financing of 6 or more salaried positions detailed to NIST for support of OSAC
 - (1) Unanimously in favor

8) Update on the NIST OSACs

- a) General Info

- i) Applied the feedback received from the community and commission to make changes from original proposal
 - (1) Included input from ASCLD – flew to Scottsdale, AZ to meet with the BoD
 - (a) ASCLD now has 1 position on the FSSB and 5 positions on the QIC
 - (2) Moved bloodstain pattern subcommittee from crime scene SAC to physics SAC
 - b) Applications
 - i) Received more than 1,300 applications
 - ii) All 50 states
 - iii) 56 applications from 21 other counties
 - iv) heavily state/local represented
 - (1) 27% state, 25% local, 18% federal
 - v) heavily practitioner represented
 - (1) 65% practitioners, 11% researchers
 - c) Schedule
 - i) Appoint FSSB in May
 - ii) Appoint LRC, QIC, HFC, and SAC Chairs in June
 - iii) Subcommittee chair selections – August
 - iv) OSAC training (online) – September/October
 - v) In-person meeting of entire structure – mid-November to January
 - d) NIST CoE
 - i) NIST will have a forensic-dedicated CoE this year
 - (1) Very general estimate of \$2.5-3.0 million per year for 5 years, can be re-upped for addition 5 years
 - (2) RFP forthcoming this month
 - (3) Initial idea is to make RFP wide-open for topics
 - e) *Comments/Questions*
 - i) Jules Epstein: Are there enough applicants to staff the OSACs at the relative practitioner/stakeholder levels initially proposed
 - (1) Answer: For the most part, yes. In a few areas they will need to do some recruiting. The application process doesn't preclude recruiting where necessary.
 - ii) Jules Epstein and Julia Leighton: NIST should limit scope of the CoE RFP to either human factors/cognitive bias or the fundamental science of pattern evidence
- 9) Wrap-Up
- a) General discussion on voting requirements
 - b) Future Meetings
 - i) August 26-27, 2014
 - ii) October 28-29, 2014