

**Texas Forensic Science Commission
Minutes from February 10, 2017 Quarterly Meeting in Austin, Texas**

The Texas Forensic Science Commission met at 8:30 a.m. on Friday, February 10, 2017 at the Omni Austin Southpark, 4140 Governor's Row, Austin, Texas 78744

Members of the Commission were present as follows:

Members Present: Barnard, Budowle, Daniel, Downing, Drake, Hughes-Stamm, Kerrigan, Johnson, Parsons

Members Absent: None

Staff Present: Lynn Garcia, General Counsel
Leigh Savage, Associate General Counsel
Nick Vilbas, Assistant General Counsel
Kathryn Adams, Commission Coordinator

Review and adopt minutes from October 5, 2016 Forensic Science Commission Quarterly meeting.

MOTION AND VOTE: *Hughes-Stamm moved to adopt the meeting minutes draft. Johnson seconded the motion. The FSC unanimously adopted the motion.*

Introduce and welcome new Commission members.

Commission members and staff introduced themselves. Barnard spoke generally about the success and future goals of the Commission. Barnard thanked Commission members and staff for their commitment and briefly stated his expectation of preparedness for meetings and desire for efficiency in the Commission's work.

Office administrative update (FY 2017 budget status report; 85th Legislative Session Legislative Appropriations Request, SB-1 and HB-2; and acquisition of content management software required for the FSC Licensing Program).

Garcia explained the FSC's administrative attachment to Sam Houston State University and discussed the implications of SB-1's recent defunding of all special items in higher education. The FSC is considered a special item for SHSU so the FSC was included in the Senate budget cuts to all special items for universities. The current version of SB-1 is a starting point for discussion about justification of funding for special items. She does not believe that FSC will be eliminated but that the legislature will work to find the best administrative attachment for the Commission.

Garcia emphasized the importance of the acquisition of content management software to support the forensic analyst licensing program and other content management needs.

Commission staff will continue to work with SHSU in executing the necessary contracts to acquire the software.

Explanation of Attorney General Opinion No. KP-0127.

Garcia gave a presentation summarizing the Commission's request to the Texas Attorney General concerning the admissibility of certain forensic analyses in Texas courts, statutory authority of the FSC and reporting requirements for certain crime laboratories. Garcia also summarized the AG's opinion/answer to the Commission's questions as follows: 1) the forensic analysis of physical evidence by a crime laboratory (as those terms are defined in art. 38.35 of the Code of Criminal Procedure) is inadmissible unless the laboratory is accredited; 2) forensic analyses in disciplines not accredited or exempt from accreditation by statute or administrative rule are inadmissible in court; 3) the FSC may in its reasonable discretion refrain from granting exemptions from accreditation to disciplines for which there are concerns as to integrity and reliability of the discipline; and 4) labs must report professional negligence or misconduct involving forensic analyses in all disciplines, not just those that are accredited.

Discuss and consider pending complaints and laboratory self-disclosures and all new complaints or self-disclosures received through January 27, 2016.

In the absence of an acting Chair to the Complaint Screening Committee, Garcia presented the following pending complaints and disclosures to the Commission.

Disclosure Pending from October 5, 2016

No. 15.05; DPS—Weslaco (Latent Print)

DPS Weslaco self-disclosed an incident in the laboratory's latent print section where an analyst excluded a suspect who was later identified as the source of a latent palm print.

Three additional non-conformances were identified by the lab during the corrective action process and case review for this disclosure. The analyst involved is no longer employed with the lab. Retesting of evidence worked by the analyst has been offered to the client base upon request for an indefinite period of time.

Brady Mills, DPS Deputy Assistant Director, summarized corrective actions taken by the laboratory.

MOTION AND VOTE: *Kerrigan moved to issue a letter to the laboratory explaining no further action is necessary at this time. Budowle seconded the motion. The FSC unanimously adopted the motion.*

Disclosures Received as of January 27, 2017

No. 16.03; Bexar County Criminal Investigation Laboratory (Firearms/Toolmarks)

Bexar County Criminal Investigation Laboratory self-disclosed an incident in which a former analyst misidentified the caliber of a bullet recovered at autopsy and subsequently failed to exclude it in comparison as having been fired from a particular firearm.

At the time of the non-conformance, the lab did not require independent verification of inconclusive results. The lab has since implemented independent verification for all conclusions. The lab reviewed reports for a 4-year period from November 2011 to January 2015. Of 576 reports reviewed, 78 had inconclusive results with no independent verifications. 26 of those 78 cases were submitted for reanalysis based upon client requests. Through the review process, the lab determined that the incident was isolated and limited to one analyst who is no longer with lab.

Erin Reat, Quality Assurance Manager at the lab, explained the subject case had not yet gone to trial when the non-conformance was discovered and the District Attorney's office was immediately notified.

MOTION AND VOTE: *Daniel moved to issue a letter to the laboratory explaining no further action is necessary at this time. Hughes-Stamm seconded the motion. The FSC unanimously adopted the motion.*

No. 16.04; Houston Forensic Science Center (Controlled Substance)

The Houston Forensic Science Center ("HFSC") self-disclosed an incident in its controlled substance section where, after completing an analysis on exhibits in two different controlled substances cases, an analyst mistakenly reported the results of each exhibit under the incident number of the other case.

James Miller, Manager of the HFSC Controlled Substances section, explained the analyst found her error as she was sealing the evidence. Re-analyses were performed and new reports were generated with an explanation of the error. The lab has instituted a policy of referring only to the evidence itself as opposed to the submission form since this analyst had confused the forms and not the actual evidence.

MOTION AND VOTE: *Budowle moved to issue a letter to the laboratory explaining no further action is necessary at this time. Drake seconded the motion. The FSC unanimously adopted the motion.*

No. 17.01; Houston Forensic Science Center (Biological Screening/DNA)

The HFSC self-disclosed an incident in its biology/DNA section in which a screening analyst mistakenly identified the presence of semen in a small amount of fecal matter using an acid phosphatase press-out method. The analyst noted a strong positive color

change and a portion of the underwear was sent for DNA testing. DNA was not obtained in the sperm fraction of the cutting and only two alleles were present in the epithelial fraction. Re-examination of other cuttings of the underwear produced negative results. The laboratory took corrective action including removing the screener from casework and providing retraining, reviewing all of her cases and amending the initial report in the case for which the semen was mistakenly identified.

Robin Guidry, HFSC DNA/Biology Manager, explained the lab believes the presence of fecal matter in the underwear being tested may have complicated the screener's reading of the color results. An extensive root cause analysis was performed beginning with involvement of the quality division. Guidry explained the lab's root cause analysis, steps taken with the analyst (additional training, moot court and oral examination) and notifications made. The lab is in the process of preparing a final corrective action report in the matter.

MOTION AND VOTE: *Hughes-Stamm moved to table the disclosure until a final corrective action report is received by the Commission. Parsons seconded the motion. The FSC unanimously adopted the motion.*

No. 17.02; Houston Forensic Science Center (Latent Prints)

The HFSC self-disclosed an incident in its latent print section where an examiner incorrectly reported negative AFIS results on two cases that should have indicated preliminary AFIS hits. Corrective action included a 5-month case review that did not reveal any similar mistakes.

Peter Stout, CEO and President of the HFSC, explained the report was caught and corrected immediately and fielded questions from Commissioners on what corrective actions were taken by the lab.

MOTION AND VOTE: *Budowle moved to issue a letter to the laboratory explaining no further action is necessary at this time. Parsons seconded the motion. The FSC unanimously adopted the motion.*

No. 17.03; Houston Forensic Science Center (Toxicology)

The HFSC self-disclosed an incident in its toxicology section in which an examiner incorrectly reported preliminary results were positive for one or more drugs when the report should have stated results were negative for all.

Peter Stout addressed questions from the Commission including how the report could have been released when the error was caught in administrative review.

MOTION AND VOTE: *Parsons moved to table the disclosure until the Commission receives and reviews the final corrective action report. Hughes-Stamm seconded the motion. The FSC unanimously adopted the motion.*

Complaints Pending from October 5, 2016

No. 16.36; Dunnavant (DPS—Garland and DPS—Abilene, Controlled Substance)

Catherine Dunnavant requested the Commission determine whether DPS Garland's and DPS Abilene's undocumented policy to first make an assumption for the presence of HCl and then apply the appropriate mathematical calculation when calculating an HCl amount is consistent with SWGDRUG and other recognized guidelines.

Garcia explained that quantitation is not required in state cases but are in federal cases, so DPS does not do many quantitation cases. DPS recently made changes to the way the it reports quantitation. Brady Mills described some of the changes made. In these particular cases, the Court ordered retesting of the samples by a DEA lab that confirmed DPS's original findings so any question remaining about the integrity and reliability of the results obtained by DPS is now moot.

MOTION AND VOTE: *Kerrigan moved to dismiss the complaint because DPS results in the cases were consistent with retests conducted by the DEA. Drake seconded the motion. The FSC unanimously adopted the motion.*

* Commissioner D. Pat Johnson recused himself from discussion and voting on this complaint.

Complaints Received as of January 27, 2017

No. 16.50; Ludwig, Ronald (John O'Neal; Ballistics)

Defendant Ronald Ludwig alleges the district attorney ignored inconclusive firearm analysis results from DPS Austin and went outside the state to find an expert to provide positive results that would falsely connect shot gun shells found at his office to shells found at the crime scene in his 1990 conviction for capital murder.

MOTION AND VOTE: *Hughes-Stamm moved to dismiss the complaint because the allegations pertain to forensic analysis conducted in 1990 before the 2003 accreditation program was established in Texas and involves an out-of-state examiner. Parsons seconded the motion. The FSC unanimously adopted the motion.*

*Presiding Officer Jeffrey Barnard, MD recused himself from discussion and vote on this complaint.

No. 16.53; Jones, De'Voderick (SWIFS; DNA)

Defendant De'Voderick Jones requests DNA testing that he believes will exonerate him and a co-defendant from the capital murder for which they were convicted. The Commission has no jurisdiction to order DNA testing in any particular case.

MOTION AND VOTE: *Hughes-Stamm moved to dismiss the complaint because the Commission has no jurisdiction to order DNA testing. Kerrigan seconded the motion. The FSC unanimously adopted the motion.*

* Presiding Officer Jeffrey Barnard, MD recused himself from discussion and vote on this complaint.

No. 16.54; Gulley, Britney (SWIFS; Firearms/Toolmarks)

Defendant Britney Gulley alleges a Southwestern Institute of Forensic Sciences (“SWIFS”) firearms analyst misidentified a firearm and bullets that led to her wrongful conviction for murder.

The Gulley case has been referred to the Dallas Public Defender’s Office which has taken responsibility for inquiries in response to notices sent by the District Attorney’s Office in an unrelated firearm/tool mark matter at SWIFS for which the Commission issued a report in April 2016.

Tim Sliter, Director of Physical Evidence at SWIFS, stated the lab was willing to retest the evidence in the case if defense counsel wishes to.

MOTION AND VOTE: *Hughes-Stamm moved to table the complaint pending reanalysis of the evidence. Budowle seconded the motion. The FSC unanimously adopted the motion.*

* Presiding Officer Jeffrey Barnard, MD recused himself from discussion and vote on this complaint.

No. 16.55; Carrizales, Gilbert (Children’s Place Hospital; Sexual Assault Exam)

Defendant Gilbert Carrizales requests copies of an affidavit related to a sexual assault nurse exam (“SANE”) performed at the Children’s Place Hospital in Corpus Christi and used to secure his conviction for sexual assault. Garcia explained the FSC has no way to obtain this information.

MOTION AND VOTE: *Parsons moved to dismiss the complaint because it involves a physical examination performed at a hospital and requests documents to which the Commission has no access. Downing seconded the motion. The FSC unanimously adopted the motion.*

No. 16.56; Bryan, Joe D. (Robert Thorman; Blood Spatter)

Defense attorney Walter M. Reaves filed this complaint on behalf of inmate Joe D. Bryan alleging blood spatter analyst Robert Thorman gave a scientifically unsupportable blood

stain interpretation, including a false mathematical calculation, that led to Bryan's wrongful conviction for murder.

Garcia stated the blood spatter analysis in this case could be combined with the review of blood spatter analysis in the Clark complaint. Downing asked about presence of blood on a flashlight; Garcia stated that DPS Waco is currently working on DNA testing and may be able to shed some light on that question.

MOTION AND VOTE: *Parsons moved to accept the complaint for review and consideration with the Commission's investigation of FSC case #16.40. Daniel seconded the motion. The FSC unanimously adopted the motion.*

No. 16.58; Wilson III, William (Houston FSC; Gasoline Analysis)

Defendant William Wilson, III alleges HFSC analyst James Miller falsely concluded the presence of accelerant (gasoline) on Wilson's white jacket and such false conclusion led to his conviction for murder.

Miller responded to Commissioners' questions concerning his analysis in this case, including supporting materials submitted. Downing asked about the materiality of the white jacket at issue. Garcia explained the Commission does not receive that kind of information so the answer to that question is unknown.

Miller spoke and confirmed that he did not know the materiality of the jacket either, but confirmed that the jacket was one of three items submitted on which gasoline was found.

MOTION AND VOTE: *Parsons moved to dismiss the complaint because the underlying data used to formulate the positive finding for gasoline supported the laboratory's findings. Budowle seconded the motion. The FSC unanimously adopted the motion.*

No. 16.63; Jackson, Robert (Cornea Associates; Eye Injury Exam)

Defendant Robert Jackson alleges the victim in his aggravated assault case had a prior injury investigators did not consider when charging him. Jackson requests a copy of an eye exam report from Walmart that he believes will prove this.

MOTION AND VOTE: *Daniel moved to dismiss the complaint because the Commission has no access to or jurisdiction over the report the complainant is requesting. Budowle seconded the motion. The FSC unanimously adopted the motion.*

No. 16.65; Stephens, Debra (Austin Police Department; Blood Alcohol Procedure)

Debra Stephens, Lab Director/Owner of Alamo Forensic Services, alleges the Austin Police Department's ("APD") toxicology section uses an incorrect validation procedure

and its estimation of measurement uncertainty has been incorrectly determined and reported in numerous case reports.

Kerrigan explained that based on the documentation provided, the complainant may have confused the measurement uncertainty of reported test results with the acceptance criteria for quality controls that are included in a run (or batch) or samples. Given the documents and explanation provided by APD, Commissioners felt the laboratory's blood alcohol section is following currently acceptable standards of practice with respect to measurement uncertainty including those set by accreditation guidelines.

MOTION AND VOTE: *Kerrigan moved to dismiss the complaint because the supporting material provided by APD's blood alcohol section sufficiently answered any questions Commissioners had about the lab's approach to uncertainty of measurement in blood alcohol cases. Parsons seconded the motion. The FSC unanimously adopted the motion.*

No. 16.69; Richards, Dylun (DPS Garland; Blood Alcohol)

Defendant Dylun Richards alleges DPS Garland crime lab analyst Chris Youngkin may have falsely represented the blood alcohol level reported in his case that led to Richards' conviction for intoxication manslaughter.

Garcia reported DPS is currently evaluating court testimony given by this analyst. Brady Mills confirmed an internal review is currently underway by DPS and a self-disclosure on this matter will be coming from DPS before the next quarterly meeting.

MOTION AND VOTE: *Budowle moved to table the complaint until the Commission's April meeting to allow DPS to continue its investigation and submission of a self-disclosure related to the switched sample and testimony incident. The Richards case will be considered with the self-disclosure and related case reviews. Parsons seconded the motion. The FSC unanimously adopted the motion.*

*Commissioner D. Pat Johnson recused himself from discussion and voting on this complaint.

No. 17.04; Gefrides, Lisa (Houston Forensic Science Center; Biology/DNA)

Forensic biology consultant Lisa Gefrides alleges HFSC's biology section is not adequately identifying and controlling errors during testing of biological evidence.

Robin Guidry fielded questions from Commissioners concerning the possibility of cross-contamination between samples. Budowle recommended the lab provide follow up to see how the new SOP's with respect to contamination events are affecting case results.

Commissioners did not observe any particular incident cited in the complaint that necessarily merited further investigation but recommended the lab provide updated data

related to any additional contamination events in the lab's DNA section at the next meeting.

MOTION AND VOTE: *Hughes-Stamm moved to table the complaint and ask the lab to provide updated data related to any additional contamination events in the DNA section, including any additional information developed regarding the contamination events cited in the complaint and their resolution, before the Commission's next quarterly meeting. Johnson seconded the motion. The FSC unanimously adopted the motion.*

No. 17.05; Innocence Project of Texas (DPS Austin; DNA-CODIS)

The Innocence Project of Texas alleges DPS Austin CODIS Laboratory failed to comply with National DNA Index System ("NDIS") procedures when uploading a DNA search profile into the Combined DNA Index System ("CODIS") such that one of the obligate alleles would have excluded defendant Cedric Millage being compared had the profile been properly uploaded.

Mike Ware, defense attorney for Cedric Millage, answered questions about the case and relayed his hope that this case will be a collaborative scientific search for the truth. Bill Wirsky, Collin County Assistant District Attorney, explained his office would cooperate in any way they can. He relayed there was a request made for DNA reinterpretation and possibly a request for post-conviction DNA in this case.

Budowle will review the data and interpretive material related to this case from DPS and any documentation from Orchid Cellmark.

MOTION AND VOTE: *Downing moved to table the complaint pending Budowle's review and analysis of the interpretive material related to this case. Parsons seconded the motion. The FSC unanimously adopted the motion.*

No. 17.06; Alejandro, Danny (Harris County Sheriff's Office; Firearms)

Defendant Danny Alejandro alleges Harris County Sheriff's Office's firearms expert Jill Dupre failed to give a direct answer at trial concerning whether a shell casing was fired from a weapon found in Alejandro's home. Alejandro believes Dupre's testimony and failure to connect the weapon to an alternative firearm led to his wrongful conviction for burglary.

MOTION AND VOTE: *Kerrigan moved to dismiss the complaint because the examiner's analysis was not probative as to Alejandro's weapon and there is no allegation of negligence or misconduct, rather a general allegation that the examiner should have associated the shell casing to another unidentified firearm. Parsons seconded the motion. The FSC unanimously adopted the motion.*

Discuss status of crime laboratory accreditation program, including accreditation non-conformances received since October 5, 2016 meeting, discussion and vote on

rulemaking drafts for removal of forensic hypnosis from exempted forensic discipline list, exemption regarding age assessment and human identification, and exemption regarding testing for sexually transmitted diseases.

Garcia reviewed proposed rule changes with Commissioners. After review of the definition of “forensic analysis” with Commissioners, Garcia explained “forensic hypnosis” does not qualify as a forensic analysis since it is not a test performed on physical evidence.

MOTION AND VOTE: *Daniel moved to strike “forensic hypnosis” from the list of forensic disciplines exempt from the Commission’s crime laboratory accreditation requirements because it does not meet the statutory definition of “forensic analysis.” Parsons seconded the motion. The FSC unanimously adopted the motion.*

Garcia explained the forensic odontology community’s request for an exemption from the accreditation requirements, specifically for forensic odontology used for purposes of human identification and age assessment.

MOTION AND VOTE: *Kerrigan moved to add forensic odontology for purposes of human identification or age assessment, not to include bite mark comparison related to patterned injuries, to the Commission’s list of forensic disciplines exempt from accreditation requirements. Daniel seconded the motion. The FSC unanimously adopted the motion.*

Garcia explained testing for sexually transmitted diseases is often done in a clinical or hospital setting but later may become part of a criminal case such as a child sexual abuse case. Staff surveyed the FSC-accredited labs to determine whether any of the accredited labs do this type of testing. None of the labs surveyed perform STD testing. Without an exemption from the accreditation requirements, sexually transmitted disease testing performed in a clinical laboratory risk setting could be inadmissible in Texas courts, despite the fact that there are no accredited crime laboratories available to perform the testing. Therefore, an exemption from the accreditation requirement is necessary.

MOTION AND VOTE: *Johnson moved to add testing and/or screening conducted for sexually transmitted diseases to the Commission’s list of forensic disciplines exempt from accreditation requirements. Parsons seconded the motion. The FSC unanimously adopted the motion.*

Garcia summarized quarterly non-conformances received from laboratories. No significant nonconformances were cited and Commissioners did not request follow-up on any of the cited nonconformances.

Discuss and introduce licensing advisory committee program and progress to date, including program background, recent licensing advisory committee meetings, selection of new defense and prosecutor representative for Licensing Advisory

Committee, review and discussion of proposed draft rules for licensing program and next steps.

Savage gave a detailed presentation outlining the background of the licensing program and current recommendations of the Licensing Advisory Committee (“LAC”) for new Commissioners and answered Commissioner’s questions related to the program’s development thus far. Garcia introduced the LAC members present.

Garcia and members discussed who must be licensed to give expert testimony in court. A consulting expert whose work is performed outside an accredited laboratory does not have to be licensed (though the admissibility could be challenged under the accreditation requirement of art. 38.35 of the Code of Criminal Procedure). An expert testifying as to results of analyses performed at her/his accredited lab on behalf of that accredited lab must be licensed.

Kerrigan asked if the LAC’s developmental process for minimum educational standards is consistent with OSAC requirements being developed. Greg Hilbig, Chair of the Licensing Advisory Committee, explained the LAC is trying to stay compatible but it has been difficult because OSAC is still in the process of developing guidelines and standards for the OSAC Registry. Commissioners also briefly discussed the differences and similarities between the proposed licensing program and certification programs offered by national certification bodies.

The LAC hopes to have a final version of the licensing program rules for presentation, review and adoption at the Commission’s next quarterly meeting in order to meet the Legislature’s January 2019 deadline for all examiners in Texas to be licensed.

Two seats on the LAC are empty—the prosecutor seat and the defense attorney seat. Garcia announced defense attorney seat nominees Betty Blackwell and Keith Hampton. Daniels spoke on behalf of both nominees.

MOTION AND VOTE: *Daniels moved to appoint Keith Hampton to the Licensing Advisory Committee. Kerrigan seconded the motion. The FSC unanimously adopted the motion.*

Garcia gave a brief overview of the three applications submitted for the prosecutor seat by the Texas District and County Attorney’s Association—Justin Cunningham, Tommy Ashworth, and Rico Valdez.

MOTION AND VOTE: *Parsons moved to appoint Tommy Ashworth to the Licensing Advisory Committee. Daniels seconded the motion. The FSC unanimously adopted the motion.*

Update regarding working group on Commission reporting requirements and general notification issues, including suspension of working group to focus on Commission disclosure guidance per statute, possible revisions to policies and

procedures, as well as possible database integration for reporting laboratory non-conformances into current iMIS technology proposal.

In response to requests from laboratory leadership for better guidance on the requirements for self-disclosures to the Commission, the Commission formed a Notification and Disclosure Workgroup to resolve some of the questions posed by laboratories. The Commission can work on providing better guidance on self-disclosures that rise to the level of negligence for labs, but the more difficult question for labs to come to consensus on is what is required to be disclosed to their client (or the district attorney's office) in compliance with *Brady* and the *Michael Morton Act* ("MMA"). Most members of the group agreed consensus could not be reached on the latter question given the diversity of policies and viewpoints on the issue throughout the State's 254 different counties. The Commission will not adopt any "model" policy making recommendations in this area, but will focus on providing training programs and seminars to teach attorneys in the community about the nature of the quality system in a lab and the requirements of *Brady* and the MMA.

Parsons also recommended training for judges. Judge Barbara Hervey, Court of Criminal Appeals Judge, agreed a model policy is probably not practical but that promulgation of best practices and training in this area may work.

Members also discussed the potential for labs to report nonconformances through the Commission's own portal or software system. Members will continue to discuss different options for managing this information.

Discuss and introduce Rio Grande Identification Project to new Commissioners.

Hughes-Stamm gave a brief description of the project and past meetings with stakeholders. The Commission's main role has been facilitator for a memorandum of understanding between UNTHSC-CHI, EAAF, and the FBI to compare family reference samples housed at Bode laboratory to CODIS reference profiles. The major barrier to the comparison is ensuring the searches comply with FBI rules governing the national CODIS database. Discussions with the FBI related to the MOU have not progressed in recent months.

Update from Texas Association of Crime Laboratory Directors.

The Texas Association of Crime Laboratory Directors ("TACL D") has not met since the Commission's last meeting so there was no update for this agenda item.

Review recommendations from Tim Cole Exoneration Review Commission ("TCERC") as they relate to Texas Forensic Science Commission activities as well as related request for assistance on synthetic marijuana field test technology by Representative Lozano.

The TCERC issued its recommendations and findings, including three items relevant to the Commission. The TCERC requests the Commission study field drug tests to determine if the tests are unreliable or if they are being improperly administered in some cases. There have been cases in which defendants pled on the basis of field test results before lab results came in and the laboratory results contradicted the results of the field tests. The second item is the processing of crime scene investigations. Garcia stated she does not believe the Commission can do much more than assist with best practices and training in this category. Finally, the TCERC's recommendations suggest requiring follow-up lab tests regardless of results from a field drug test.

Garcia noted the Commission doesn't need to take action on any of the items outlined in the TCERC's report yet, but Garcia and Savage will continue to discuss and monitor legislation and create a plan for addressing the recommendations.

MOTION AND VOTE: *Daniels moved to direct Garcia and Savage to formulate an action plan concerning FSC recommendation items from the Tim Cole Exoneration Review Commission's report. Budowle seconded the motion. The FSC unanimously adopted the motion.*

Discuss possibility of standardizing sexual assault kits statewide.

Downing gave a brief presentation on the need for standardization of sexual assault kits in Texas. Currently, kit requirements vary greatly from jurisdiction to jurisdiction and often the kits collect unnecessary material especially if the process for collecting the material is uncomfortable for already traumatized victims. Many of the State's most widely used commercial kits are outdated in their recommended instructions related to evidence collection as science has progressed over time. Downing will work on forming a panel of stakeholders to discuss the possibility of standardizing and updating sexual assault kits in Texas and provide an update at the Commission's next quarterly meeting.

Update on Retrograde Extrapolation Education Guidance Document.

Garcia will include material for this agenda item with materials for the Commission's next quarterly meeting.

Update and review regarding Harris County Institute of Forensic Sciences (Toxicology, Blood Alcohol) #16.02.

Commissioners did not discuss this item in any depth due to the turnover in new Commissioners appointed since the Commission's last quarterly meeting. New members of the investigative panel were selected at the agenda item, "Nomination and Selection of New Investigative Panel and Committee Members" below. The new panel will meet before the Commission's next quarterly meeting and provide an update on the investigation's progress.

Update and review regarding Clark (Harris County IFS, HPD, Harris County Sheriff's Department; GSR, DNA, Blood Spatter) #16-41 case.

Commissioners did not discuss this item in any depth due to the turnover in new Commissioners appointed since the last quarterly meeting. New members of the investigative panel were selected at the agenda item, "Nomination and Selection of New Investigative Panel and Committee Members" below. The new panel will meet before the Commission's next quarterly meeting and provide an update on the investigation's progress.

Update from Hair Microscopy Panel, including case review status and discussion of whether additional cases should be reviewed or whether work should be concluded in a final report.

Vilbas gave a presentation to Commissioners on the status of the hair panel's progress. The project is coming to a close. Out of approximately 800 total cases, 50 records were obtained for review. Of those cases, 22 were recommended for notification. Garcia hopes to provide a draft report at the Commission's next quarterly meeting.

Update and review regarding Bite Mark Panel (Chaney–National Innocence Project) #15-07, including record collection and January 27, 2017 case review meeting in Austin.

Garcia briefly explained the purpose of the Commission's Bite Mark Panel and the Bite Mark Case Review Team, and members reviewed the proposed criteria for the case review.

MOTION AND VOTE. *Budowle moved to adopt the draft Bite Mark Panel Review Criteria. Parsons seconded the motion. The FSC unanimously adopted the motion.*

The Bite Mark Case Review Team will meet to evaluate cases in accordance with the adopted criteria before the Commission's next meeting and Garcia will provide an update on the progress of the review at the Commission's next quarterly meeting.

Nomination and selection of new investigative panel and committee members.

Commissioners presented the following list of nominees for new investigative panel, committee members and FSC Vice Chair:

#16.02 Harris County Institute of Forensic Sciences (Toxicology, Blood Alcohol):

Mark Daniel
Jasmine Drake
Sarah Kerrigan

#16.41 Clark (Harris County IFS, HPD, Harris County Sheriff's Department; GSR, DNA, Blood Spatter) Investigative Panel:

Pat Johnson (Chair)
Sheree Hughes-Stamm
Jarvis Parsons

DNA Mixture Interpretation Review Panel:

Bruce Budowle (Chair)
Nancy Downing
Jarvis Parsons
Sheree Hughes-Stamm

Bite Mark Case Review Panel:

Mark Daniel (Chair)
Nancy Downing
Jasmine Drake

Hair Microscopy Review Panel:

Bruce Budowle
Pat Johnson
Jarvis Parsons

Forensic Development Committee:

Nancy Downing
Sheree Hughes-Stamm
Sarah Kerrigan

Legislative Development Committee:

Jeffrey Barnard
Mark Daniel
Pat Johnson

Complaint Screening Committee:

Mark Daniel (Chair)
Jasmine Drake
Pat Johnson

Rio Grande Border Identification Project Panel:

Sheree Hughes-Stamm (Chair),
Bruce Budowle
Jeffrey Barnard

Vice Chair of the Commission:

Sheree Hughes-Stamm

MOTION AND VOTE: *Parsons moved to approve all nominations for investigative panel, committee and Vice Chair assignments. Budowle seconded the motion. The FSC unanimously adopted the motion.*

Review and adoption of revised Policies and Procedures draft.

MOTION AND VOTE: *Budowle moved to adopt the Policies and Procedures draft to change the name of the current Commission Chair to Dr. Jeffrey Barnard. Parsons seconded the motion. The FSC unanimously adopted the motion.*

Update, review and discussion of DNA Mixture Interpretation Review and Austin PD DNA Lab Audit. (Budowle/Hughes-Stamm/Koehler/Garcia)

- a. **Statewide & county-based defense triage projects; (Wicoff/Boswell/Strassburger).**
- b. **Discuss process for reviewing private laboratories protocols and case samples.**
- c. **Progress regarding recommendations in Austin Police Department DNA Lab Report approved at July quarterly meeting.**
- d. **Correspondence with ASCLD/LAB regarding accrediting body root cause analysis.**

Garcia provided a brief update and background on the Commission's DNA Mixture Interpretation Review project. Garcia reported that Budowle initially reviewed DNA protocols for all publicly-funded Texas laboratories in addition to private labs SERI and Signature Science and found the protocols to be sufficient other than a few noted changes (with the exception of Austin Police Department's protocols). Garcia and Budowle are working on a plan to review DNA protocols for all remaining accredited private DNA labs in Texas as well.

Bob Wicoff, Harris County Public Defender who is managing the statewide DNA mixture interpretation case review, provided an update. Wicoff is currently waiting for recalculations to be returned on several cases. Requests for recalculations have been made in about 10% of cases reviewed. Dramatically different results for 2 cases recently came in, including a Galveston case where an individual who was originally included in a

mixture from a piece of evidence in a home invasion was excluded. In another case, an individual convicted of sexual assault went from included to inconclusive. Wicoff reported about 1500 cases were taken in and about 700 have been reviewed to date.

Dawn Boswell, Chief of the Tarrant County District Attorney's Conviction Integrity Unit, gave an update on Tarrant County's DNA case review. Boswell explained the office is looking at about 278 CPI cases for review. 85 of the initial 278 case notifications have come back and those defendants have been assigned local counsel.

Trudy Strassburger, Deputy Director of the Capital Area Private Defender Service in Austin, provided an update on Travis County's DNA case review. The office has two part-time contract attorneys assisting with the review. Closure of the APD DNA lab has caused delays but the group will continue to process cases as they come in.

Garcia introduced Jody Koehler, DPS Austin DNA Section Manager and ASCLD/LAB Assessor. Koehler gave a detailed presentation to Commissioners on the status and progress of the review of APD DNA cases and internal validation methods. Koehler detailed the background of the review for new Commissioners and the findings that sparked the initial audit. Of 60 cases tested by one particular DNA analyst at APD, 17% had some type of quality issue noted. Koehler recommends the Commission and/or auditors perform further review of additional cases that were not included in the initial review, examine raw data from the subset of cases where carryover contamination may have been an issue, and continue to review the examiner's cases with the 17% quality issue rate.

Koehler further noted fundamental issues with APD's validation methods. Koehler recommended review of all validation studies and a gap analysis to determine what is lacking in the current validations, performance of additional validation studies, issuance of new interpretation guidelines that are supported by the new studies, reinterpretation of cases on a case by case basis as required by the legal community, and retesting of cases that can't be resolved by any of these steps. Koehler will provide further update to Commissioners at the next quarterly meeting.

Commission members discussed the issue of an inoperable freezer at APD. All DNA samples are kept in a freezer that was determined to be at about 80 degrees for 7-8 days. Koehler related she has a fairly simple plan for evaluating the impact of the freezer incident on the samples stored in it and will bring an update to Commissioners at the next meeting.

Daniels inquired as why the freezer was out for so long without anyone noticing. Koehler's understanding was that no one went into the area of the freezer for the 8- day period. In addition, a software-based alarm that was supposed to alert members of the laboratory if the freezer shut down did not function.

Garcia reviewed with Commissioners a letter response from ASCLD/LAB (dba ANAB) from the Commission's inquiry as to why the issues at APD were not found during the

accrediting body's various assessments. Members discussed that the response from the accrediting body was inadequate and that additional discussion on this issue should continue at the next meeting.

Consider proposed agenda items for next quarterly meeting.

Staff will circulate a proposed agenda for the Commission's next meeting.

Schedule and location of future panel and quarterly meetings.

Savage will send a Doodle Poll to members to set dates for the next three Commission quarterly meetings in 2017.

Hear public comment.

There were no public comments other than those noted above.

Adjourn.