

Texas Forensic Science Commission
Minutes from July 24th, 2009 Meeting in Houston, Texas

Members Present: Bassett, Kerrigan, Natarajan, Eisenberg, Watts, Hamilton, Levy

Members Absent: Adams, Hampton

(Additional attendees included: Veena Mohan, Assistant Attorney General, Administrative Law Division; Leigh Tomlin, TFSC Coordinator; Lori Wilson, HPD Crime Lab; Scott Ehlers, Senator Rodney Ellis' office; and Edwin Colfax, The Justice Project)

The meeting began with an approval of the May 2009 meeting minutes. The Commission approved the minutes by Motion from Eisenberg. The Motion was seconded by Kerrigan. Bassett announced that the May 2009 meeting minutes will be posted on the Commission's website on Monday.

Tomlin gave a brief update on office activities for the Commission. She indicated that the DPS Lab Poster had been printed, laminated and distributed to all of the DPS accredited labs on the list provided to the Commission by DPS. The Commission had not yet received any responses from labs on the poster. Tomlin indicated that the only office purchases or fund usage since the last meeting was for copies, printing and postage for distribution of the lab poster and mailing of case documents. Tomlin informed Commission members of an article she and Bassett drafted and published in Sam Houston State University's Criminal Justice Mandate. The article was an informative description of the Commission and its current activities. Tomlin passed around the journal and the lab poster for those Commission members that had not already seen them. Next, Tomlin completed a review of office correspondence activities and also reviewed the current complaint list with Commission members. Tomlin reviewed the status of four pending complaints that would be discussed at the meeting.

The meeting proceeded with a discussion of the Willis/Willingham investigation, Case #0901. Bassett began a discussion of what the next steps would be once a final version of Dr. Beyler's report was received by the Commission. Bassett updated the Commission on his communications with Dr. Beyler. Several of the Commission members had input as to the structure of the draft and suggestions for the format of the overall conclusion. Commission members presented specific questions that they wanted answered by the report. Bassett indicated that Beyler should be submitting his final report by the end of the week following the meeting. It was discussed that the report and any other correspondence relating to any investigation was subject to disclosure under the Public Information Act. The Attorney General's Office representative confirmed that there was no known exception for disclosure of the report, upon proper request. It was discussed that in the future, the Commission will request that experts not send any preliminary drafts to the Commission for review, but only submit a final, edited report of their findings. It was decided by Commission members that Dr. Beyler should either attend or be teleconferenced into the next Commission meeting. At that time, the Commission members will have an opportunity to ask Dr. Beyler any questions they may have about

his final report. It was also decided that in the future, the Commission will teleconference with any expert at the meeting prior to the date the experts' report is released. The decision was confirmed by Motion from Hamilton and seconded by Eisenberg. Next, Bassett explained that Dr. Beyler was missing the testimony of one fire expert who testified at the Willis trial. Bassett asked Tomlin to get in touch with him on contacting the appellate court to obtain the trial transcript. A brief review of assignments for the Willis/Willingham matter ended this portion of the meeting.

The meeting continued with a review of the Moon investigation, Case #0902. Eisenberg lead a discussion on the status of Dr. Shaler providing the Commission with an estimate. Commission members agreed that the cost estimate was reasonable for the investigation. There was some discussion about the estimated length of time for the investigation. Eisenberg will speak with Dr. Shaler before the next meeting regarding questions from the Commission. Eisenberg indicated that he had gone through all of the transcripts and reports provided to the Commission by DPS. The documents should be sufficient for Shaler to render his report. It was decided that Tomlin and Bassett would begin drafting the contract between the Commission, Sam Houston State University and Dr. Shaler. The draft will be similar to the one drafted for Dr. Beyler in the Willis/Willingham investigation. The Commission continued the discussion with questions they would like answered in the Shaler report. It was discussed that Levy would contact Donna Standley for feedback on the case. A brief review of assignments for the Moon case ended this portion of the meeting.

Next, the meeting proceeded with a discussion of legislation involving the Commission. The DNA audit program legislation did not pass this session. The bill was passed by the Senate, passed by the House Public Safety committee, but then died on the calendar at the end of session. Colfax indicated that the legislature was very much on board. There was not much opposition to expanding the oversight of the Commission. Kerrigan indicated that the delay of the audit program might be a good thing, as the results of the upcoming roundtable discussions with stakeholders will provide significant input as to how the bill should be structured. Stakeholders will have an opportunity to draft some guidelines with regard to expanding the Commission's activities. Other concerns with the bill were questions regarding whether the Commission had sufficient funding. Kerrigan indicated that it was important for the Commission to make clear that the audit program would not result in biological evidence from being removed from the crime labs. The program would be more of a paper audit program. There has been some concern from forensic biologists with this issue. Watts continued the discussion with comments and input received at the annual Association of Forensic DNA Analysts and Administrators meeting. Watts indicated that there has been much opposition from the forensic science community as to another layer of regulation. Ehlers recommended that the Commission convey their findings and ideas regarding any bill related to the Commission before the next session.

The meeting continued with a discussion of the distribution of information on the TFSC. Bassett informed Commission members of his presentation at the Advanced Criminal Law seminar. Bassett gave an informative speech during the crime scene investigation

portion of the seminar. Kerrigan lead the discussion regarding the series of roundtable discussions with forensic scientists and stakeholders following the publication of the NAS report. The meetings will be held in four locations, and the tentative date for the first meeting in Austin is Friday, November the 6th. Kerrigan indicated that Pat Johnson offered that entire week for meeting space at the DPS crime lab headquarters in Austin. DPS will be hosting the first meeting and the Commission will provide all of the logistics. The second meeting will be held in Houston, sometime in December or January and the third, in Dallas, in February or March. A fourth meeting will tentatively be held in Lubbock next year. Natarajan is to look into contacting the law school at Texas Tech University regarding holding the roundtable discussion in one of their buildings. The meetings will be announced through relative media sources, Judge Hervey and other law enforcement agencies. Kerrigan proposes 8 roundtables per meeting with 10-12 people per table. She presented an outline of potential topics and ideas for the meeting. The outline was reviewed by the Commission. The Commission discussed hiring two different expert meeting facilitators to assist in preparation and development for the meeting. There was a motion to approve hiring Ray Davis for the first meeting in Austin, TX. The motion was presented by Hamilton, seconded by Watts and approved by the Commission. Kerrigan will get in touch with Mr. Davis.

The next steps in preparation for the meeting will be to put together a registration form to post on the Commission's website. Tomlin and Kerrigan will work together in preparing and editing the form. Tomlin will contact different agencies that may be interested in attending. Watts and Kerrigan will work together in identifying chair people for each meeting. Tomlin is to schedule teleconferences with moderators through the University.

Scott Ehlers offered comments as to the timing of the meetings. He suggested that if timing is such, the final report that is the product of these meetings could be a very good opportunity to propose some legislative reform. If the report comes out soon enough, it could impact the next legislative session. Ehlers suggested that the Commission incorporate legal reforms as part of the report.

The meeting proceeded with a review of pending complaints. A discussion regarding complaint # 0915 was led by Eisenberg. Eisenberg reviewed all of the documentation for the complaint and suggested re-contacting ASCLD, the accrediting agency. Tomlin indicated that the Office had not seen a response to the complaint from ASCLD. It was also discussed that DPS should be contacted regarding the complaint. Tomlin is to send a letter along with the complaint to Pat Johnson. It was discussed that any response, particularly a response from the lab, should be to the same level of detail of the complaint. Each allegation should be followed up with proof that the allegation has been corrected or did not exist. The response should be extremely detailed addressing each of the points in writing, showing that the issues have been corrected. Bassett stated that contact should be reinitiated with ASCLD regarding the complaint, and then the Commission will ask SWIFS to provide a detailed response specifically to the complaint, point by point. DPS will also be sent the complaint and any corresponding documentation.

The meeting continued with a discussion regarding complaint #0908. The Commission discussed the responses received from two different agencies. It was decided that due to a lack of information to analyze or critique, the Commission could not further proceed on the complaint. Watts presented a motion to send a letter to the complainant regarding the same, along with any documentation received for the complaint. Kerrigan seconded the Motion. Tomlin is to send a letter to the complainant next week.

A brief public comment period began with comments from Colfax. Colfax presented reports from The Justice Project on wrongful convictions that were used to educate the legislature during the last session. Copies of the reports were provided to Commission members.

The Commission then conducted a brief review of any agenda items or assignments to be completed before the next meeting. After a brief closing discussion, the meeting was adjourned by Motion from Bassett and seconded by Kerrigan.

The next meeting for the Commission is to be held in Dallas on October 2nd, 2009, beginning at 9:30 a.m.

The meeting following the October 2009 meeting shall take place in December 2009, and the date and location will be determined at the October 2nd, 2009 meeting.

The first roundtable discussion is tentatively scheduled for November 6th at the DPS Crime Lab Headquarters in Austin, TX.