

**Texas Forensic Science Commission Complaint Screening Committee
Minutes from February 12, 2016 Meeting in Austin, Texas**

The Texas Forensic Science Commission Complaint Screening Committee met at 7:30 AM on Friday, February 12, 2016, at the Omni Austin Southpark Hotel, 4140 Governor's Row, Austin, Texas 78744.

Members of the Committee were present as follows:

Members Present: Jeffrey Barnard
Richard Alpert

Members Absent: Arthur Eisenberg, Chair

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

Discuss factual information, allegations and potential recommendations for complaints and laboratory self-disclosures received or left pending by the Commission since October 2, 2015.

Pending Disclosure from October 2, 2015 meeting

1. #2012.15.02 APD Crime Lab (Crime Scene Reporting)

The Austin Police Department Crime Laboratory self-disclosed an irregularity in the laboratory's crime scene section. A crime scene technician failed to issue reports in 121 field cases.

MOTION AND VOTE: *Alpert moved to recommend the full Commission take no further action given the results of the laboratory's root cause analysis and corrective actions implemented. Barnard seconded the motion. The CSC unanimously adopted the motion.*

Disclosures Received as of February 1, 2016

1. #2016.15.05 DPS Weslaco (Latent Prints)

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

MOTION AND VOTE: *Alpert moved to recommend the full Commission table the self-disclosure pending final results of the case evaluation currently being conducted by the laboratory. Barnard seconded the motion. The CSC unanimously adopted the motion.*

2. # 2016.15.06 Corpus Christi PD (Latent Prints)

The Corpus Christi Police Department Crime Laboratory self-disclosed an incident in the laboratory's latent print section in which an analyst erroneously identified a latent print on a CTS Latent Print Proficiency Test.

MOTION AND VOTE: *Alpert moved to recommend the full Commission issue a letter to the laboratory advising them to notify the prosecutor regarding the failed proficiency test and explaining no further action is necessary in light of the root cause analysis and corrective action taken by the laboratory. Barnard seconded the motion. The CSC unanimously adopted the motion.*

Complaints Received as of February 1, 2016

1. # 1116.15.14 Jackie Wilson (DNA; DPS Houston)

Inmate Jackie Wilson filed this complaint alleging a DPS (Houston) analyst issued a false and misleading report and gave false and misleading testimony regarding the DNA analyses performed in his case.

MOTION AND VOTE: *Alpert moved to recommend the full Commission refer the complaint to the DNA Mixture Project because the allegations are related to DNA mixture interpretation. Barnard seconded the motion. The CSC unanimously adopted the motion.*

2. #1117.15.15 Darius Elam (Harris County DA; DNA)

Inmate Darius Elam, who was granted post-conviction DNA testing on fingernail clippings from the victim in his case, filed this complaint alleging the results excluded him as a contributor and identified another profile. The profile was run against CODIS but no hit was identified. Elam alleges the Harris County District Attorney's office has denied him relief by claiming they cannot eliminate the victim's DNA as the source of the profile. He further alleges the District Attorney's office falsified a latent print connecting him to the crime scene.

MOTION AND VOTE: *Alpert moved to recommend the full Commission refer the complaint to the DNA Mixture Project because the allegations are related to DNA mixture testing and interpretation. Barnard seconded the motion. The CSC unanimously adopted the motion.*

3. #1118.15.16 Mario Cockerham (Southeast Texas Forensic Science Center; Dog Scent Lineup, Autopsy)

Inmate Mario L. Cockerham filed this complaint, alleging dog scent line-up evidence was used to convict him at trial and the forensic pathologist's conclusions about the death of the infant victim were incorrect and biased.

MOTION AND VOTE: *Alpert moved to recommend the full Commission dismiss the complaint because the Commission has previously addressed the complaint and the forensic issues have*

either been resolved or are beyond the Commission's jurisdiction. Barnard seconded the motion. The CSC unanimously adopted the motion.

4. #1119.15.17 Debra Stephens (APD; Controlled Substance)

This complaint was filed by Debra Stephens, a former APD employee, relating to a controlled substance case against defendant Steven Louis Vallejo, alleging Austin Police Department Laboratory management reported false errors in the analysis of Vallejo's case to destroy her reputation.

MOTION AND VOTE: *Alpert moved to recommend the full Commission dismiss the complaint because the general allegations set forth in the complaint have already been vetted by ASCLD/LAB and the Commission. Barnard seconded the motion. The CSC unanimously adopted the motion.*

5. #1120.15.18 Jason Spence (McClennan County DA's Office; DNA, Bite marks)

Jason Spence, son of David Spence, filed this complaint alleging the wrongful conviction of David Spence, Anthony Melendez and other defendants involved in the Lake Waco Murders, requesting DNA testing for Anthony Melendez and re-evaluation of the bite mark evidence used at trial.

MOTION AND VOTE: *Alpert moved to recommend the full Commission dismiss the complaint because the Commission has no statutory authority to order DNA testing in any particular criminal case or to determine the status of testing at any particular time, and also because bite mark testimony may be included as part of the Bite Mark Panel review process. Barnard seconded the motion. The CSC unanimously adopted the motion.*

6. #1121.15.19 Randy Virgil Echols (DPS Waco; Sexual Assault Kit/DNA)

Inmate Randy Virgil Echols filed this complaint alleging general misconduct by the Comanche County Sheriff's Office, the DPS (Waco) crime lab, and Hendricks Medical Center S.A.N.E. nurse Judith Lafrance.

MOTION AND VOTE: *Alpert moved to recommend the full Commission refer the complaint to the DNA Mixture Project because the allegations are related to DNA mixture interpretation. Barnard seconded the motion. The CSC unanimously adopted the motion.*

7. #1122.15.20 Roger McCluer (Dr. Di Maio; Bullet Trajectory/Gunshot Wound)

Inmate Roger McCluer filed this complaint alleging Dr. Di Maio negligently expressed an unsupported opinion related to bullet trajectory, gunshot wounds and other evidence presented at McCluer's trial.

Barnard recused himself from discussion and deliberation of this complaint, because his laboratory performed the autopsy in the case. Members tabled the complaint for discussion by the full Commission.

8. #1123.15.21 Jarnyl Brown (Ft. Worth PD; Firearms/Tool Marks)

Inmate Jarnyl Brown filed this complaint alleging the Fort Worth Police Department Crime Laboratory misreported findings in a firearms/tool marks report used to identify Brown as a shooter in his criminal case.

MOTION AND VOTE: *Alpert moved to recommend the full Commission dismiss the complaint and send a letter providing contact information for Texas innocence clinics for evaluation of any legal issues. Barnard seconded the motion. The CSC unanimously adopted the motion.*

9. #1124.15.22 Guadalupe Padilla (DPS Austin; DNA)

Inmate Guadalupe Padilla filed this complaint requesting additional DNA testing by DPS (Austin). Padilla alleges additional testing would exclude him as the perpetrator in the aggravated sexual assault of a child and indecency with a child cases for which he was convicted in 1996 and 1997 and is currently serving a 37-year sentence.

MOTION AND VOTE: *Alpert moved to recommend the full Commission refer the complaint to the DNA Mixture Project because the allegations are related to DNA mixture interpretation. Barnard seconded the motion. The CSC unanimously adopted the motion.*

10. #1125.15.23 Melvin Pinion (Tarrant County DA; General Innocence)

Inmate Melvin Pinion filed this complaint requesting review of all the evidence used to convict him at his 2011 trial for indecency with a child, including video photos of the victim that were presented in the courtroom throughout the trial.

Alpert recused himself from discussion and deliberation of this complaint because his office prosecuted the case. Members tabled the complaint for discussion by the full Commission.

11. #1126.16.01 Frederick Ervin (lab unknown; DNA)

Catrice Nelson, sister of inmate Frederick Ervin, filed this complaint alleging the Jasper County District Attorney's Office and Jasper County Clerk's Office will not provide copies of DNA testing records that were used to convict Ervin at his trial.

MOTION AND VOTE: *Alpert moved to recommend the full Commission dismiss the complaint because it does not allege any negligence or misconduct relative to the DNA testing in the case. Barnard seconded the motion. The CSC unanimously adopted the motion.*

Members discussed forwarding to DNA Mixture Project if it is subsequently determined that DNA testing was performed and included the interpretation of a mixture.

12. #1127.16.02 Chaz Rodgers (IFL Euless; Firearms/Tool Marks)

Chaz Rodgers, mother of victim Anthony Hudson who was shot and killed in 2012, filed this complaint. Rodgers believes defendant Devon Candler, who was convicted in Hudson's death, was wrongfully convicted due to faulty firearm/toolmark analysis and suppressed evidence and seeks closure in her son's death.

MOTION AND VOTE: *Alpert moved to recommend the full Commission dismiss the complaint in light of the laboratory's comprehensive explanation and provide a copy of the laboratory's response to the Complainant. Barnard seconded the motion. The CSC unanimously adopted the motion.*

13. #1128.16.03 James Downs (DPS El Paso, DPS Lubbock; DNA)

Inmate James Downs filed this complaint alleging police illegally drew a blood sample from him and that DPS (El Paso) and DPS (Lubbock) crime labs and other law enforcement agencies made mistakes in the chain of custody and handling of the biological and other forensic evidence used to convict him for aggravated sexual assault of a child and kidnapping.

MOTION AND VOTE: *Alpert moved to recommend the full Commission to dismiss the complaint and refer it to the DNA Mixture Project and the Hair Microscopy Review Team because the allegations involve both DNA mixture interpretation and microscopic hair analysis issues. Barnard seconded the motion. The CSC unanimously adopted the motion.*

14. #1129.16.04 Carlos de la O (Bexar County Crime Lab; DNA)

Inmate Carlos de la O filed this complaint alleging Bexar County DNA analyst Erin Reat did not follow proper protocols for the paternity testing that identified Mr. De La O as the father of an aborted fetus following the sexual assault of a 14-year girl. Mr. De La O requests further testing that would allegedly prove he is not the father.

MOTION AND VOTE: *Alpert moved to recommend the Commission dismiss the complaint because the allegations were not supported by the comprehensive materials provided in the laboratory's response. Barnard seconded the motion. The CSC unanimously adopted the motion.*

15. #1130.16.05 Marlin Wayne Webb (Dr. Suzanna Dana; Blood Spatter Analysis)

Inmate Marlin Wayne Webb filed this complaint, alleging pathologist Dr. Suzanna Dana was not qualified to render the blood spatter analysis opinion she gave at Webb's capital murder trial. Dr. Dana provided a response in which she claimed that she never held herself out as a blood spatter expert.

Commissioners discussed the forensic discipline of blood spatter analysis and its limits as they pertain to autopsy examinations either by pathologists or medical examiners. Commissioners suggested the issues related to blood spatter analysis be referred to the Licensing Advisory Committee for review and discussion of the discipline. Dr. Timothy Sliter, Chief of Physical Evidence of Southwestern Institute of Forensic Sciences and member of the Licensing Advisory Committee, agreed the Committee would discuss the issue. Commissioners discussed that in this case it was appropriate for the forensic pathologist to testify generally about blood spatter (e.g. if it is consistent with arterial spray).

MOTION AND VOTE: *Alpert moved to recommend the full Commission dismiss the complaint because it contains no allegation of negligence or misconduct related to the forensic analysis at issue in the case and because the Commission has no jurisdiction over autopsies. Barnard seconded the motion. The CSC unanimously adopted the motion.*

After discussion of the complaint above, staff discussed with members the option of immediately forwarding any DNA mixture cases staff receives to Bob Wicoff at the DNA Mixture Project so they may be vetted in a timely manner with other DNA mixture cases and before the Commission's next quarterly meeting. Staff requested the Commission's General Counsel have the discretion to forward any DNA mixture cases that do not have other forensic issues to the DNA Mixture Project. For cases not being handled by the Project, Mr. Wicoff will forward the information to the appropriate local county contact.

MOTION AND VOTE: *Barnard moved to allow staff to send any DNA mixture case that do not allege any other forensic issues to the DNA Mixture Project. Alpert seconded the motion. The CSC unanimously adopted the motion.*

16. #1131.16.06 Lawrence James (Jefferson County Crime Lab/DPS Houston; DNA)

Inmate Lawrence James filed the complaint alleging the DPS (Houston) crime lab and other law enforcement agencies conspired to plant biological evidence that falsely incriminated him in his 2012 murder conviction.

Barnard recused himself from discussion and deliberation of this complaint because the subject of the complaint was a forensic pathologist trained by Barnard. Members tabled the complaint for discussion by the full Commission.

Public comments.

There were no public comments other than those provided by Dr. Timothy Sliter in item 15 above.

Adjourn