

**Texas Forensic Science Commission
Minutes from March 27, 2009 Meeting in Austin, Texas**

Members Present: Watts, Bassett, Levy, Kerrigan, Hampton, Natarajan and Hamilton

Members Absent: Adams, Eisenberg

(Dr. Eisenberg listened to the meeting via telephone conference, but did not participate in any voting and offered comments only as a public spectator.)

(Additional attendees included: Veena Mohan, Assistant Attorney General, Administrative Law Division; Barbara Deane, Assistant Attorney General, Chief, Administrative Law Division; Leigh Tomlin, TFSC Coordinator; Ed Salazar, Director of the State Fire Marshal's Office; Gabriel Oberfield, Innocence Project; David Layton, Picturebox Films; Mark Adams, Office of the Governor; Rose Cardona, Texas Court of Criminal Appeals, Integrity Unit Lawyer; and Judge Barbara Hervey, Texas Court of Criminal Appeals)

Before the meeting commenced, Ms. Deane reviewed the Public Information Act terms for teleconferencing with the Commission.

The meeting began with an approval of the February 2009 meeting minutes. The Commission approved the minutes with revisions by Motion from Kerrigan. The Motion was seconded by Hampton. Watts presented a Motion to adopt the minutes as amended, and Kerrigan seconded the Motion. The February 2009 meeting minutes will be posted on the Commission's website.

The meeting proceeded with a discussion of legislative budgeting. Bassett indicated that he had been in contact with staff from Senator Whitmire's office. Bassett informed Commission members that he may call on some of them to testify at hearings if necessary during the legislative session.

Eisenberg offered to provide the Commission with information on the new bills that have been filed, relating to the Commission's activities and responsibilities, but did not participate in any deliberations made by the Commission concerning the bills. Eisenberg informed the Commission of three particular bills impacting the TFSC (HB 3874; HB 4143; and SB 1909), all filed March 12th 2009. Eisenberg informed Commission members that the bills have been sent to the appropriate committees for review in the past few days. The bills appear to significantly change the role and responsibilities of the TFSC.

Eisenberg indicated that these bills seem to coincide to a large extent with what the New York State Commission's role and responsibilities are. HB 3874 appears to involve Texas state health services overseeing forensics. The other two, HB 4143 and SB 1909 basically dictate that the TFSC establish a DNA laboratory audit program to conduct periodic unannounced audits within the state of Texas.

Levy led a discussion of how the bills would interplay with DPS's statutory duties and whether they would be supplemental or supplanting. Other Commission members indicated that the bills appear to describe the audit program to be in addition to any other accreditation program such as, DPS, ASCLD, etc. A brief read would indicate that this would be a 3rd level above and beyond the national accreditation and the audit requirement put in place by the Texas legislature for DPS.

Bassett stated that the bills seem to be consistent with some of the items the Commission has been discussing, but it would require sufficient staff, funding, and would be a significant expansion of the Commission's work. Bassett indicated that while the Commission is not reluctant to take on these responsibilities, they may not presently have the resources. Levy explained that the Commission would need to start laying the groundwork to take on such responsibilities, deciding what staffing support would be and other important logistics. The Commission discussed that they are not opposed to expansion, but must come up with funding, staffing and communications with the forensic science industry in order to expand their responsibilities. Kerrigan indicated that the time table might be revised and that to have the audits in place by the end of the year, as the bills indicate, might be a difficult challenge.

The meeting continued with an update on office activities from the TFSC Coordinator, Leigh Tomlin. Tomlin indicated that the office had been fairly busy since the last meeting, with correspondence and other communications regarding pending cases and Commission activities. Tomlin reminded Commission members to complete their personal financial statements by April 30th. Office correspondence and the status of all complaints received were discussed by Tomlin. Communications with Dr. Beyler and the status of the Willis/Willingham investigation was briefly discussed by Tomlin. Tomlin also indicated that the University had invited the Commission to submit an article about the Commission in the annual Criminal Justice mandate. An article on the Commission was drafted by Tomlin, approved by Bassett, and submitted to the University to be published in the mandate. Tomlin also gave an update on Texas register postings. The Commission provided notice of the contract with Dr. Beyler in the Texas Register since the last meeting. The Commission also posted an Invitation for Offers for an expert to review the Moon case in the Texas Register. Tomlin explained that a proposal was received from Dr. Robert Shaler and would be reviewed by the Commission at today's meeting.

Distribution of information on the TFSC was discussed next. The Commission discussed outreach activities, such as attending meetings of appropriate forensic agencies and labs. Kerrigan and Watts indicated that they would get Tomlin a list of appropriate agencies and their contact information. Tomlin will complete a list of meetings the Commission may want to send a representative to attend and talk about the Commission. Bassett indicated that he would be attending the annual Fire Marshal's conference in October to give a brief talk on the Commission. He also stated that he would give a short description of the Commission at the Advanced Criminal Law seminar this year. Tomlin is to call people at the IAI, SWIFS, and the Texas Medical Examiner's Association to find out

about meeting opportunities for Commission outreach activities. Judge Hervey indicated that she would be happy to help with distributing information on the Commission. Tomlin is to put together a letter on the Commission and get the letter to Hervey for distribution. Bassett indicated that Judge Hervey would be a great resource in spreading information about the Commission's activities.

Watts proceed with the discussion of a poster from the Commission to be placed in labs. The poster will state what the goal of the TFSC is and how to get in touch with the Commission. Once the format of the text is decided, the Commission could have the posters laminated and mailed to the forensic labs throughout the State. Bassett proposed that one or two of the Commission members come up with a final version of the poster. Watts and Kerrigan volunteered to come up with the final poster to be distributed to the labs. The plan for distribution of the poster will be discussed at the next meeting.

At this time, Judge Hervey was invited to add to the earlier discussion of the HB3874, HB4143 and SB 1909. Hervey discussed the bills and their origination. Hervey introduced Rose Cardona, integrity unit lawyer from the Texas Court of Criminal Appeals. A discussion of the Criminal Justice integrity unit conference and comments on the NAS report continued. Hervey indicated that the general idea in Texas is for there to be some additional oversight for Texas labs. Hervey would like to see the oversight land with the Commission. Hervey explained that the bills were very bare-boned and that ASCLD had offered to help in any way they could. Bassett explained that the responsibilities the bills would give the Commission would require a significant budget increase. Hervey explained the cost did not seem to be an issue, and everyone seems to understand these changes are more than necessary. During discussion, Hervey explained that once the bills are passed, the other items will fall into place and the bills would give the Commission rule making authority. Kerrigan indicated that we would need support from all stakeholders in the field of forensic science.

The Commission indicated that they are in support of the expansion and the new bills, but the concern is in the timing of the implementation of an audit program and then the fiscal impact. It would be an extreme challenge for the Commission to come up with a DNA audit program in 2009. The Commission communicated to Judge Hervey that, with the funds and the extension of the proposed timeline, they would support the expansion of responsibilities proposed in the bills. Hervey indicated that she would like any input from the Commission on how to revise or add to the bills. Hervey will keep the Commission informed on the bills, and Bassett will let the Commission know when there are opportunities for input.

The next item discussed was the National Academy of Sciences' report. Kerrigan provided a summary of the report. Kerrigan also presented a draft of a press release for the Commission to post on their website regarding the NAS report. Oberfield offered comments on how unique Texas is in development of the TFSC as compared to the rest of the country. Oberfield indicated that there was a body in MN that has a statute that very closely mirrors the TFSC's. VA also has a forensic science board, and NY has the Commission on Forensic Science. MD also may soon establish a law that needs to be

filled in by the Department of Health and Mental Hygiene. Oberfield indicated that beyond that, those are the main ones about which the Innocence Project has knowledge. Kerrigan explained that the Commission might want to explain to people that it was established by the Texas legislature. Watts presented a Motion to approve the press release drafted by Kerrigan. The Motion was seconded by Hamilton. Tomlin will provide a link to the press release and the NAS report summary on the Commission's website for public access.

Bassett proposed that a group of Commission members undertake an analysis of the NAS report as compared to current Texas forensic lab procedures. Kerrigan explained that would have to be done in conjunction with the scientific community. Kerrigan indicated that the Commission should encourage the scientific community to make their own recommendations. Tomlin will go to the University to ask whether there would be any funding issues. Kerrigan and Watts will put together a proposal to be presented at the next meeting for an open meeting where members of the public are invited to offer comments on the Commission's oversight of labs in Texas.

At this time, Bassett invited a public comment period and asked each guest to introduce themselves. The meeting continued with comments from Oberfield on the NAS report. Oberfield indicated that the Innocence Project supports endeavors to bring a sense to Texas as to what this report means to Texans. Oberfield briefly discussed the Innocence Project's Coverdell report, which surveys the national application of this specific provision which is connected to receipt of Coverdell grants across the country. Oberfield explained that there needs to be an independent organization in each state to receive that grant.

The Willis/Willingham investigation was the next topic discussed. Bassett explained that Dr. Beyler has executed a contract with the University. Levy and Bassett worked on the contract together to make sure it was consistent with the objectives of the TFSC. Bassett spoke with Dr. Beyler, and he still working on gathering and studying a factual background with his research. Dr. Beyler should have feedback in late May or early June. It was discussed that Dr. Beyler not comment to anyone until the investigation is complete, to avoid impeding any part of the investigation.

The meeting continued with a discussion of the Moon case. The proposal from Dr. Robert Shaler was reviewed by Commission members. Tomlin communicated to Commission members what Eisenberg's comments were on Dr. Shaler's qualifications. The Commission collectively filled out the evaluation matrix on Dr. Shaler. Dr. Shaler appeared to be overly qualified in all areas. It was decided by Motion from Hamilton and Second by Watts that the Commission would approve the evaluation matrix for Dr. Bob Shaler. Watts presented a Motion for Levy and Bassett to prepare a contract for Dr. Shaler and to have authority to propose and invite the University to sign the contract. The Motion was seconded by Dr. Kerrigan. Tomlin will notify Dr. Shaler that he has been selected to investigate the Moon matter.

The meeting continued with comments from Ed Salazar on the Fire Marshal's response to the Willis/Willingham investigation. Salazar explained that the Fire Marshal's office would be more than willing to make a presentation to us on arson lab procedures. He explained that the current lab was not involved in these two matters (Willis/Willingham), and was not even in existence at that time. Salazar indicated that the Fire Marshal's office will be open, as much as possible, to offering comments. Bassett invited Mr. Salazar to appear at the Commission's May 15th meeting and give a specific comment on the Willis/Willingham investigation and help the public understand the context of what was then and what is now in arson investigations. Bassett feels this would be particularly important to understand prior to receiving a report from Dr. Beyler. Salazar indicated that someone from the Fire Marshal's office would be willing to come to the next Commission meeting. Salazar also mentioned that the Fire Marshal's office would like someone from the Commission to come and speak at the Fire Marshal's conference, the 3rd week in October 2009. Bassett offered to speak at the Fire Marshal's conference or to send another Commission member to provide an informative presentation on the Commission. Levy mentioned that a detailed response from the Fire Marshal's office also may be helpful in which, as much as possible, the Fire Marshal's office explains the items in the complaint that they may or may not agree with. Levy invited the Fire Marshal's office to take a position on the issues that are in controversy in a brief two-page response.

After lunch, the meeting continued with a discussion of self-reporting procedures. Kerrigan presented an anonymous complaint form to be posted on the Commission's website. After review of the anonymous complaint form, Kerrigan proposed a Motion to approve the form as modified and give Tomlin the authority to make minor changes to both forms and to put the forms into a PDF editable form. The Motion was seconded by Watts and approved by the Commission. Kerrigan also presented revisions to the current TFSC complaint form which were also approved by the Commission with minor changes by Motion from Hamilton and Second by Hampton.

The meeting continued with a discussion of how anonymous complaints should be handled. Mohan gave Commission members a brief overview of the whistleblower act and how it may or may not apply to anonymous complaints. Bassett proposed that if the complaint has merit, the Commission shall contact the lab or entity the complaint is against and ask for their response. It was also discussed that the Commission may have an obligation to inform the appropriate accrediting agency related to the complaint. Kerrigan will contact ASCLD before the next meeting and ask them if they have a recommendation of how our anonymous complaints should be reported to them.

The Commission proceeded with a review of any pending complaints and complaint forms received. The Commission discussed that they could not proceed on several of the complaints because of a lack of information provided to the Commission. Each complainant will be notified of the status of their complaint as decided at the meeting.

The Commission reviewed any agenda items to be completed before the next meeting.

The meeting was adjourned by Motion from Watts and Second by Hampton.

The next meeting for the Commission is to be held in Dallas on May 15th, 2009, beginning at 9:30 a.m.

The meeting following the May 2009 meeting shall take place in July 2009, and the date and location will be determined at the May 15th, 2009 meeting.