



STATE OF MICHIGAN

TASK FORCE ON FORENSIC SCIENCE

LANSING

GRETCHEN WHITMER
GOVERNOR

CHIEF JUSTICE BRIDGET M. McCORMACK
COL. JOSEPH GASPER
CO-CHAIRS

Task Force on Forensic Science
January 25, 2022
Virtual Meeting via Zoom

Meeting Minutes

Voting Members Present	Representing
Col. Joe Gasper, Director	Michigan Department of State Police
Chief Justice Bridget M. McCormack	The Michigan Supreme Court
Mr. Jeff Nye, Director	Michigan Department of State Police, Forensic Science Division
Mr. Jonathan Sacks	Public defenders or criminal defense attorneys
Mr. Matthew J. Wiese	Prosecuting attorneys
Dr. Jeffrey M. Jentzen, M.D., Ph.D.	Board-certified pathologists with experience in forensic pathology
Mr. Kent Gardner, Director	Oakland County Sheriff's Department Forensic Laboratory
Mr. Christopher R. Bommarito	Forensic science practitioners with at least five years of experience in the field
Mr. Brandon N. Giroux	Forensic science practitioners with at least five years of experience in the field
Hon. (ret.) Dr. Donald Shelton, Ph.D.	Individuals from the private sector or from a university in this state who have earned a doctoral degree in a distinct field relevant to forensic science and who have published scholarship related to the field in a peer-reviewed journal
Dr. Ruth Smith, Ph.D.	Individuals from the private sector or from a university in this state who have earned a doctoral degree in a distinct field relevant to forensic science and who have published scholarship related to the field in a peer-reviewed journal
Dr. Barbara O'Brien, Ph.D.	Individuals from the private sector or from a university in this state who has published scholarship related to cognitive bias
Judge Paul J. Denenfeld	The 17th Circuit Court of Kent County, designated by the Chief Justice
Ms. Lori Montgomery, Attorney General Dana Nessel's designee	The Michigan Attorney General's Office
Voting Members Not Present	
Non-Voting Members Present	
Senator John Bizon	The Michigan Senate, designated by the Senate Majority Leader
Senator Stephanie Chang	The Michigan Senate, designated by the Senate Minority Leader
Representative Laurie Pohutsky	The Michigan House of Representative, designated by the House Minority Leader.
Non-Voting Members Not Present	
Representative Robert Bezotte	The Michigan House of Representatives, designated by the Speaker of the House

I. Call to Order

- Col. Joseph M. Gasper called the Task Force on Forensic Science meeting to order at 1:01 p.m.
- All were advised the meeting was being recorded.

II. Roll Call

- Roll call was taken, and a quorum was present.

Attendance Roll Call	Present Yes	Present No	Location, City, County, & State
Voting Members			
Col. Joe Gasper, Co-Chair	X		Virtual via Zoom
Chief Justice Bridget M. McCormack, Co-Chair	X		Virtual via Zoom
Mr. Jeff Nye	X		Virtual via Zoom
Mr. Jonathan Sacks	X		Virtual via Zoom
Mr. Matthew J. Wiese	X		Virtual via Zoom
Dr. Jeffrey M. Jentzen, M.D., Ph.D	X		Virtual via Zoom
Mr. Kent Gardner	X		Virtual via Zoom
Mr. Christopher R. Bommarito	X		Virtual via Zoom
Mr. Brandon N. Giroux	X		Virtual via Zoom
Hon. (ret.) Dr. Donald Shelton, Ph.D.	X		Virtual via Zoom
Dr. Ruth Smith, Ph.D.	X		Virtual via Zoom
Dr. Barbara O'Brien, Ph.D.	X		Virtual via Zoom
Judge Paul J. Denefeld	X		Virtual via Zoom
Ms. Lori Montgomery, Attorney General designee	X		Virtual via Zoom
Non-Voting Members			
Senator John Bizon	X		Virtual via Zoom
Senator Stephanie Chang	X		Virtual via Zoom
Representative Robert Bezotte		X	
Representative Laurie Pohutsky	X		Virtual via Zoom

III. Approval Vote of the 11/22/2021 Meeting Minutes

- A motion to approve the 11/22/2021 meeting minutes was given by Chief Justice Bridget McCormack and seconded by Mr. Jonathan Sacks.
- With no discussion, the 11/22/2021 meeting minutes were approved with 14 Yeas, 0 Nays, and 0 Abstained.

IV. 2022 Plan

- There will be a meeting basically every other month. The schedule is in the November meeting minutes.
 - The schedule will allow enough time and concentration for the subcommittee meetings.
 - The meetings are every other month, but additional meetings can be called if needed.

V. Reappointments

- The Governor's office has given the Task Force an extension to the end of December 2022.
- Everyone currently serving was reappointed to their position.
- All were asked if they did not want to be reappointed to indicate that at this time.
 - No indications were expressed.

VI. Review of Consensus on an Oversight Body

- As we move forward, we will need to narrow down the scope sooner rather than later.
- All were asked if they had any comments or questions regarding the points discussed at the last meeting, or if there were any new points that were identified.
 - No comments, questions, or new points were expressed.

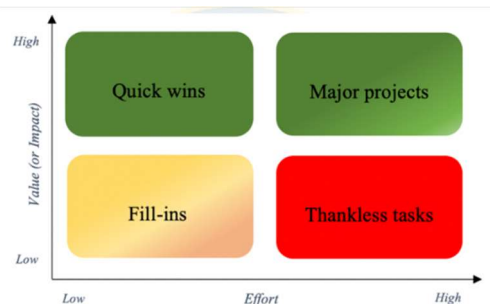
VII. Discussion: Recommendations of Oversight Body Scope

(Forensic Science Disciplines; public/private labs, university experts, other experts)

Presenter: Mr. Jeff Nye

- Scope of the Oversight Body
 - Meaning of scope: Scope is a range of influence the recommendations of the Task Force may have on forensic science and forensic science service providers in the state.
 - Will we be creating recommendations for the Michigan State Police (MSP), Forensic Science Division, private and/or public practitioners, medical examiners, and for which disciplines within forensic science?
 - Knowing how broad the recommendations will be applied to the forensic science community as a whole, Mr. Nye referenced the Executive Order.
 - The Executive Order defines Forensic Science as the study of medical, chemical, toxicological, ballistic, or other expert examinations or tests performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action, including autopsy.
 - Defining forensic science, because it is so broad, can be hard at times to define.
 - The Executive Order defines a Forensic Science Service Provider (FSSP) as an entity, or agency of this state, that employs forensic science practitioners and issues reports prepared by forensic science practitioners.
 - Defining forensic science practitioners is a little bit easier to understand. It is basically anybody that is using a forensic science.
 - Determining the scope will help define the range of influence the Task Force may have and will help guide the activities of each of our committees.
 - Mr. Nye explained his meaning of scope is basically when we make a recommendation as a Task Force, what will be the range of influence that recommendation is going to have on the forensic science community. We need to consider what impact it will have and the resources necessary to implement the recommendations.
 - Example: Accreditation. Who would it apply to? The cost to independent, local, and statewide laboratories is high. The potential impact to services, if labs are unable to comply, may be significant. Would the recommendation of accreditation apply to all?
 - Example: Who will participate in the survey for the status of forensic science in Michigan?
 - Example: Are we talking about just the Forensic Science Division of MSP, or are we talking about local entities such as counties, or other local laboratories?
 - Example: Are we talking about a laboratory that is government related, laboratories that are not accredited? Are we talking about private practitioners, either in a laboratory setting or as an individual? Are we going to include medical examiners? Are we going to include forensic science and then the specific disciplines because forensic science is rapidly evolving?
 - Regarding impact: From the forensic science community as a whole, how hard, or easy, is it going to be to implement the recommendations? What sort of impact, either positive or negative, will the recommendations have in the criminal justice system as a whole?
 - Discussing the scope and defining the scope will help some committees refine their tasks.
 - Example: Mr. Nye's subcommittee has a nice survey they'd like to send out. They have generated a list of possible participants for that survey. Right now, that list is pretty wide open because he is looking at it with a fairly broad definition of forensic science. If we are going to narrow the scope, it would be nice to do that now, before the survey is sent out.

- Objective as it related to scope. What is it that we are we trying to address?
 - Wrongful Convictions for Michigan from the national registry of exonerations. (34 of the 139 had a label of “forensic” on it as a contributing factor)
 - Communication (misapplied testimony, withheld exculpatory testimony, etc.)
 - Misunderstood testimony, or some exculpatory forensic evidence was withheld from trial.
 - Jury put too much weight on testimony, and it wasn’t as clear as what it could have been or should have been.
 - Medical testimony (shaken baby, time of death, etc.)
 - Number convictions have been overturned related to shaken baby.
 - Time of death determinations from a medical aspect.
 - Non-traditional forensic disciplines (arson, bite mark, polygraph, canine, etc.)
 - There are a handful related to arson investigations, bite marks, polygraph, and canine.
 - There is a data set available with a lot of detail.
 - We need to remind ourselves, what are we trying to accomplish with the Task Force, the recommendations, and certainly the scope of what we’re working on and what we’re discussing because that’s the measures we want to take to change wrongful incarcerations.
 - Forensic reform within overall criminal justice reform.
 - Transparency, consistency, Uniform Language and Testimony and Reporting (ULTRs), training.
 - Are these efforts already part of other requirements? (accreditation-training for practitioners (Y), training for legal community (N)).
 - There has been much conversation about training, not only for practitioners, but for the legal and judicial communities.
 - Accredited laboratories have a requirement for training, but that accreditation for a laboratory doesn’t make a requirement for the legal or justice community.
 - As a Task Force, there has been discussion about recommendations and making sure that we have a consensus within the Task Force, because then it’s more apt to be implemented.
 - All were reminded we are just making recommendations, then somebody has to make the determination as to whether those recommendations are going to be adopted and implemented.
 - We’ll need to keep an eye on the scope of the recommendations, like how broad the recommendations are going to be, and then what resources are going to be necessary.
 - Resources by FSSPs to carry out recommendations.
 - Resources by “entity” to manage information.
 - There needs to be an awareness of the needed resources when developing recommendations.
 - For instance, accreditation, if recommended, will require a lot of resources. Not only financial, but personnel related resources and whether that impacts it in a negative way where we really want to impact in a positive way.
 - Recommendations will require supporting resources and depending on the recommendations, will this entity be required to actually manage all the information and actually oversee the recommendations and their implementation?
 - Keep in mind any recommendation that are submitted, adopted or not, becomes a tool to be used and is expected to be implemented.
 - We want to make recommendations that are reasonable, practical, and able to be implemented.
 - Recommendation Effort versus Impact in review the graphic



- In reviewing the graphic, if you look at the up and down axis, the y axis, that's sort of like a low to high on the amount of impact the recommendation or a decision may have. The bottom axis, going from left to right, shows the amount of effort it takes to implement a particular project or recommendation. So, things that take a lot of effort but have low impact is busy work, keeping everyone busy, but not really doing much. On the opposite side, if you have something that takes a lot of effort to implement, but it has a high impact, that would be major-long-term projects.
- What would be most beneficial, those that have low effort to get them implemented, but have the highest impact because they could be implemented quickly?
 - Comment from Mr. Johnathan Sacks: Mr. Sacks urges the Task Force to adopt major projects and not have a group of several recommendations that may or may not be a consensus and not to think small of let's just keep studying or let's just have some training.
 - An example would be the Michigan Indigent Defense Commission, which is now a 150 million dollar a year investment. It would have been very easy for that to just be a series of best practices or study commission.
 - Another example would be the Pre-Trial Task Force where a number of very ambitious recommendations over a lot of different areas that have been implemented.
 - Mr. Sacks shared five areas for objectives:
 - Have oversight body commissioners who could study, offer guidance, and come up with recommendations of training on the reliability of the different disciplines
 - Legal practices, which also gets into the boundaries of expert testimony, jury instruction, and uniform language.
 - Disclosure and complaints. Clearinghouse for disclosures of nonconformity for all the impacted labs and complaints, and to review them and figure out what the next steps would be. Concerns have been expressed in the past of not wanting those disclosures and complaints to create a new appellate process, or something along those lines – Mr. Sacks certainly agrees.
 - Minimum standards and best practices. Independence, access, best practices for evaluating and testing. There's a good funding model in the Indigent Defense Commission Act of how to give this some teeth. The permanent body can recommend needed resources to meet the recommendations or requirements.
 - Quality of forensic science, covering things like accreditation, spot checks, and blind testing.
 - Mr. Sacks reiterated he would love to see us aim high with the major project piece of that access and see us focusing on areas like the five he shared.
 - Mr. Nye followed up with the question as to whether there was a priority list of what should be addressed first or was it a pushing everything through the same pipeline at the same time type of effort?
 - Mr. Sacks' reply: For the Indigent Defense Commission Act, there was an advisory commission that's a bit analogous to this Task Force. They studied issues, brought in speakers, and ultimately, based on their study, provided a recommendation for a statute. Ultimately the statute wasn't 100% of what the advisory commission recommended, but it was probably 90%. That statute has since been implemented. Defers to Chief Justice to comment on the Pre-Trial Task Force.
 - Chief Justice McCormack's comment: The Pre-Trial Task Force did not rank the recommendations. There was a big task force process with the civil legal system in 2020, and that report did rank the recommendations with easier to implement versus larger tasks. Chief Justice sees value in making distinctions between recommendations that could be "easy

- wins” versus more difficult to implement but does not see a reason to shy away from including the more difficult to implement.
- Comments from Mr. Christopher Bommarito: In regard to the Commission Subcommittee, he feels they tried to focus on practical solutions based on the scope the Commission would cover.
 - It would cover both private and public laboratories (like the Texas Commission)
 - An issue with private laboratories, is them not being forthright in regard to marijuana quantification protocols and so forth.
 - Registration idea - for those providing expert testimony that are not captured through accreditation and would encompass accident investigators and so forth. Says this would mean we don't need to define every forensic science discipline covered.
 - Mr. Nye commented he'd like to hear from the group regarding how broad of a definition are we talking about regarding forensic science. Standard traditional forensic science is thought of as biology DNA, toxicology, latent prints, firearms, and controlled substances – more lab-based. Whereas more periphery related forensic science would be things like arson investigation, digital facial recognition, more engineering related things, and certainly the medical experts talking about time of death, particular injuries, bitemarks, and all those things. How broad do we want to cover? That will certainly inform the subcommittee covering the state of forensic science in Michigan.
 - Dr. Jeffrey Jentzen commented medical examiners are accredited through their organizations in addition to their medical licenses. The Texas Commission does not include medical examiners within the Commission itself but is left to their own state accrediting body. Medical testimony is not limited to medical examiners or forensic pathologists, but it expands throughout the medical discipline including pediatricians, emergency room physicians, paramedics, and the whole broad environment of medical treatment and practice. We should keep this in mind.
 - Mr. Nye commented this is why we need to know what's our objective as a Task Force and what are we trying to accomplish, which will inform our scope so that we are effective in our recommendations, but also not narrowing our scope so much that we're leaving behind certain things that can be improved. We need to find the balance.
 - Dr. Jentzen commented a starting point could be a breakdown of the 34 wrongful convictions related to forensic science so that we can figure out where to best spend our time.
 - Mr. Nye commented he does have a breakdown, but it is just his personal breakdown and that he doesn't have access to all the underlying information that others may have. Generally speaking, there are several related to shaken baby, several related to arson investigations. There are some related to bitemarks and medical examiner time of death. There are some with communication where exculpatory evidence might have been withheld from trial. Although it may be tagged with forensic science, it maybe pointed to a different area as far as where the responsibility lies. Some that had firearms issues related to the Detroit Laboratory. There was one that was tested in 2002 and retested in 2012 when there was newer technology used. There are many contributing factors, and every example is unique.
 - Hon. (ret.) Dr. Donald Shelton commented the Supreme Court has already answered the question regarding expert witnesses to include all expert witnesses and not just scientific experts. As related to how broad

our scope should be, the Governor's Executive Order determined that we are to have a broad scope, and we are to come up with broad recommendations, and that whatever the number of wrongful convictions there are related to forensic science, that's enough.

- We've talked a little about having a procedure to resolving complaints and concerns about forensic science evidence, and those specifically covered, we're supposed to develop recommendations for having statewide protocols and develop a process for the public to report misconduct or alleged misconduct. We are to develop best practices for individuals who practice or apply forensic science in the criminal justice system. We are to develop recommendations for updating stakeholders and provide other information and guidance.
- Dr. Barbara O'Brien commented she concurred that the scope should be broad because all these examples that don't fit in the very narrow traditional view of what constitutes forensics are the kinds of evidence juries are hearing and thinking about. When looking at wrongful convictions based on forensic science, we may have unique problems in Michigan that are specific to our system. But we can learn a lot by looking more broadly into the types of wrongful convictions in which there was forensic error nationwide. Dr. O'Brien expressed we should consider medical pathology to be part of it as well – not including that discipline in Texas was for political reasons there. One of our main purposes is to prevent wrongful convictions and to facilitate the efficient and accurate processing of material that can be used to convict a guilty person. If we are really concerned about wrongful convictions, bad medical testimony also contributes, so we should include that kind of evidence in our scope.
- Mr. Matthew Wiese commented on having many, many cases involving medical examiners, he can't stress enough how much we need to have forensic pathologists. There needs to be funding from the state so every county in the state has access to forensic pathology and would like that to be part of the scope.
- Dr. Jeffrey Jentzen shared that the 2009 National Academy's Report really focused on forensic pathology and the need to have board certified forensic pathologists involved with homicide cases and that was the recommendation. Currently Michigan only requires medical examiners to have a medical degree but not more specific training. The Michigan Medical Examiner's Association has supported the idea of having a board-certified forensic pathologist involved in potential homicide or other suspicious cases.
- Mr. Christopher Bommarito commented the best thing going that we have in the state are the accredited laboratories. The unaccredited labs and the independent experts are the areas that are like the Wild West, and this is why he recommends the registration for expert testimony and that should cover anybody that is going to testify as an expert. A registration system would be one that could be easily implemented. Registration wouldn't be saying this person is qualified to give expert testimony, but at least they'd be registered and if they were a bad actor, they could have their registration revoked by the Commission.
- To recap Mr. Nye commented everyone is saying we prefer a very broad definition of forensic science and to continue in our committees, especially as we start surveying providers of forensic science or expert testimony within the state, we should cast a pretty wide net to see what we get and go from there.

- (End of Presentation and Discussion)

VIII. Discussion: Recommendations from Education and Application Forensic Science Subcommittee

Presenter: Hon. (ret.) Dr. Donald Shelton

- The final report will be distributed and summarized in this presentation. The subcommittee had several meetings and heard from several people who are involved in various types of forensic science, education, and also consulted with several others. The report is separated into their findings and then their recommendations are based on those.
- The subcommittee patterned after the Governor's Executive Order, and the finding is that the admission of unreliable and/or misapplied forensic science evidence has led to a substantial number of wrongful convictions.
 - Nationwide, the Innocence Project reports an issue related to forensic science involved in nearly 45% exonerations where there was a DNA exoneration and almost ¼ of all exonerations.
 - The Innocence Project talks about unreliable or invalid forensic disciplines - where bitemark testimony, for example, has insufficient validation of the methods where we think it might be accurate, but the science has not been demonstrated accurately. Also, misleading testimony - talking about a "match" or testifying absolutely about things would need to be more accurately stated in a statistical probabilistic manner.
 - The subcommittee looked at attorneys and found many, particularly defense counsel, are unaware of the *Daubert* admissibility requirement, resulting in a lack of appropriate objections. In many cases the forensic science evidence is not challenged; there's never been an objection and that often precludes a review. Most often the lack of an objection is not deliberate or intentional, it's just the attorneys don't know what is objectionable or what they ought to at least bring to the court's attention. In law school there is no requirement, and little opportunity, for law students to learn about the legal requirements for the admission of forensic science testimony.
 - There is also no requirement for mandatory continuing legal education in Michigan. There are 50 state and 46 have mandatory continuing education for attorneys. Only Massachusetts, Maryland, Michigan, and South Dakota do not.
 - For appointed counsel for indigent defendants in Michigan, we do have the Michigan Indigent Defense Commission (MIDC) that established training standards through the Michigan Indigent Defense Commission Act where forensic science evidence training is recommended but not required.
 - The subcommittee's recommendations for attorneys are:
 - The Supreme Court should require mandatory continuing education for attorneys in Michigan.
 - Any attorney appearing in a trial or appellate criminal proceeding should be required to include one annual course on forensic science evidence prior to appearing in a criminal proceeding.
 - The Michigan State Bar has a long history of opposing any continuing legal education requirement. It is an argument that has been lost in 46 states but has prevailed in Michigan.
 - The subcommittee recommends that the MIDC add a mandatory forensic science requirement for a certain number of hours per year. Once that modification is made through the Department of Licensing and Regulatory Affairs (LARA), then the State will be required to fund that new training as they are implemented. That process has already been set up; it just needs to have a mandatory forensic science requirement added.
 - For appellate attorneys, the subcommittee thinks similar requirements should be adopted by the Appellate Defender Commission for attorneys from State Appellate Defender Office (SADO) or the Michigan Appellate Assigned Counsel System.
 - The subcommittee's recommendations for judges are:
 - Many judges are unaware of the requirements for admission of forensic science evidence and the procedures that *Daubert* requires. This results in routine admission of what may be questionable testimony. Voluntary judicial education has been provided by the Michigan Judicial Institute (MJI) under the Michigan Supreme Court. The Michigan Supreme Court has adopted a Mandatory Continuing Judicial Education (MCJE) Program for the state's justices, judges, and quasi-judicial officers. The program is in the works with an expected effective date of January 2024. As drafted now, it requires 12 hours of continuing education each year, with three of those hours devoted to ethics and demeanor and the other nine hours as areas to be determined by a

judicial education board. There is nothing in the current structure that would require forensic science evidence education. So, the recommendations for judges are:

- Under the Mandatory Continuing Judicial Education order of the Michigan Supreme Court, the Judicial Education Board should include an annual requirement for forensic science evidence education for all judges...
- With the additional recommendation that the court appoint members of the Judicial Education Board who have experience or at least knowledge in forensic science.
- There is a need for increased education and competency requirements for people who offer testimony as forensic science experts. There are no general continuing education requirements for government or private labs or private persons, but there are continuing education requirements for government laboratory personnel. Some may have generalized continuing education requirements as a condition for accreditation without being specific about that particular continuing education. The format and the nature of continuing education requirements are most appropriately considered by other committees, namely the Commission and the Improving Practices and Credentialing committees. The subcommittee does support proposals for requiring laboratories to require continuing education as part of the Standard Operating Procedures (SOP) and requiring some certification of private labs and experts that includes a requirement for continuing education.
 - We currently have only two higher education institutions in Michigan that offer degrees in forensic science. Michigan State University offers a Master's degree in forensic science and Madonna University offers a Bachelor of Science degree in forensic science. Both programs are accredited by the American Academy of Forensic Sciences. Maybe forensic scientists don't have a forensic science degree and laboratories typically hire employees who have bachelor's degrees in a natural science like biology, chemistry, or physics, but they may not have any training or education in the requirements for the admissibility of forensic science testimony.
 - The subcommittee's recommendation is American Academy of Forensic Sciences accreditation should be a requirement for any school offering forensic science education.
 - Secondly, the subcommittee supports laboratory procedures where new employees are trained, and those that don't have degrees in criminal justice or forensic science, get trained in the *Daubert* basic requirements for the admissibility of forensic science evidence in court.
 - Mr. Christopher Bommarito questioned the required training for all attorneys and would his personal attorney who just does wills and trusts and contracts be required to have training in forensic science?
 - Dr. Shelton's response was their continuing education would be in their own field. Attorneys appearing as trial or appellate counsel *in criminal cases* would have to have the forensic science education part.
 - Mr. Jonathan Sacks expressed his agreement with the recommendations and questioned if there is a mechanism for parallel requirements for prosecutors as there are for indigent defense attorneys. In other words, can the Prosecuting Attorneys Association of Michigan (PAAM) require prosecutors who use forensic science evidence take a certain class?
 - Mr. Matthew Wiese's response was no, PAAM has no jurisdictional authority over individual prosecutors, although a vast majority of the prosecutors avail themselves of the opportunities for training. But believes the recommendation is well-placed regardless of whether you're a prosecution or defense attorney.
 - Mr. Sacks also commented there are a number of states, through their statewide Public Defenders Office, that have a resource attorney or sometimes a unit for forensic science. The goal of this sort of unit is to have independence of forensic science and how the lab should equally serve the prosecution and defense. The resource attorney would be available to take calls when someone sees issues and has questions as to what experts to talk to. The idea of a permanent sort of defense body position to not just set up training, but also to be a resource person.
 - Dr. Shelton shared that at least in Michigan, this type of resource sharing has been typically left to networking. It is a great suggestion, but he's not quite sure how we would implement it.

- Mr. Sacks commented he would be happy to discuss this further with Dr. Shelton, and models in other states.
 - Mr. Nye commented that maybe the committee they could provide some of the specifics about what the training might look like and how will it be delivered. Would it be like an annual conference to talk about forensic science? It would be interesting to see from a prosecutor or defense attorney aspect as to what they would like training in.
 - Dr. Shelton commented, maybe the easiest way for continuing education for judges, is the Supreme Court which has set up a structure through the Judicial Education Board where they can fashion the particulars of what's going to be educated. The Michigan Judicial Institute, which is doing voluntary judicial education, has already started to put together a program next month that may show an example of what the contents of the continuing education could be.
 - Dr. Jeffrey Jentzen shared they have been doing a two-day course on an annual basis in forensic pathology and they try to tackle developing topics that are current and consequential to the field. He also shared he's been disappointed that the outreach to the judicial area, prosecutors and defense attorneys has resulted in very little involvement.
 - Mr. Sacks shared the Virginia Department of Forensic Science offers training routinely for attorneys and judges, although he's not sure if it's a requirement.
 - Dr. Shelton commented he believes the training is not required. The Commissions committee heard from the Virginia folks.
 - Mr. Christopher Bommarito concurred, it is his understanding the training is not required.
 - Chief Justice McCormack, regarding the new judicial education requirements, is asking that the Governor recommend some funding for additional staff given that we will be moving to a mandatory judicial education world. Will be making a budget presentation to the legislature.
- (End of Presentation and Discussion)

IX. Public Comments (limited to 3 minutes each)

- Marla Mitchell-Cichon with the WMU Cooley Innocence Project, (Guest via Zoom) commented. Previously presented to the Task Force on wrongful convictions. She believes the training should be joint training for both prosecution and defense. She also believes the Commission is focusing on science and what's reliable, what's appropriate, and not so much about how attorneys are going to use science tactically. She also believes the more joint training that lawyers have in this area, for those who are doing this type of work, the more beneficial. Ms. Mitchell-Cichon reminded the Task Force, that after their group presentation at the August Task Force meeting, they did prepare a very detailed breakdown of the wrongful convictions in Michigan and a fair amount of specificity regarding the forensic practices that were used, and some of the problems related. In that document, they shared how they thought a Commission could address some of those specific problems and that document was shared with everyone on the Commission in September. If anyone doesn't have the document, they would be happy to provide it again.
- Attorney William Maze (guest via Zoom) commented, criminal defense lawyer and adjunct professor at Madonna University teaching expert witnesses and ethics. With the jury instructions we could look at the model criminal jury instructions for the Ninth Circuit, District Courts. It avoids talking about expert witnesses altogether, it just delves into that a person is able to provide opinion testimony. Mr. Maze expressed he is really bothered by the idea of having to register experts. What do we do under, say *Kumho Tire*, where these people wouldn't be registering as experts in their given area of expertise, or experts used in DUI cases on a regular basis that are breath test experts, and field sobriety test experts, and all the drug recognition experts that would be required to register as experts under this proposal? He commented it is an easy way to exclude defense experts.

X. Break

XI. Subcommittee Report-out and Discussion

- State of Forensic Science in Michigan – Chair: Mr. Jeff Nye
 - The committee was waiting on the discussion regarding the scope and has developed a pretty good working survey that just needs a little refining.
 - If any other committees have additional questions they would like to add on to the survey, let him know as they'd like to get the survey sent our pretty soon.
 - In the background the committee is getting a list of possible recipients of the survey. Have come up with a pretty good list and also queried our lab management system for agencies that use our services and get the members of the Michigan Association of Chiefs of Police and the Sheriffs' Association. The committee was waiting for the conversation today to occur as to whom will get the survey.

- Commissions Review – Chair: Mr. Christopher Bommarito
 - The committee has focused their conversation on what the makeup of a committee should be. A consensus hasn't been reached at this time, so the matter needs more discussion.
 - Dr. Jeffrey Jentzen suggested the committee could look at the Florida Medical Examiner's Commission, which has a broad group of different professionals.

- Improving Practices – Chair: Dr. Ruth Smith
 - The committee has been looking at finalizing their survey that will go out to lab analysts to try and get a sense of challenges they're facing.
 - Their next meeting if Friday, January 28, 2022. They will spend some more time finalizing the survey and thinking about how they're going to send it out and who specifically they're going to send it to.

- Credentialing – Chair: Dr. Jeffrey Jentzen
 - The committee is working on developing their consensus recommendations and they feel the laboratories and forensic experts should have a documented system of accreditation but does not feel we need to recreate or create any new credentialing bodies and that the existing credentialing groups are adequate for what has been the history in Michigan.
 - The committee looked at the accreditation of qualified licensed practitioners not involved in or under an accredited laboratory. The committee feels those under an accredited laboratory would be qualified and accredited under the umbrella of the accredited laboratory.
 - The committee feels accreditation should be mandatory, which may require some heavy lifting in the area of required legislation.
 - Dr. Jentzen commented on the overlap between the Credentialing and Commission Review subcommittees with things like certifying or confirming laboratory accreditation, programs, policies, and proficiency testing.
 - Other areas of importance are some types of ethics and/or bias recognition training. That might overlap with the Education subcommittee.

- Education and Application of Forensic Science – Chair: Hon. (ret.) Dr. Donald Shelton
 - Presentation given, no additional information.

- Reporting, Testimony, and Rules of Evidence – Chair: Mr. Matthew Wiese
 - Mr. Wiese thanked Michigan Supreme Court staff, including intern Victoria Williams, for assistance and research provided.
 - Mr. Wiese recapped this committee is to address current inconsistencies and insufficiencies and to enhance adequacy, accuracy, and uniformity in testimony, as well as in the underlying documentation and processes.

- Mr. Wiese commented on the overlapping topics of the subcommittees and hopes we are looking at them and are looking at making overall recommendations. Overlap between this subcommittee and the education subcommittee.
- At their last meeting, (1) adequacy, accuracy, and uniformity were discussed along with (2) how to eliminate bias, and (3) the federal uniform language, and testimony and reporting. (Mr. Nye and Mr. Sacks were guest attendees.)
 - In talking about adequacy, accuracy, uniformity, and reports, the subcommittee talked about opinion-based reports versus science or factual based reports, Dr. O'Brien came up with the phrase "Continuum of Certainty" where we have certain disciplines, such as DNA, that would be way up on the certainty scale and you have other sciences that are lower on the certainty scale.
 - Mr. Wiese commented he never had a State Police Crime Analyst say that "it's a match." They always talk about probabilities. They talk about statistics. The subcommittee talked about maybe the need for underlying databases or statistics for which we base opinions.
- The subcommittee talked about education for attorneys and for judges to give guidance and parameters to what can be testified to.
- The subcommittee talked about having an annual forensic science symposium that's open to prosecutors and defense, and scientists, and people that work in the academic world, various projects like the Innocence Project, and judges, too, to have a cross-section of the system to have discussions where we present both sides of the science issues.
- During the subcommittee meeting talked about error rates. Mr. Sacks shared an idea of boiling down each of the disciplines to a one-page summary about the various parts of science, or what makes it qualified, to be used as a guide for the various disciplines in the various sciences – not specifically for prosecution or defense.
- The subcommittee talked about bias and wanting to eliminate suggestibility or confirmation bias. The subcommittee talked about having some sort of customer service approach at the labs where the prosecutor or defense can call to speak to somebody, not the analyst, to frame an issue *for* the analyst, so the analyst isn't told to look for a particular item or thing. Jeff Nye had said it's a big deal to make this happen but need to separate customer service and testing to eliminate confirmation bias. Making the lab more accessible for everybody in this way might eliminate the idea that the labs are biased in favor of just the police and prosecution.
- The subcommittee looked at uniform language, testimony, and reporting.
 - Suggested the labs look at the federal standards (ULTRs). Maybe, rather than recreate the wheel, look at standards we already have. If this would be done by an oversight body or a governing body would need to be determined.
- The subcommittee talked about having a revision to some of the jury instructions. If you look at the expert witness jury instructions, they are really general and very vague. If you look at the witness credibility instructions, it is very specific as to all the reasons you can consider evidence of the witness to be good, bad, not credible, or credible. Maybe there should be some revisions to the instructions that focus on the ability to insert some of the concepts that are accepted in forensic science for the jury to hear. Jury tend to hear testimony from experts and even without language like "match," the jurors might weigh testimony too heavily.
 - Dr. Shelton commented he recalls in the past, at least, experts routinely testified about a match or 100% certainty, particularly in things like fingerprints and ballistics or fabrics, or things of that nature, and that witnesses only started to offer more probabilistic testimony starting in the DNA field. Stresses he thinks this still needs to be addressed.
 - Dr. Shelton agreed with Mr. Wiese's comments regarding bias to eliminate domain-irrelevant information. The customer service approach sounds like a good idea.
 - Dr. Shelton commented that with jury instruction, he always felt he was blessing the expert testimony without giving specific guidance about how to evaluate the testimony. Strongly supports revision of jury instructions.

- Mr. Wiese may not be able to attend the next Task Force meeting but hopes to have written recommendations soon.
- Negligence, Misconduct, and Misapplication Reporting – Chair: Senator Stephanie Chang
 - The subcommittee met on December 14th and had Megan from the Innocence Clinic and Sarah from the Innocence Project in New York as their special guests. They have a spreadsheet that has been super helpful on the various commissions across the States and what their complaint reporting process looks like.
 - The subcommittee is still quite far from consensus but have had good discussion about a culture of reporting and recognizing unintentional errors vs intentional.
 - Areas being looked at are a centralized system for reporting misapplication or nonconformity or negligence that is about quality management, quality assurance, and not a goal of being punitive.
 - The subcommittee discussed the scope and hasn't yet come to a consensus.
 - Need to include medical examiners. Some concerns are having a process for those who are accredited with reporting to their accrediting body and then also if we created another process through the Commission and having two processes where not everything necessarily gets a full review, but potentially having a multi-layered system where there's an initial review and the Commission would review only certain issues to move forward with more investigation.
 - Discussed not including things that are more like HR issues. For example, someone in the lab had a personnel-related issue that might impact that person's credibility, it wouldn't necessarily be for the Commission to a review. Issues would be more about the work done in a lab.
 - The subcommittee hopes to meet in February and work more toward a consensus.
 - The subcommittee has some members interested in a statewide reporting system while others are not. Input from other subcommittees would be helpful to get a sense of which direction they should go.
 - Mr. Jonathan Sacks commented he strongly supports a statewide reporting process.
 - Dr. Barbara O'Brien concurs.
- Post-Conviction Notifications – Chair: Ms. Lori Montgomery (AG's Office)
 - The subcommittee is tasked with determining the notification procedure when an issue arises and submitted some questions to Mr. Nye for the survey.
 - The subcommittee is waiting to hear back what forensic service providers do if an issue does arise.
 - The subcommittee presented a document within their subgroup about what has happened in the past when issues arise, like the breathalyzer and DNA statistics. Information was gathered from different entities like MSP and the Attorney General's Office. One of the biggest issues is not having the resources to address these issues within a single agency. Hopeful that an entity like a commission could provide such resources.
 - Another issue is determining if something needs to be disclosed and not leaving that decision to MSP or PAAM and ensuring all parties are notified.
 - The subcommittee is at a standstill until the results of the survey are back.
- Col. Gasper commented he'd like to more formally identify the overlaps in the subcommittees in a future discussion so we can focus on a couple of those points.
- Mr. Christopher Bommarito commented his subcommittee could use some guidance from the Task Force as to whether practitioner members of the commission should be made of out-of-state members or in-state members. Thought behind it being you don't have a police agency investigate their own officer-involved shootings. But on the flipside, it's a Michigan Commission, so should there be preference given to Michigan members?
 - Mr. Nye commented on benefit of having in-state members is that they actually understand the environment within the state and can probably be a little bit more focused on what's going to work within our state.

- Dr. Jeffrey Jentzen commented maybe selecting in-state experts that have been nominated by their professional organizations might improve the buy-in for those organizations.
- Mr. Bommarito expressed his concern regarding team members on the Commission investing their own people. For instance, Jeff Nye is the Director, but not on the Commission, but one of his subordinates is. There is influence there.
- Mr. Sacks commented he thinks a local committee is more motivated to make change and implement the proper oversight and regulations. Mr. Sacks also commented that if there is a conflict of interest, then they can make sure they're not part of those proceedings.
- Mr. Nye commented regarding motivation. If we're going to do something that's going to invest in forensic science and how it's applied in Michigan, it would be great if it was a Michigan in-state committee. Mr. Nye also commented if there is a concern, there's always the opportunity for recusal.

- End of Discussions

XII. Next Meeting: Tuesday, March 8, 2022 – 9:30 a.m.

(Public health considerations will determine if the meetings will be in-person vs. remote)

XIII. Adjournment

- A motion to adjourn was given by Chief Justice Bridget M. McCormack and seconded by Mr. Matthew Wiese.
- With none opposed and no discussion, this Task Force meeting was adjourned by Col. Joseph M. Gasper at 3:20 p.m.