



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
TASK FORCE ON FORENSIC SCIENCE
LANSING

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

Task Force on Forensic Science
September 20, 2022
In Person, Michigan State Police Headquarters
7150 Harris Drive, Dimondale, MI
and
Virtual via Zoom

Voting Members	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
Non-Voting Members	
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 Robert Bezotte	The Michigan House of Representatives, designated by the Speaker of the House
Representative Laurie Pohutsky	The Michigan House of Representative, designated by the House Minority Leader.

I. Arrival and Coffee

II. Call to Order

- Col. Joseph M. Gasper called the Task Force on Forensic Science meeting to order at 9:39 a.m.
- All were advised the meeting was being recorded.

III. 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		
Chief Justice Bridget M. McCormack, Co-Chair	X		
Mr. Jeff Nye	X		
Mr. Jonathan Sacks	X		
Mr. Matthew J. Wiese		X	
Dr. Jeffrey M. Jentzen, M.D., Ph.D	X		
Mr. Kent Gardner	X		
Mr. Christopher R. Bommarito	X		Virtual via Zoom
Mr. Brandon N. Giroux	X		Virtual via Zoom
Hon. (ret.) Dr. Donald Shelton, Ph.D.	X		
Dr. Ruth Smith, Ph.D.	X		
Dr. Barbara O'Brien, Ph.D.	X		
Judge Paul J. Denenfeld	X		
Ms. Lori Montgomery, Attorney General designee	X		
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

IV. Approval Vote of the July 19, 2022, Meeting Minutes

- A motion to approve the July 19, 2022, meeting minutes was given by Hon. (ret.) Dr. Donald Shelton and seconded by Dr. Ruth Smith.
- With no discussion, the July 19, 2022, meeting minutes were approved with 13 Yeas, 0 Nays, and 0 Abstained.

V. Subcommittee Recommendations and Discussion

- Subcommittee 1: Forensic Science Statewide Body, Speaker: Mr. Jonathan Sacks
 - Mr. Jonathan Sacks acknowledged and thanked the members of the subcommittee and support staff: Judge Denenfeld, Judge Shelton, Senator Bizon, Chris Bommarito, Kent Gardner, Brandon Giroux, Lori Montgomery, Jeff Nye, and Amy Lindholm.
 - Mr. Sacks emphasized the recommendations are very much a compromise document. If he were to write a document of what a permanent Task Force would look like, it would be very different from what is being presented. It would have a much more investigative focus. But what the subcommittee has come up with is a compromise that he feels is something all can buy into because it is the best model, and a good way too, for there to be an independent body that can look at and move the bar on forensic science issues in Michigan.
 - Where the Forensic Science Statewide Body (FSSB) is housed in state government
 - Issues looked at:
 - Authority and Mandate in regard to what makes sense. Should it be executive, legislative, or judicial.
 - Potential Conflicts related to the separation of powers and the issues there might be depending on where the statewide body is placed and potential conflicts of interest. An example would be if there is a Forensic Science Commission in the Judicial Branch and the Judicial Branch is also making final rulings on evidentiary issues related to forensic science, there may be a conflict of interest.

- Some models looked at are the Michigan Commission on Law Enforcement Standards (MCOLES), which is a training body within the Michigan State Police; The Michigan Indigent Defense Commission, which is in Licensing and Regulatory Affairs (LARA) as an executive agency; The Legislative Corrections Ombudsman, which is part of the Michigan Legislative Council; and the State Appellate Defender Office, which is an independent agency within the Judicial Branch.
- The recommendations of the subcommittee are:
 - The permanent forensic science body be housed with an Executive Branch agency that is the best fit. Reasoning being the potential conflict of interest that might be there if it were in the Judicial Branch, and potential separation of power issues. The Executive Branch seems to be the best fit when looking at mandates that include grant making, complaints and investigations, and accreditation and registration.
 - The permanent forensic science body should not be part of the Michigan State Police, or part of the Forensic Science Lab in the State Police.
 - The permanent forensic science body should have some independence. The major disadvantage of the statewide body being in the Executive Branch is the feeling that the Administration at the time may impact where the Forensic Science Task Force could go in a way that would not happen as part of the Legislative or Judicial branches. The best solution the subcommittee could come up with is language that is parallel to the Michigan Indigent Defense Commission (MIDC) Act.

MCL 780.985(2): The MIDC is an autonomous entity within the department. Except as otherwise provided by law, the MIDC shall exercise its statutory powers, duties, functions, and responsibilities independently of the department. The department shall provide support and coordinated services as requested by the MIDC including providing personnel, budgeting, procurement, and other administrative support to the MIDC sufficient to carry out its duties, powers, and responsibilities.

- Composition of the Forensic Science Statewide Body
 - Consensus of the subcommittee is that the body need to be science heavy and that it should not be a body full of lawyers and judges.
 - Four Forensic Science Practitioners:
 - A forensic scientist, with an advanced degree and at least ten years of experience, who has received substantial education, training, or experience in the subject of laboratory standards or quality assurance regulation and monitoring
 - A forensic scientist, with an advanced degree and at least ten years of experience, who has received substantial education, training, or experience in the subject of molecular biology (DNA analysis/population genetics)
 - A forensic scientist, with an advanced degree and at least ten years of experience, who has received substantial education, training, or experience in the subject of forensic chemistry (drug analysis, toxicology, or trace evidence)
 - A forensic scientist, with an advanced degree and at least ten years of experience, who has received substantial education, training, or experience in the subject of pattern evidence (firearms, toolmarks, latent fingerprints, footwear/tire tracks)

Criteria questions – Advanced degree, years of experience, and Organization of Scientific Area Committees (OSAC) service

- One Forensic Medical Examiner
- Two Academics, one with DNA expertise
- One Retired Judge (Supreme Court appointment)
- One Prosecutor (Prosecuting Attorneys Association of Michigan (PAAM) appointed)
- One Defense Attorney / Public Defender (Criminal Defense Attorneys of Michigan CDAM appointed)

- Member of the Public that would be up to the Governor at the time.
- Staggered four-year terms
- Dr. Jeffrey Jentzen comment/suggestion: Recommend that under the Medical Forensic Examiner, that it be designated as board certified Forensic Pathologist in Michigan. Medical examiners are designated as what the requirement is as a physician, and in many cases their training and expertise does not pertain to forensics or legal matters.
- Mr. Jeff Nye comments/suggestions: Some of the higher-level degrees for some disciplines may be a bit of a high bar, and maybe an option for more experience for disciplines such as firearms/toolmarks. It might be a little bit of a challenge to get somebody with a higher degree in some of those areas.
- Mr. Jonathan Sacks comment: This is an area where the subcommittee does not have consensus and is not sure of the best answer.
- Hon. (ret.) Dr. Donald Shelton comments: Part of the problem is we can end up with traditional examiners in latent prints or ballistics who are not aware, and don't represent the latest scientific evidence about those traditional fields. Because we have always done it that way is not a valid consideration for this commission.
- Dr. Ruth Smith comments: The focus on advanced degrees in forensic science is really on biology and chemistry and she's not sure there's an advance degree option available in the country right now that focuses, for example, on firearms or pattern evidence.
- Judge Paul Denefeld comment: This is why we added the two Academics. So, there are people who are studying and keeping up on exactly what's going on in science.
- Dr. Jeffrey Jentzen Comment: An option is to have a designation as to the highest degree within that discipline.
- Mr. Jeff Nye Comment: Regarding advanced degree, years of experience, and Organization of Scientific Area Committees (OSAC) service as being a standard setting: Another way to do that would be to up the number of years of experience, but also show involvement within the discipline within the scientific field, rather than just being an examiner, to show you're up with the latest technologies, advancements, and thought processes.
- Hon. (ret.) Dr. Donald Shelton comments: Further discussion is needed to determine what an advanced degree is, and what does that mean...a masters, a PhD, or maybe substitute a university degree or baccalaureate degree for advanced since we agree there aren't masters or PhD programs available in some of these disciplines, but there are at least underlying forensic science degrees at the baccalaureate level.
- Mr. Brandon Giroux comments: Some masters programs do exist out there where you can do a concentration in pattern evidence. An example is his master's thesis which was in firearms, and that was something that gave him that distinction on his diploma. Additionally, if you look at the Association of Firearm and Tool Mark Examiners (AFTE), a lot of new members that have been joining over the past ten or fifteen years, do have advanced degrees, specifically in forensic science. Many of which do have that concentration in patterned evidence. Mr. Giroux also commented, looking at people with involvement in professional organizations, people that are on the Board of AFTE, people that are working on the OSAC, should carry significant weight. Maybe even as much or more so than just having an advanced degree. Showing you're involved means that you are up to date to the most recent standards, and you are knowledgeable about the most recent technology.
- Mr. Jonathan Sacks comment: This information gives us good guidance. For some of these it could be either, or for others an absolute requirement. Further discussion to continue in the smaller subcommittee later today on how to frame some of these qualifications.
- Scope
 - This definition, along with the addition of social science, guided our Forensic Science Task Force: "Forensic Science" means the field of study of medical, chemical, toxicological, firearms and toolmark identification, or other expert examinations including DNA, and social science evidence, for the purpose of determining the connection of the evidence to a criminal action. Forensic Science includes a study of the portion of an

autopsy conducted by a medical examiner, or other forensic pathologist, who is a licensed physician.

- Mission (Taken from the (National Institute of Justice (NIJ) Report)
 - The State Forensic Science Commission needs to contribute to a positive culture in crime laboratories while maintaining its role as an independent investigative body.
 - Reasoning: It seems to combine two pieces; This should be a productive and positive body that moves forensic science forward that works with public labs such as the Michigan State Police Lab as a partner and complements each other's work. But at the same time, it is a body that must have some sort of independent investigative function.
 - Open Meetings Act: This would be automatic if under the Executive Branch but would need to be specified if under another branch.
 - Freedom of Information Act: Again, this would be automatic if under the Executive Branch but would need to be specified if under another branch.
 - Certain number of meetings required each year
 - Mandate for the Commission, in addition to policy decisions and investigative decisions, would be to hire a director who sets an organization chart, identifies appropriate staff, and seeks appropriations for the body to exist as part of the State of Michigan government.
 - Dedicated Budget and staff.
 - Ability to retain expert contractors: Lab experience to help with investigation and review; a statistician, and counsel.
 - Commission members shall not receive compensation but shall be reimbursed for the reasonable actual and necessary expenses.
 - Report requirements that include impact on individual people or cases.
 - Annual report requirement
 - Website
 - Transparency Matrix: Include Best Practices for Transparency: Public meetings, comments, posted policies, posted adjudications, findings, and lab documents
 - General Counsel: Either on staff or contracted for counseling Forensic Science Services Providers. (Subcommittee has not reached a consensus on how this would work) If FSSP counsel, then there would need to be a conflict firewall
 - Timeline for the different mandates
 - Dr. Barbara O'Brien question: Was the lack of consensus on counsel because people didn't like it, or people weren't sure what the right solution is? What is the nature of the disagreement.
 - Mr. Jonathan Sacks response: One part was not being sure of the right solution. Everyone thought it made sense for counsel when needed to advise the forensic science body. But would it be the right role to be counsel for public labs and then there were some potential conflict questions. Mr. Sacks expressed he would like to see a role for independent council for public labs within the permanent body, but the conflict questions would need to be resolved.
 - Ms. Lori Montgomery comment: They did talk to Lynn Garcia at the Texas Science Commission and her position is full-time, and there is a lot of work. Ms. Montgomery expressed she's a little against making it a part-time position given how big we want this commission to be. Ms. Garcia also commented there is no way she could provide counsel to independent labs or public because there would be an extreme conflict of interest.
 - Col. Joseph Gasper comment: We would be prohibited from using them because the Attorney General (AG) represents all state agencies. The AG would have to sign off on that because they are essentially our counsel.
 - Mr. Jonathan Sacks comment: From his experience with the Michigan Indigent Defense Commission, they have contracted with the AG's office, who advises them, and they have a good relationship.
 - Ms. Lori Montgomery question: Is there something where we can give the commission counsel but have the MSP and public labs go to the resource section so their counsel wouldn't be coming from the commission?

- Mr. Jonathan Sacks response: The suggestion makes sense as long as the public labs have a source of independent counsel and don't have issues where PAAM ends up being their landing spot.
 - Hon. (ret.) Dr. Donald Shelton question: What about the public labs outside of MSP or Oakland? Are we just making provisions for MSP as opposed to other public labs? Whether a lab is public or private, we have an inherent conflict if we have a regulating agency providing legal advice to those that it regulates.
 - Mr. Jonathan Sacks response: Ms. Montgomery's model makes a lot of sense. The counsel for the commission-on-commission issues and commission investigations, and the other piece to figure out a mechanism for independent counsel for public labs. That's an easier question for the State Police Lab, which is already part of State Government. The harder question is for other public labs, there should be independent counsel for the public labs.
 - Col. Joseph Gasper Comment: From his perspective, and the agency's perspective, the support he gives to any of our recommendations will be across the board and apply to all, not to just MSP.
 - Mr. Jonathan Sacks follow-up comment to Col. Gasper's comment: That makes sense. There shouldn't be two classes of public lab. The distinction between public and private makes sense, but the public, just one.
- Mandate
 - Accreditation requirement for Forensic Science Labs / Forensic Science Service Providers (FSSP) based on ISO-17025 or 17020 with a timeframe to meet the accreditation requirement.
 - Mr. Jeff Nye comments: The two-year timeframe to get accredited is pretty tight. Do we want to make recommendations around providing some sort of support to get accredited? It could be financial in nature, or it could be just support to get through that process. For many laboratories to become accredited there's not only a financial challenge strain, but it's going to be enough of a challenge that many of them may fold up and not want to pursue it. That's not a healthy situation for the forensic community as a whole within the state.
 - Ms. Lori Montgomery comment: There is a catch all statement which states you can get a permanent waiver, and it was brought in for smaller companies that may not be able to fiscally get accredited. Is there a way to say within the two years after the effective date of the statute you at least have to begin the process?
 - Mr. Jeff Nye follow-up: There are enough laboratories around the country that are not accredited. They have an intention, and they have the motivation, but it's a very large, steep learning curve, and it's a bit of challenge for us to put a mandate out there to be accredited without providing some sort of support to get through the process, and there's not a lot of capacity in the country to help with that.
 - Mr. Jonathan Sacks comment: We need to settle on a timeframe for a final recommendation and he does like the waiver provision.
 - Mr. Christopher Bommarito comments: Paying for accreditation is sort of the cost of doing business. We are trying to raise the bar here, so I think some of these labs that are unaccredited are the ones that are probably causing most of the problems. Mr. Bommarito commented he is not a big fan of a waiver and perhaps the timeline might need to be extended to three years but doesn't feel two years is too high of a bar.
 - Mr. Jeff Nye comments: Agrees with paying for accreditation. The type of support meaning expertise and sort of guiding people through the process, helping establish those policies and procedures, and maybe doing a gap assessment. Mr. Nye also commented he's not sure he would support the waiver

either unless it was a really extreme situation. It is not really what we're trying to accomplish. We're trying to accomplish raising the bar.

- Dr. Jeffrey Jentzen comments: In the NAME (National Association of Medical Examiner Accreditation), we have a provisional accreditation where if you don't meet the requirements, you're given a year under supervision. So, there may be a way to get around it with something provisional.
- Dr. Jeffrey Jentzen comments: Under forensic laboratory we'd like to make sure we're including medical examiners' offices within the state. Maybe use some kind of language to identify them as a forensic laboratory.
 - Mr. Jonathan Sacks follow-up to Dr. Jentzen: This is a good suggestion. There needs to be a definition section.
- Mr. Jonathan Sacks comments: Expert and technical support make sense. We have to settle on a timeline and the waiver. From a defense perspective, the last thing we want is a situation where some defense experts may have a tougher time, because they don't have the same institutionalized labs. That is a place where the waiver provision might be important.
- Hon. (ret.) Dr. Donald Shelton comment: One of the reasons we focused on accreditation is it's one of the few benchmarks of quality we can look to, and if we lose some unaccredited laboratories in this process, that's not a bad idea. Dr. Shelton commented he too is against the waiver.
- Ms. Lori Montgomery question: Can we ask the forensic practitioners in this meeting, are there any fields of study that you can think of where there isn't accreditation?
 - Mr. Jeff Nye comments: Unsure about behavioral sciences, but under 17025 and 17020 they do cover most everything else, including medical examiners. For medical examiners we do have NAME, and we need to be careful about whether we're trying to put medical examiners under 17025 or 17020, or do we want to include NAME.
 - Dr. Jeffrey Jentzen comments: We would want to make sure it's under NAME accreditation and we'd want to make it mandatory rather than voluntary.
 - Hon. (ret.) Dr. Donald Shelton comment: Social science experts generally do not come in the laboratory, so I don't think accreditation to them, would be more like registration.
- Ms. Lori Montgomery comments: Forensic science is a broader category than just what we each have. But the definition covers it. If there's no lab, there's nothing to do with it.
 - Mr. Jonathan Sacks comments: The experience of the subcommittee is that there is near unanimous agreement as to the accreditation and registration piece and the waiver provision is something that does not have consensus yet.
- Registration requirement for an expert witness to register with the forensic science body, and it would include keeping data of what courtrooms they've testified in, what cases they've been on, and make that information publicly available.
 - Dr. Jeffrey Jentzen comments: Envisions there are two kinds of experts. The ones that are routinely functioning within the state, and the outside experts that come in that are basically hired by attorneys for special cases. So, I think there should be some designation that maybe bringing in an expert for a one-time case, that possibly the attorney who is bringing that expert in, is required to provide, or make sure that registration is completed rather than the expert.
 - Dr. Jeffrey Jentzen comments: In my medical license with the university, I'm up for my two-year accreditation and I'm being stalked by a staff member to get my material in. So, I want to encourage us to have enough staff to be able to go through and look at the individual registrations, and those that need to be updated, possibly on a particular timeframe, every three years or so. Questions would need to be answered; are there any legal complaints against the individual in the past years; are there any challenges, are they being brought up for any disciplinary actions, etc.? These things would need to be updated on a regular basis.

- Mr. Jonathan Sacks follow-up to Dr. Jentzen: All good points. There needs to be a way to really streamline registration in particular cases for somebody new, somebody not familiar with Michigan, or a developing discipline.
 - Dr. Jeffrey Jentzen comments: Maybe add some language about the expert or their designee has to apply for the registration.
 - Mr. Jeff Nye comment: Some states require you to register or obtain a license before you actually conduct the work, and this seems to be more focused on providing a testimony.
- Complaints
 - Who discloses: Set up a system of reporting negligence, misconduct, or nonconformance by a Forensic Service Provider that affects the integrity of the forensic science or forensic medicine results.
 - When to disclose: When and what to disclose would be significant events, nonconformity with policies, procedures, or accreditation, standards, or errors related to accreditation requirements affecting the integrity of results.
 - The results / work product must be impacted
- Types of Reports / Complaints: This would not be a forum for personnel complaints unless they are complaints that affects a work product.
 - Formal Lab Reports and Responses: This would include public and private labs and the labs would report negligence, misconduct, and nonconformance that has affected the integrity of the forensic science or forensic medicine results. A good example would be the Michigan State Police Lab reporting of the CBD. This would be a type of mandatory reporting and that would be something that would trigger a response.
 - Employee Whistleblower: Complaints raised by employees for a forensic laboratory or any other individual that has discovered, has suspicion, or has reason to believe an act of professional negligence, misconduct, or nonconformance affected the integrity of a forensic science or forensic medicine result.
 - Media: Complaints from the media.
 - Criminal Legal System Stakeholders, including people prosecuted: Complaints from our criminal legal system stakeholders, including people who were prosecuted.
- Types of Investigations: Not all investigations would be the same.
 - Educational Investigations: Maybe something like a new discipline like facial recognition or new technology. This would be an investigation not related to a complaint.
 - Complaints and reporting resulting in investigations: Complaints and reporting leading to investigations.
 - Invited Investigations by Laboratory: This would be where a laboratory requests an investigation to look at an issue.
 - Retroactive case reviews: Examples would be the DNA, hair, and bitemark issues.
- Notification: A permanent body would notify any public or private lab, or independent expert if there was a complaint.
- Complaints and reporting: The framework would be to measure two things; the severity of the issue, and the risk of recurrence. If there is a severe problem that just happened one time and it would never happen again, that's not necessarily something that needs an independent investigation. If not a high issue, the complaint would go back to the lab for a response. If the response is not acceptable, then an investigation may be necessary. A seven out of eleven vote of the permanent Commission body would be needed for an investigation to move forward. If there are separate investigations, for instance, an internal investigation, or one by the accreditation body, there would need to be process in place to figure out how to not duplicate the investigation. Reporting of Forensic Science Laboratory internal audits if they meet the reporting requirements. This would be for forensic science method audits, not personnel or financial.
 - Chief Justice Bridget McCormack question: When the complaint comes in, is the staff deciding or is everything decided by committee? Or is there some role for staff in the initial determination?

- Mr. Jonathan Sacks response: Staff would give the recommendation, but in order to not violate Open Meetings Act, regardless of what a task force recommends, the actual Commission would be the one to make that decision, saying this investigation is needed and we are going to adopt this staff recommendation. The front end is to adopt if there is high severity, high risk of recurrence, and then a vote of seven would trigger the investigation. For anything else that is not a vote of seven, or not a recommendation by staff that's been adopted by the full commission, it gets sent back to the lab for reporting.
- Dr. Ruth Smith question: Can you talk a little bit more about duplication of investigations? Because those instances that are high severity and high risk are the ones that are more likely to be investigated by an accreditation body.
 - Mr. Jonathan Sacks response: This is an issue we flagged as a question the subcommittee couldn't answer. We don't want to discourage internal investigations like the very successful one that happened recently with the Michigan State Police Crime Lab. It falls under the large category of things where staff would come up with a recommendation, do some fact finding, and then go to the Commission and say this is our policy recommendation for how this would work.
- Process issues:
 - Confidentiality: The permanent body, through staff recommendation would need to figure this out. We, as a subcommittee, absolutely agree that until a certain threshold is reached, a particular lab analyst, or a particular expert should not be named, and their names should not be public as part of the initial work. The NIJ report recommends general counsel to help work through confidentiality issues. Other areas are the Open Meetings Act and *Brady* disclosure where at some point or other, there is a threshold where the criminal legal system actors need to know about something that might impact cases that are going on. In Texas, the person who makes the complaint is posted, but not the actual target of the complaints. We felt that would chill complaints and wouldn't be the best way to do it.
 - Timeline: For processing and responding to complaints, the timeline would be something else for the permanent body to work out and the staff to recommend. Regarding investigations, an investigation shouldn't happen if it is going to impact a particular case that's going on until conclusion of trial court proceedings and exhaustion of appeal by right.
 - Investigation Powers: The FSSB would receive a complaint and determine if it's a high threshold, has a high risk of recurrence, or severity, and request documentation. If there is no compliance, the FSSB has subpoena power for investigations. The registration and accreditation requirements mandated by the FSSB could include cooperation with investigation requests.
 - Dr. Jeffrey Jentzen question: Is the results of an accreditation process available to the public through FOIA?
 - Mr. Kent Gardner response: Accreditation by ANAB published those labs that are accredited and scope of accreditation.
 - Dr. Jeffrey Jentzen follow up question: If there is a defect within the laboratory, is there away for the public to find out even though it doesn't affect the accreditation?
 - Mr. Jeff Nye response: We, as a laboratory, will provide information to our Records Resource Section, they determine what's responsive to any given FOIA request. Not being an expert, my assumption would be that would be readily available, but I don't know.
 - Mr. Kent Gardner response: We have to submit a report to our accreditation body, then that's going to be presented to the Commission, so the Commission will have it.

- Dr. Jeffrey Jentzen comments: I believe the NAME inspection does not release the actual accreditation materials, but they'll just say whether they are either accredited or not. (Dr. Jentzen will check on this.)
- Mr. Christopher Bommarito comments: I don't believe you can FOIA the accreditation bodies directly because they are not public bodies, but private.
- Mr. Jeff Nye response: We have received some FOIAs for our accreditation audit report from ANAB and that has been a responsive FOIA request.
- Results:
 - Results issues do not supplant the judicial appellate process. Obviously, it could be very powerful evidence for various appeals depending on the results of an investigation, but a permanent forensic science body would not have the power to overturn a conviction. Their investigation should result in a public report, recommendations, reprimand, corrective actions, and full notification.
 - Stakeholder should be notified, especially as to discoverable materials.
 - Subjects of an investigation should be notified.
 - The Commission may provide a recommendation for a larger scale institutional response if it's required. If it's something that goes beyond a handful of cases.
 - Recommendation for legislative changes to include future enforcement powers as needed. For instance, the Texas Forensic Science Commission has the power to put a lab out of business. Nobody on the subcommittee felt like there was a readiness for that sort of mandate yet but felt there should be something there to include future enforcement power.
 - Language similar to TX legislation: "Not a comment upon the 'guilt or innocence of any party in an underlying civil or criminal trial involving conduct investigated by the Commission.'"
 - Dr. Barbara O'Brien question: Could you explain a little more about "it doesn't apply to an ongoing or a criminal investigation"? Is that to contemplate a situation like a Massachusetts scandal where there was actually criminal behavior in the laboratory and you're talking about an investigation or criminal proceeding against a forensic science actor? Or are you talking about just a regular criminal matter in which these issues come up?
 - Mr. Jonathan Sacks response: The former is where that is generally featured. An investigation should not happen until a particular case over. But if there's a question about a pattern matching technique that might feature in 100 open criminal investigations, that wouldn't be a reason not to look at that complaint.
 - Ms. Lori Montgomery comments: For the Attorney General, for example, we have a public integrity unit, and I would just be concerned that if we're doing an active investigation into, for example, a MSP analyst, the FSSB would hinder the AG's investigation.
 - Mr. Jonathan Sacks response: This is something we need to think about as well.
 - Ms. Lori Montgomery comment: She doesn't feel it should stop the investigation, but maybe pause it for the time being due to an active investigation.
 - Dr. Jeffrey Jentzen comments: Maybe it's just the wording, but thought it was for an active ongoing case that's being actively adjudicated, that you have to wait until it has been completed and the appellate process is over.
 - Mr. Jonathan Sacks response: We need to clarify and sort out exactly what this piece means.
- Notification
 - The FSSB shall develop and implement a notification procedure for investigations.
 - The notification to stakeholders being: Prosecuting attorneys Association of Michigan; the State Appellate Defender Office; the Michigan Indigent Defense Commission; the local prosecutors and public defenders; the Michigan Judges

Association; the Michigan District Judges Association; the Department of Attorney General; and prosecution Conviction Integrity Units.

- Ms. Lori Montgomery question: Should we add notification to the accreditation body?
- Mr. Jeff Nye comment: There is language about what the threshold is and a requirement already. He would hope that anything that got the Commission's state-wide body what have already been to the accreditation body.
- Question: Shouldn't they wait until the investigation has been completed and a determination has been made that there was a violation before the accrediting body is notified?
- Mr. Jeff Nye response: If we receive a complaint internally, we would do our own investigation, and if we felt if it met a threshold, it would go to the accrediting body. They will make a determination, follow up with questions, and determine if they want to do their own independent investigation. That is already in place. A third tier would be the statewide body. If there were still additional questions about what was remedied, and what the accrediting body remedied, then the statewide body could have a bite of that same apple.
- Ms. Lori Montgomery comment: Thought the whole point of notifying these stakeholders was after an investigation was conducted and after they found some sort of misconduct or issue in science or something like that.
- Mr. Jonathan Sacks response: That's right. There's the notification piece which are the results of an investigation and there's a separate transparency piece earlier that could be annual reports, or non-conformances, or just other pieces about what's going on in forensic science in Michigan at public labs. But the full-scale notification apparatus, that's the results of an investigation.
 - Notification to a convicted person in the criminal case if it's relevant and that person's attorney.
 - The notification would include a description of the technical issue and a written summary of the facts; A protocol for the FSSB to provide potentially affected defendants with the information regarding relevant resources including, but not limited to, public defenders.; Information that any remedy still must follow standard appellate and post-conviction remedies, rules, and procedures.
 - The notification procedures apply to both independent FSSB investigation and laboratory disclosures.
 - The FSSB shall ensure notification procedures, respect due process concerns, and respect laboratory remediation and corrective processes.
- Education and Information
 - Provide a clearinghouse to disseminate information of developments in forensic science. Not reinventing the wheel but provide resources with websites and ways to get the information.
 - Provide on central place of information for available education and training taking place in Michigan for prosecutors, defense attorneys, and lab analysts, along with national trainings and online trainings.
 - Provide the central database of forensic science experts. This links very nicely with the registration requirement.
 - Collect and analyze information and give recommendations on the impact of current laws, rules, policies, and practices on forensic crime laboratories, and the practices of forensic science for needed changes.
 - Judge Paul Denenfeld comments: This would be a way for defense attorneys to try and utilize and educate themselves. It would be a good start for them.
- Recommendations for Appropriations, Resources, Best Practices, and authority to design a system of grants for implementation
 - General recommendations as the independent Forensic Science Services Body would be a good way for there to be a central body to work on recommendations to distribute labor for resources, to reduce backlogs, and respond to developing issues.

- To assess system capabilities and needs.
- Make recommendations for adequate resources and facilities for public labs and forensic service providers.
- Recommend specific best practices by promoting best practices that could be tied into the resource collection, grant requests from Federal resources, etc.
- Grant making power. Where it has worked is the Michigan Indigent Defense Commission where minimum standards are set, and then the Commission funds those requirements. Some areas would be accreditations, an independent person

who would have control over discovery to avoid bias. Judge Shelton brought up in discussion that there could be a conflict of interest if a body that is doing investigations on a lab is also giving out grants to those labs. This is complicated and it is something that would need to be addressed by general counsel or a staff member of the commission.

- Dr. Jeffrey Jentzen question: What's the downside for an independent grant authority?
 - Hon. (ret.) Dr. Donald Shelton response: We are talking about the government giving grants to private labs and later investigating a lab for failure to get accreditation. Their response is, well I applied for a grant, and you didn't give it to me and so I don't have to comply with accreditation. I think the MIDC you discussed is a little different in the sense that the government is providing grants or coverage to other government agencies, whether to a county to provide an educational program. A grant by an agency that's also regulating the grantees is an inherent conflict.
 - Mr. Jonathan Sacks comments: These are hard questions for us to work out. It's really something that a lawyer and independent counsel would need to take time to look at. This is just authorization to set it up.
 - Hon. (ret.) Dr. Donald Shelton comments: This is going to cost a lot of money, not the grant, but the whole commission idea, and I think we're going to struggle in the Legislature to get that kind of appropriations. The grant request is a part of that large apple we are asking them to bite into.
 - Judge Paul Denenfeld comments: There were some people concerned, on a philosophical basis, about a private lab being able to seek public funded grants. His own view is that if the purpose of the Commission is to improve forensic science throughout Michigan, then private labs should also have the opportunity to apply for grants to actually come up to snuff. Some people felt strongly that taxpayer money shouldn't be going to fund grants to private labs.
 - Mr. Jeff Nye comment: There was a mechanism related to if it was for the public good. It's just a matter of whether that's something we want to happen.
- Hon. (ret.) Dr. Donald Shelton comments: He congratulated the chairs in the excellent choice of Mr. Jonathan Sacks as the subcommittee chair. The committee met and all gave their comments, but the real leader was Mr. Sacks, and he did a fantastic amount of work on this and on behalf of the committee, and on behalf of the task force.
 - Mr. Jonathan Sacks comments: It was very much a consensus document and the product of a lot of work by a lot of people, and thanks to Ms. Amy Lindholm, who did a lot of behind the scenes work and wrote a lengthy memo as to the structure section and many of the pieces.
- Subcommittee 2: Forensic Science Practice, Speaker: Mr. Jeff Nye
 - Committee members are: Mr. Jeff Nye, Dr. Ruth Smith, Sen. Stephanie Chang, Dr. Barbara O'Brien, Rep. Laurie Pohutsky, Col. Joseph Gasper, and Dr. Jeffrey Jentzen.
 - There were seven main objectives of the subcommittee
 - Conduct a statewide survey of forensic science service providers

- The survey was completed earlier this summer. The results were discussed as a Task Force. The survey went out to a pretty large number of potential service providers, including public, private, medical examiners, and others, and our response rate was relatively low with thirty-one total responses. Sixteen coming from local and county law enforcement agencies that might have a forensic science aspect to their services. Three from statewide law enforcement agencies, being MSP, and seven from medical centers and psychiatric support locations, and five from private forensic laboratories.
- There is a variation of level of service provided as far as the scope of services and types of forensic science provided as well as a pretty large variation in the levels of accreditation, or what would refer to as the maturity of a quality management system compared to fully accredited laboratories.
- Conduct a survey of practitioner service providers
 - This survey will be sent out soon. It will go to a fairly limited number of people. We anticipate we'll get the results back in a couple of weeks.
- Independence within law enforcement agencies
 - Discussion was primarily trying to mitigate or reduce the potential for bias that may unduly influence the type of testing or the extent of testing that we would do.
 - Talked about potentially having a case manager within certain systems to separate those that are a frontline scientific people that are doing the analysis from the law enforcement for those that are submitting evidence to make sure they only have a certain amount of information to actually conduct testing but not that biasing information.
 - Talked about identifying ourselves when testifying as being from law enforcement rather than working for a larger organization.
 - Discussed a lot about provided training and sort of educational aspects of bias; how to mitigate or remove some of those negative impacts that bias might have.
 - Discussed hiring practices and whether it is appropriate or correct to have people who have a law enforcement background conducting forensic examinations and some of the biases they may or may not bring to the job.
 - Talked about the history of forensic science and why they are primarily associated with law enforcement agencies. So potential recommendations in that area, as far as going forward and having a case manager or some sort of middle area that would remove the direct contact with law enforcement by the scientist, is to help create some of that independence from the investigation to the analysis.
- Access to forensic science laboratories, whether public or private, or academic in nature, as well as access for just requesting information, and getting documentation.
 - Requesting for additional analysis.
 - Specifically for MSP and likely many other that are in the public sector, our requests for analysis come directly from and solely law enforcement conducting investigations.
 - There was some interest for defense to have access to laboratories to request additional testing, or to get additional items tested. There are processes in place for those methods. First being the defense attorney can have a conversation with the prosecutor and they can come to a resolution and what that request would be and the prosecutor, as the chief law enforcement agency in the county, would submit the request to the laboratory. If that conversation between the defense and the prosecution does not come to the same consensus about what needs to be tested, there's always the opportunity for a judge to issue a court order if they can impress upon a judge that it would be vital to their defense. Court orders are commonly submitted to the laboratory for allowing additional testing. So, there's already processes in place.
 - Recommendation is to make sure everybody is aware of those processes through training or some sort of statute later that sort of memorializes what the process would be so there can be a better understanding of what that method would be.
 - In contact with experts by stakeholders we heard specifically from some defense community members that they have a difficult time contacting scientists within certain organizations and

having meaningful conversations about the analysis that's already been done and what significance or weight can be put to some of that evidence that has been analyzed.

- Recommendation specifically for our organization is to create some sort of model policies to help improve access to defense by our experts, and if those model policies can be developed with those polices, that we share them with other forensic science service providers within the state to incorporate with them in their organizations as well.
- Recommendation related to access to experts and documentation specifically related to the Innocence Clinics that are not criminal justice partners to the same level that the defense attorney might be. There are some challenges regarding getting unredacted information so they can do the important work that they do. We would stay with the same kind of model as far as creating a model memorandum of understanding on how those non-criminal justice partners would gain access to that information without having to go

through redactions. They have limited access through discovery because those cases have already been adjudicated. So, the only real mechanism they have is through FOIA.

- Recommendation for a case manager for some organizations seems very doable, and there's good possibilities for some organizations that are large like the Forensic Science Division where it would be very cumbersome and very expensive just because of the amount of evidence we process, as well as the number of staff members we have, and the geography we cover with our state. The recommendation is to evaluate and implement where possible, having a case manager type of process in place to help avoid access to some of the biasing information.
- Practices for quality control and compartmentalization
 - Discussed the MSP FSD proficiency testing program and the different quality assurance processes in place. We discussed Houston's blind proficiency testing program and the difficulties and some of the challenges and limitations, and some of the benefits.
 - Recommendation to institute a blind proficiency testing program within the state with the intent to evaluate each discipline and methods on an annual basis. The idea behind that is we have hundreds and hundreds of people practicing forensic science in the state, and rather than testing the individual, which becomes a very, very significant effort, we at least try on an annual basis to perform a proficiency test that is blind in nature to test the method in a practice that's being used on an annual basis.
 - Recommendation for inter laboratory evaluations by re-analyzing evidence after the fact, or sharing evidence with another laboratory, to make sure we're doing an inter-laboratory comparison.
 - Sequential unmasking is the process of releasing case details only as they are needed in a manner that would limit the potential for bias with the idea of giving the examiner or scientist the evidence they need to evaluate with limited information, but also giving them the standards they're preparing against.
 - Recommendation would be for further studies and research to be conducted to understand what impacts it would have on the capacity or the output of the laboratories.
 - Hon. (ret.) Dr. Donald Shelton question: Is this an effort to eliminate or reduce domain irrelevant information, or are you talking about something else?
 - Mr. Jeff Nye response: An example would be a latent print case where you get a latent print that was lifted from a crime scene. The latent print examiner might get the latent print from the crime scene, reference prints for individuals of interest, and maybe the homeowner. Having the unknown and the known at the same time has the potential for biasing interpretation of the unknown. The idea would be to at least create policies where you're evaluating the unknown first to see if it's even of sufficient quality to make an identification from. This would be a monumental shift that will cause significant inefficiencies in how we conduct our work as a whole as a community. Our recommendation would be that we continue to evaluate what impacts that might have because it's the sort of thing where what are the perceived benefits versus the cost, not monetary costs, but efficiency output. Are we going to

- see improvements in quality or are we really going to see the same level of quality, but it's going to cost us a lot more time and efficiency.
- Hon. (ret.) Dr. Donald Shelton question: Are there other recommendations about the type of information that the analysts should get from law enforcement?
 - Mr. Jeff Nye response: Yes, that's the idea behind having a case manager. It would give the scientists or the examiner sufficient information to conduct the exam, but not all the other information.
- Accreditation requirements for all service providers
 - Recommend everyone become accredited to ISO 17025 and/or 17020 from an ILAC member accrediting body.
 - Recommend a two-year requirement to become accredited with some level of support, whether it's monetary support, assistance, experience, knowledge, or expertise to assist these laboratories or these entities to become accredited, because it will be a pretty big challenge for some laboratories to achieve accreditation.
- Disclosure of Negligence/Misconduct
 - Recommendation that there be a model policy written for what threshold there is for reporting to some statewide body. We have some language related to reporting to our accrediting body already. There is a lot of gray areas about whether something is reportable or not. There was a lot of discussion about it and we will continue to work on a policy for what disclosures would look like and what additional investigations might need to be conducted after the fact that we've already done our own investigation and our accrediting body has done an investigation. Is there anything more for the statewide body to do other than just report and evaluate the significance of the extent of our own investigation.
 - Question: Have you guys talked about who should be responsible for creating this model policy? Would it part of the Forensic Science Commission (FSC), or something else?
 - Mr. Jeff Nye response: It could be done any number of ways. Things to consider are *Brady/Giglio* and disclosures. There was a lot of discussion around the fact that many staff members around the state, and certainly within the Forensic Science Division, are unionized employees, which is quite different than the Texas Commission. From a human resources standpoint, there are things to be careful about. It is very complicated, much like having attorney representation. There are a lot of conflicts and a lot of due process rights and things of that nature. Within our division we have probably five or six different unions and they all have their own processes to go through. That's not even counting Kent's organization (Oakland County) or other law enforcement agencies. And that's where that sort of disclosure of misconduct becomes a challenge. Reporting after an investigation is done is very different than how the Texas model is. In Texas, as soon as there's a complaint, there's a public website that has all that information on there. I don't think that's where we are at right now, it's quite a bit different than that. By the time it ever gets to something where there is negligence or misconduct, if it rises to that level, there's already been a lot of personnel actions that have taken place.
- Training requirements
 - Discussed was training within the forensic science field, and minimum externally provided training. We (FSD) try to provide every single one of our examiners some external training every year. Oakland County does something very similar where there is a lot of external training provided.
 - Discussed an eight-hour minimum, basically one day of training per year, specific to their field of expertise specifically within the technical method they work within. Along with their eight hours of training, there would be annual training related to ethics and bias.
 - Recommendation: An initial training program that covers topics such as bias, courtroom testimony, ethics, technical discipline specifics that cover the range of testing and conclusions the expert will be expected to encounter.
 - Recommendation: Continuing education program that requires a minimum of eight hours annually of technically relevant material, externally provided, based on the scope of testing the individual conducts.

- Recommend Ethics and bias training be provided annually to all forensic science service providers.
- Stakeholders training will be covered in Judge Shelton's presentation.
- Resources needed
 - The committee discussed a number of items related to resources needed. The survey did disclose the need within the community as far as personnel, equipment, and a variety of different things.
 - Recommendation: An annual needs assessment for the forensic science community within Michigan that would help direct where resources would need to go or how many resources are needed. Then we can monitor over a period of time whether those resource needs are being addressed, or that we're closing that gap within the community.
 - Recommendation: Having a funding stream on an annual basis related to those needs so if people have equipment needs, or training needs, there would be grants available. From our experience, a lot of the forensic equipment that's available now is very, very expensive and is beyond many laboratories in the state. On average a DNA piece of equipment is probably north of \$200,000 and the new equipment related to our THC issue that we already purchased runs about \$400,000 a piece and that's beyond a lot of laboratories, as far as what resources they have available to them.
 - We have a really significant need for training. When we hire someone, there is a large gap from the time we hire them to the time they actually become competent. That is a two-to-three-year gap. It would be really nice if we had a university or community college that could take some of those responsibilities to train and train to our standards, whatever our community standards would be. Then we'd get somebody that's essentially already prepared to do the work and maybe just need a little bit of understand of the culture and demands of what our specific policies are. This would shorten the process quite a bit. This would help reduce backlogs.
 - Dr. Jeffrey Jentzen comment: Since we last met, there's been a requirement for all medical examiners to do bias training for medical licenses.
 - Hon. (ret.) Dr. Donald Shelton question: How does your benefits package compare to Bode Technology and other national forensic organizations? Because what I've seen, once you train them for two years, they go to work for Bode for a lot more money.
 - Mr. Jeff Nye response: Feels it a little bit the other way around. We have two, three, four people that worked for Bode and we were just successful in hiring for our controlled substances unit from GPI Anatomicals. We've been pretty good at getting people that come in with experience. The challenge is that we still have a responsibility to train them for our policies, our procedures, and methods. It takes a long time before the point they can be deemed an expert and testify.
 - Mr. Christopher Bommarito comments: As a subcommittee we have discussed independence from law enforcement and the elimination of enlisted personnel from the Forensic Science Division. I don't know if we can really implement best practices in this field if we have police officers doing analysis in the lab, it's just not a good situation. I think we discussed eliminating through attrition because we wouldn't want to lose experienced personnel. But we don't want to keep the clock starting over again as the enlisted people are hired.
 - Mr. Christopher Bommarito comment: Regarding blind proficiency testing, I think as a proficiency test provider it's an admirable initiative, but I don't think it's really practical. I think a lot of disciplines, those types of materials would be prohibitively difficult to produce. Logistically it's easier when Oakland County, or you guys (FSD), have the same agencies submitting evidence, so things can be submitted without hopefully being detected. But for my lab, where I'm getting evidence from all over the country, and none of it's regularly submitted, there's no way something like that can be implemented.
 - Mr. Jeff Nye response: For blind proficiency testing, that's why inter laboratory comparisons or the re-analysis by a second employee would be part of the auditing. For instance, in our alcohol section we commonly, every single year, will randomly pull a certain number of samples that we analyze by our technical leader so that our scientists don't know whether a sample is going to be pulled. So that essentially

- becomes a blind proficiency test. As you said it works for some disciplines, and it's much more challenging for others. Random re-analysis works well in blood alcohol, but in DNA you might not have evidence to go back to, or you don't want to consume additional evidence because you want to make sure it's available for second testing by defense.
- Mr. Christopher Bommarito follow up response: Read it as all service providers institute a blind proficiency testing program and then the next recommendation is that forensic science service providers consider interlaboratory evaluations or re-analysis audits. So doing blind re-analysis is another way of doing blind proficiency testing, as you said blind proficiency test for the original analyst, and then it's a declared test for whoever follows up doing the re-analysis. So that is a pretty good model, and I wouldn't separate that from blind proficiency testing and whatever recommendations that you do.
 - Mr. Jeff Nye comment: Correct, agreed.
 - Mr. Christopher Bommarito question: What about the thorny issue of enlisted people in the lab?
 - Mr. Jeff Nye response: To be honest, I have not had the same experiences that you've had, or you recall. I think, in certain disciplines there are great opportunities. The enlisted members bring a wealth of experience in a different way. They also provide a great service assisting our civilian members with things like communication and a whole host of other things. I don't support that but respect the fact that you have a very different opinion.
 - Mr. Christopher Bommarito comment: It's not just my opinion. It's sort of a national thing. It's one of the recommendations in the NSA (National Academy of Sciences) Report.
 - Mr. Jonathan Sacks comments: Can we recommend and pursue some sort of independent governance within the Michigan State Police on large policy issues? I know MCOLES is within the State Police as a separate governing agency, and of course I've talked about my own experience with an independent agency within the judicial branch. I'm hoping that for one of the independence pieces, we take a look at the Forensic Science Division remaining a division of the State Police, but for major policy questions, there is an independent sort of agency or independent governance there that exists. Another piece of independence is back to the counsel piece. Other public labs would have their own way to do it. But it would be good to make sure the Forensic Science Division would have access to some sort of Independent Counsel. Maybe set up a contract with the Attorney General's licensing division.
 - Mr. Jonathan Sacks question: How can we, as part of discovery, get the additional pages of paperwork that goes with a four-page report? What's the discovery request people need to know about?
 - Mr. Jeff Nye and Hon. (ret.) Dr. Donald Shelton response: That's being addressed by another committee.
- Continuing through Lunch
 - Subcommittee 3: Criminal Legal System, Speaker: Hon. (ret.) Dr. Donald Shelton
 - The subcommittee's approach is how to address the basic lack of awareness in the philosophical context of forensic science issues by participants in the court side of our judicial system, by the lawyers, judges, and perhaps the jury.
 - Education:
 - Education Recommendations:
 - The Supreme Court adopt mandatory continuing education for attorneys in Michigan. As part of that program, attorneys who appear in trial or appellate criminal proceedings, should be required to include at least one annual course in forensic science evidence prior to their appearance. Michigan is one of only four states in the country that does not have mandatory continuing education for attorneys.

- The MIDC (Michigan Indigent Defense Commission) have a mandatory forensic science requirement for a certain number of hours per year, and that LARA fund that new training as much as possible.
- For appellate attorneys there is a similar recommendation that a similar requirement be adopted by SADO (State Appellate Defender Office)
- For judges, the lack of awareness and lack of knowledge about forensic science issues is about the same for judges as it is for lawyers. The Michigan Supreme Court has recently adopted a mandatory judicial education system which will go into effect in January 2024. It is the subcommittee's recommendation that the Judicial Education Board created under that structure include an annual requirement for forensic science evidence education for all judges, civil as well as criminal. It is also recommended that at least one member of that board be a person who is experienced or knowledgeable in forensic science evidence.
- Recommendations for points one and four may be modified upon addressing some questions and concerns raised by the newly appointed Director of the Michigan Judicial Institute.
- Recommendations for students: There are universities who are offering degrees in forensic science education and our recommendation is that laboratories should hire people with degrees in forensic science education and those universities should be accredited by the committee FEPAC (Forensic Science Education Programs Accreditation Commission) of the American Academy of Forensic Sciences, which has an accreditation process in place.
- Expert Testimony
 - The issue arises because some judges go to lengths to avoid holding a *Daubert* hearing. Even those who say they are going to hold a *Daubert* hearing sometimes put the burden on the opponent rather than the proponent of forensic science.
 - Recommendation is that the Michigan Supreme Court amend our current MRE 702 (Michigan Rule of Evidence) to correspond to the recent recommendation of the United States Judicial Council to the Supreme Court of the United States Federal Rule of Evidence (FRE) 702. The amendment basically clarifies that the judge is required to conduct a hearing because it says a witness may testify as an expert if it's been demonstrated to the court, hold a *Daubert* hearing. If the proponent demonstrated that it's more likely than not, basically a preponderance standard, that the *Daubert* requirements have been complied with. There are three things. One is to reinforce the judge's duty to hold a *Daubert* hearing as the gatekeeper; secondly, to make it clear that the burden is on the person offering the evidence; and thirdly, that the standard for admissibility is more likely than not.
- Evidence and Discovery
 - The issue is what type of discovery ought to take place regarding DNA testing and DNA evidence.
 - Recommendation is to add provision Michigan Court Rule MCR 6.203, which directly addresses the discovery of DNA testing results and information. It sets forth a list of items of discovery that the prosecution is required to produce regarding DNA evidence to include a laboratory report; the laboratory case file, which includes bench notes, communications, photos, etc.; chain of custody documents; and any reports of contamination or other problems that affected the testing procedures or relevant to the evaluation.
 - Recommend disclosure should happen prior to entry of a plea so the defendant and the defense counsel would know the DNA evidence possibly against him before a plea could be made. There were some concerns expressed by prosecutor Matthew Wiese (absent from today's meeting) that mandatory disclosure prior to entry would significantly delay moving cases along if the government had to go to the lab and get all this information and disclose it before the defendant would be allowed to enter a plea. Mr. Wiese's idea was that this mandatory disclosure only take place on requests by the defense. A compromise to accommodate Mr. Wiese's concerns is that this mandatory disclosure could be waived like any other right the defendant has.
 - Dr. Jeffrey Jentzen question: Is there any differentiation between notes and the report?
 - Hon. (ret.) Dr. Donald Shelton response: This was addressed to require the disclosure of the laboratory case file, including bench notes and worksheets.
 - Recommendation: Thirty days prior to trial, upon request of defense counsel, the prosecution shall produce the CV (Curriculum Vita) for whoever is going to testify, and the reports of proficiency examinations of the person who is going to testify.

- Recommend a list be provided by the police, of any collected items, that there's reason to believe may have contained DNA evidence which have been destroyed, lost, or otherwise become unavailable.
- Regarding defense testing and retesting, the recommendation is that the court should permit inspection and testing of DNA evidence upon an affidavit. The affidavit part could be ex-parte to protect the work product of defense counsel.
- Recommendation: If the defense intends to call an expert, then within a specified time before trial, the defense is required to produce all the mentioned information required of the prosecution.
- Recommendation: If an expert retained by the defense will not testify at trial, then the prosecution is not permitted to call or interview that expert as a witness.
- Judge Paul Denenfeld comment: (Regarding mandatory discovery) Mr. Wiese mentioned he would have preferred this be upon request. In an effort to try and reach consensus, Judge Denenfeld said he goes along with that because of his own view, he thinks they've discovered there aren't a whole lot of situations where the People have a mandatory disclosure requirement. Mr. Wiese's concern was mandatory disclosure, even when not requested.
 - Hon. (ret.) Dr. Donald Shelton response: Before Mr. Wiese raised the issue, the provision at the beginning that says unless waived by the defendant was not in there. It was simply a requirement for mandatory disclosure. The waiver provision was added in response to his legitimate concerns about allowing pleas to go ahead without the delay that might be engendered by having to produce all of this evidence before that and that would be unfair both to the process, but to the defendant as well. We started from the American Bar Association (ABA) criminal justice standards and modified them. But the rationale is DNA is different from almost every other forensic science for a lot of reasons. One being DNA evidence may well be dispositive of the entire case, whereas other forensic science evidence may be relevant disposal. Also, DNA evidence is a double-edged sword in it is as adept of acquitting as it is convicting that it may provide absolute exculpatory evidence or may provide absolute conviction evidence. Our subcommittee recommendation is that we address DNA differently than the other forms of forensic science evidence covered under 6.202.
 - Mr. Jeff Nye comments: Regarding automatic discovery, the only other state in the entire country is New York. In preparation for this, several months ago Mr. Nye reached out to a peer that runs a laboratory in New York City to try to get an understanding of what resources they need in order to respond just for New York City. For this one agency within New York City, it was 27 additional staff members and \$2,000,000 in IT infrastructure to respond.
 - Hon. (ret.) Dr. Donald Shelton response: One difference with New York is they do not have waiver permission. The whole process in New York is held in advance and the defense doesn't have a choice, it's automatic. That was one of the considerations for adding the waiver.
 - Ms. Lori Montgomery comments: New York also requires a lot more things than we do in this one. A lot of things were removed that were not practically used at the front end.
 - Judge Paul Denenfeld comments: The New York statute has rather firm sanctions against the people that do not disclose, and we were conscious of that, leaving it up to the court to determine if there's any violation.
 - Hon. (ret.) Dr. Donald Shelton comment: The New York provision provides an exclusionary rule that will be applied if not complied with. We discussed that at the committee and our consensus was that any sanctions at any level ought to be left to judicial discretion as any discovery issue. So we don't say anything about it.
 - Mr. Jonathan Sacks comment: For non-DNA evidence the committee feels like 6.202 and 6.201 accounts for that problem?
 - Hon. (ret.) Dr. Donald Shelton Comment: The committee didn't feel the basic discovery provisions for other types of forensic science evidence needed to be revised.
- Jury Instruction
 - Expert Witness Instructions, jury instruction relating to expert witnesses, and the fact that the witness is being recognized as an expert by the judge, and that instruction goes to the jury, has been a concern expressed nationwide. Witting or not, it amounts to a vouching in the eyes of the jurors for the expertise of the witness.

- Recommendation is that no instruction regarding expert witness testimony should be given one way or the other. This is designed to eliminate any appearance of vouching. That's a Michigan Supreme Court decision.
- Anti "CSI" Instruction: The recommendation is that the Supreme Court state that no instruction should be given concerning the adequacy of police investigation for the so-called "CSI" effect. This arises because judges in our, and other states, have given instruction about whether or not the police did forensic science examinations. The jury instructions almost always gets the judge in trouble related to whether the police did an inadequate investigation and finding reasonable doubt. This should not be the subject of an instruction by the judge.
- Mr. Gardner comments regarding testimony and data: This will eliminate the science testimony due to lack of data. The only thing I can come up with is national error rates and you can't come up with any kind of specific data in their testing. Firearms and physical matches don't have that type of data. It's very subjective. Not like DNA where you know probability.
 - Hon. (ret.) Dr. Donald Shelton response: That is not what this is addressing. They are talking about sufficient facts about this case, and data about this case. Judge Shelton requested Mr. Gardner give him some information about cases where this has been excluded, and he'd be happy to look at those and see if this needs to be modified.
- Mr. Nye comment regarding education: It says making sure they have a degree in criminal justice or forensic science.
 - Hon. (ret.) Dr. Donald Shelton response: No. It says if you hire a scientist that doesn't have a degree in criminal justice or forensic science, they need to be trained in *Daubert* requirements. It's not saying you can only hire people with those degrees.
- Judge Paul Denenfled question: On the jury instructions, the recommendations were from the ABA?
 - Hon. (ret.) Dr. Donald Shelton response: Correct.
- Hon. (ret.) Dr. Donald Shelton comment: The Supreme Court has not approved the amendment to 702 yet. That is expected to happen in February.

VI. Break in Public Meeting; Subcommittee Workshops

VII. Resume Public Meeting

- Mr. Christopher Bommarito comments to the chairs: If we could set aside some time, if not in this meeting, then the next meeting to discuss the Independence within law enforcement topic within the Forensic Science Statewide Body Subcommittee, it would be very helpful to have the entire Task Force discuss that topic.
 - Col. Gasper response: If we don't cover it after public comment, we'll definitely get it scheduled for our next meeting.

VIII. Public Comments

- Elizabeth Jill Cole, Clinical Fellow at the Michigan Innocence Clinic: Speaking on behalf of the innocence network. Thank you all for your diligent work over the past year to develop a proposal for a Forensic Science Commission in Michigan. We are so excited to hear about the support and accountability components being framed out by the Task Force and we appreciate the hard work that it took to get to this point. We think the composition of the Forensic Science Commission is key to its ability to navigate and support the Michigan forensic science system. At this morning's meeting the proposed composition only includes two independent researchers who are not focused on forensic science. We think that in order to meet the scientific needs of tomorrow, the Commission will need more scientific expertise than four forensic scientists and the two researchers described today. More and more we're seeing how these technologies developed outside of the public safety arena are being transitioned into the criminal legal system. For the Commission to be a forward-looking body that is capable of supporting Michigan with the science and technology of tomorrow, we need to ensure that the membership has the expertise needed to take us into the future.

Questions have been raised about forensic science practices in Michigan in the past that we think could have been informed or prevented with more support from independent scientists. For example, and I think this was touched on in the subcommittee meeting, a statistician could provide how to best express probabilistic testimony and design the scope of validation studies. Most forensic providers don't have a

statistician on board, and we think that Michigan would benefit from a uniform practice on that. We know that the Task Force has discussed including a statistician as a contract position. But having this guidance on the Commission itself, could embed this expertise and provide priorities for all stakeholders rather than leading to litigation, as it has continually happened in the past. Another example is a computer scientist can help evaluate the technical merit and accuracy of algorithm-based technologies that are increasingly applied in a number of investigations. And a third example is a cognitive psychologist that can help ensure policy and practices are designed in a way that guards against human factors, cognitive biases, and implicit biases.

- Atea Duso, Chief Assistant Prosecutor in Midland County: Comment regarding changes to Rule 6.202 & 203 and disclosure of DNA reports and the data and things behind that. One of the concerns, obviously as a prosecutor, we all know we want justice. We want things to be fair, but you have to also think about our victims and the fairness to our victims. In trying to sort of speed up this process of getting DNA results and reports and everything over to the defense counsel, and certainly I think we all agree that they're entitled to those things, and they should have those things, at least in our jurisdiction they do, it's really concerning to me to think that, there may be sort of a time constraint put on this that is really difficult for us to meet, to the point that we may not be able to authorize a case. You have a case comes in. Somebody makes disclosure to get a report, and we know that there's going to be DNA evidence that's coming in. But we have a very short time period in which we have to be able to turn it over to the defense. To sit down with a victim and have to have the conversation on...Well, look, we'd like to go forward with this. We'd like to help you, thank you for disclosing and having the courage to come forward, but we have to wait because we don't know how long it's going to take to get the results, and we only have a very short period of time where we have to turn those over. I don't want it to have a chilling effect on people coming forward with the CSC complaints where we have to sit down and try to explain to a victim why we may not be able to authorize that case in a timely manner, and end up with sort of a backlog of CSC cases, waiting to get DNA results, so that we can provide all of this information within whatever timeframe is considered reasonable. So, I think that that is a big concern for those of us in prosecution and dealing with the victims of these crimes.
- Tayna Abdelnour, Director of the Violence Against Women Project at the Prosecuting Attorney's Association: I do have some concerns as it is related to some of the discovery recommendations as well. I think one of the things I had was that we did not have the ability to see the final version or the final recommendation. It wasn't posted on the website. I know there has been some recent, maybe modifications to that. And in terms of the timeframes related to the discovery, I believe I saw on the screen an issue of the potential ability to waive some of this as well. My concern really is for the victims here. One of the issues that I did recognize when reading this version, as well as an earlier version, was the impact on the lab and every time there is an impact on the lab, there is an impact on the victim. Often times when there are unfunded mandates, those things cause delays. So, my concern is making sure there's adequate funding for not only the lab, but potentially for the prosecutor's office, and all partners involved because it directly affects the victim. Delays have a significant effect on victims of sexual assault and domestic violence. If we do not have potentially a clear outline or guideline with regard to some of these recommendations and rules, oftentimes we don't think of the impact. My concern is also the delay in charging. If prosecutors are going to hold on to these cases, that impacts whether or not the victims will ever have their ability to see their assailant, the individual who violated them, in court and held responsible for what they have done. Potentially I would like to see a little more discussion surrounding some of the victim issues that seem to be ignored in some of these discussions. And again, I had not been involved in the discussions in the subcommittees, but I hope that that is a strong consideration from all parties involved.
- Cheri Bruinsma, Executive Director of the Prosecuting Attorney's Coordinating Council: I'd like to thank all of the members of the Task Force for their work on this. I know that prosecutors in general support changes to the criminal justice system that are beneficial both to the victims and defendants, and I think there is a lot of good work being done here to promote both those things. There are, however, a few areas of concern that we've identified. The one that I would like to focus on is the elimination of the expert witness instruction in cases in which expert witnesses are used. I think that eliminating that instruction is concerning for many reasons. Experts are often used in cases both by the prosecution and defense and

the current state of the law has an instruction that specifically explains to jurors that they are able to give the expert's testimony the weight that they think it deserves. I think eliminating that makes it more likely that the jurors will place undue weight on expert testimony, perhaps in comparison to the rest of the evidence in the case. I would encourage that the expert witness instruction be kept for those reasons.

IX. Revisit Recommendations and Proposed Changes

- Col. Joseph Gasper: From the standpoint of the subcommittee chairs, specifically as it pertains to the conversation with the entire group present, would any of the subcommittee chairs feel as though there would be value or need to have additional conversation right now with the entire group. Otherwise, we can continue on with more subcommittee conversations until our next meeting.
 - Hon. (ret.) Dr. Donald Shelton: My subcommittee will need to meet to consider the questions about the judicial education portion. We don't have enough information to have that meeting today.
 - Mr. Jonathan Sacks: In terms of the Forensic Science Statewide Body, I think we got good feedback this morning. I don't necessarily think we need a larger discussion, unless there are any other points that people want to make that they didn't have a chance to make this morning. Unless there are comments in response to the Innocence group comment as to the commission members.
 - Mr. Jeff Nye: I don't think there's anything we need to bring through to the entire Task Force. There's probably additional committee work that we could do, but nothing for the full Task Force.
- Col. Joseph Gasper: We can take up two discussions. One would be the Innocence comments, and the other would be Mr. Christopher Bommarito's question about his request to talk about the separation from law enforcement.
 - Innocence comments about the statisticians and the computer science additions to the potential list of Commission members.
 - Judge Paul Denenfeld: He raised the issue of a statistician part, because he read a report in which Chief Justice had written, maybe an introductory statement, and it was really highlighted on how important it was. Both Mr. Bommarito and Mr. Nye indicated in subcommittee that they have had negative experiences with statisticians sitting on some various committees.
 - Mr. Jeff Nye comments: We discussed this at the committee level, so it's not that we missed it. From my position, there's a lot of value of statisticians, computer science, and the cognitive psychologist that she mentioned. There's a difference in utilizing those resources versus actually sitting on a commission and being able to be a decision maker or part of that decision making process. They can certainly be there and provide information, but oftentimes they become more of a rubber stamp for things that are outside of those specific areas. That's why we decided we would maybe use contract work versus actually being a voting member within the commission.
 - Ms. Lori Montgomery comments: We spoke with the Texas Forensic Science Commission and that is exactly how they approach it. They use contractors for very intricate disciplines that may not be used all the time. So that's why we want to take a look at what was the best bang for our buck, especially for putting someone on the actual commission, and that's why we came up with the more general sciences that are a little bit more common and then for those small disciplines that may not be used as much but are still extremely important we can contract it out from the FSB (Forensic Science Body).
 - Mr. Christopher Bommarito comments: We are also informed by our desire to have this kind of scientists-led. So, as we add more people, then it seems like we're going to have to add more scientists if we want to maintain that.
 - Dr. Jeffrey Jentzen comments: I wonder if this is an opportunity to differentiate a voting versus a non-voting member, or maybe some type of ad-hoc member that would be called in as needed, rather than going to the trouble of contracting that type of arrangement.
 - Chief Justice Bridget McCormack comments: Sort of advisory members to the Commission who can bring expertise that wouldn't have to be an ongoing basis.
 - Dr. Jeffrey Jentzen comments: It could be a valuable position for an academic person who serves in that kind of non-paid role.
 - Mr. Jonathan Sacks comment: That could work, and also on the cognitive psychologist as well.

- Chief Justice Bridget McCormack comments: I thought the larger point was making sure the Commission is looking forward towards the future, and I just wonder, have all of you given thought to how the membership of the Commission could change in the future as needs and forensic science needs change? If it's static, and you can't adapt, that's probably not ideal. But, as long as there's some way that everything can follow the science or try to keep up with the science.
 - Judge Paul Denenfeld comment: I think that is one of the reasons why we ended up with staggered terms to bring someone fresh in.
 - Mr. Jeff Nye comments: Where forensics is heading is really automation and minimalization, which lends itself to not being in a laboratory, but being in a field application. I think we have to be careful how we phrase our recommendations that we are not limiting ourselves to just a brick-and-mortar laboratory. I think that's where we have to be careful.
 - Mr. Jonathan Sacks comment: It does make some sense to put in some language to make sure that it is adaptable, so we can think about what that might look like and the terms.
 - Hon. (ret.) Dr. Donald Shelton comment: If this is going to be cast as a statute, I'm not sure how you're going to be able to do that. Obviously, the Legislature can change it.
 - Hon. (ret.) Dr. Donald Shelton comment regarding the statistician: I don't think we ought to add a statistician as a permanent member. My concern about statistics is that we need to push all identification testimony to be probabilistic and find a way to eliminate testimony about "matches" and "100% certain" and "the exclusion of everybody else in the world". And all pattern testimony needs to be probabilistic like DNA experts have recognized for years.
 - Mr. Jeff Nye comment: My gut feeling is it's generally moving that way. There's just a lot of research that needs to be done.
 - Hon. (ret.) Dr. Donald Shelton comment: We certainly haven't convinced a lot of fingerprints, ballistics, questioned document people about that.
 - Dr. Jeffrey Jentzen comment: I don't know how much attorneys want to hear definitive probabilities either. I've been warned not to put any probability, specific probability quantitation, on to opinions. So, I think there's a larger education that needs to be done.
- Col. Joseph Gasper comment: It sounds like we're going along the lines of an ad-hoc, non-voting member.
 - Mr. Sacks comment: I think so. We'll add at least an advisory member. Judge Shelton is right, it would be legislative language, but I think if there is some way to frame it for adapting the framework for the science positions, and we can continue to discuss otherwise as a subcommittee.
- Topic of separation from law enforcement
 - Mr. Bommarito Comments: The recommendations from the subcommittee are pretty light, and I don't think they're sufficient. Primarily it's about training about bias, which I think most laboratories already do. Police officers in the lab doing lab work, there's a perception of bias at best and at worst, there is actual bias. This is something labs have moved away from over the last twenty years, at least the last decade, and we're pushing best practices, I don't think just a status quo is the right approach. This is why I wanted to discuss that amongst the group. The other alternative that we've discussed on the previous subcommittee was actually separating the labs from MSP and we decided that's not a good approach because of a multitude of issues. So, then it's a matter of how do we make the lab more independent. And one of the major things is getting police officers off the bench.
 - Judge Paul Denenfeld comments: I was a member of that subcommittee that Mr. Bommarito chaired, and my recollection is that we were pretty much unanimous that we thought there should be a movement towards the ending of police officers in the laboratory. And as Chris (Mr. Bommarito) said, we were really talking about attrition, not firing people, but simply not filling vacancies with people coming through the ranks. I also agree that it's not just perception. I mean, I think that, like any of the rest of us, police officers are trained in a particular way. Their training is to gather evidence and prosecute people to get convictions. I would prefer that we have people

that are really steeped in science as opposed to even the risk of bias that could lead to a wrongful prosecution. So those are my concerns.

- Dr. Barbara O'Brien comments: I am particularly sympathetic to this argument about bias, and I think that the problem of bias, first of all, bias is not a "bad bias". Then there's the cognitive bias that I'm talking about, and people are so resistant to the notion that they have any sort of cognitive biases. But I feel, it goes far past the law enforcement issue, that I feel I'm totally in favor of moving away from the police officers moving into the lab. But I feel like the bigger issue is insulating people from the kinds of biasing information that can alter their perception because you don't have to be motivated to have bias. You don't have to be steeped in a culture to have bias. And those things don't help, but I feel like the problem is so much deeper than that. Even somebody who comes into it, who's never been a police officer before, they're just joining the lab, they're going to have their biases that have nothing to do with even their feelings about law

enforcement, in general. So, I feel like to get the most bang for your buck in terms of reforms, it has to really be about protecting people from information that can color how they view the evidence that they're examining. Because you don't need a motivation to be biased. It's just the way our brains work. I'm totally in favor of that, but I also feel like it doesn't go far enough, and it goes too far at the same time. I really feel like the real effort has to be in things like sequential linear unmasking, case managers, and things like that.

- Mr. Jeff Nye comments: We have to look at this from a few different ways. Number one: If you look at the survey that we did on the Forensic Science Service Providers, there was a least one comment in there about this particular topic. It was not from a State Police response, but it was a local agency regarding something about needing assistance to keeping a law enforcement officer from promoting into the lab because of the way that their hiring situation works out. Versus, you take a situation for which we hire. The way we do it now, is that we open it up for both internal promotion for both internal and enlisted, and we open up for external, and they have to compete against each other, so that creates a situation where you are hiring the best person for the job, rather than what was sort of given as the comment in the survey where they are not allowed to post externally, because the internal candidates are given preference. I think we have to make sure we look at that as a whole. And another thing is enlisted people today are competing against a lot of really well-educated individuals that are coming out of universities. So, they have to be competent and capable in those scientific areas. And we also have to remember that science isn't just about science. It is also about communication. It's about being able to present publicly in front of a jury and a whole host of other things. We're focusing wholly on the science right now, but there's other aspects that are very, very important that makes a good employee and a good scientist. The last thing I want to say is that at least in our system as an accredited laboratory, quite likely in Kent's (Oakland County) as well, as an accredited laboratory, an individual is not communicating or providing that result to an investigating agency. It is almost always at least two independent people. So, the concern about enlisted members is only if you have an enlisted member doing an analysis, an enlisted member doing the verification for technical review in order for that to go out. As we have gone through the years, the number of enlisted members has certainly, in our system, been going down through natural processes, so that very finite situation, you can affect some of those through policy rather than by restricting those being hired.
 - Dr. Jeffrey Jentzen question: Have you ever been presented with any limitation of trade or bias against any law enforcement in a union type of situation in hiring practices and that type today?
 - Mr. Nye response: No. There was a point many, many, many years ago, where the Field Operations Bureau would have preference over those positions in some disciplines: firearms, latent prints; those traditional situations, but that has not been the practice for well over a decade. Another thing from a bias standpoint, our enlisted members are not going to court in a uniform. They're in a suit just like everybody that will go and testify as well.
 - Col. Joseph Gasper comments: If we are going that route, and we get a retired police officer who now wants to be considered for employment in our lab; I'm not an employment attorney, but excluding somebody for their experience, I'm not sure we would survive that.
 - Dr. Jeffrey Jentzen comments: It was my point; I don't know if there was some limitation of trade we had in there. In our death investigator positions in the medical examiner's offices,

within the last ten years there was a big thing to hire law enforcement because they would retire and then move on into a death investigator position, and now the vast majority are trained, licensed nurses.

- Mr. Kent Gardner comments: In our situation we can't get rid of those positions. So we hire a civilian and they become a deputy. So right now, I think out of six deputies, two are police officers.
- Hon. (ret.) Dr. Donald Shelton comments: I don't think the concern is about competence, I don't think that is the issue. I think there are two concerns. One of them is the cognitive bias that can result with the most competent people. If you think about Dr. Dror's testimony for example. That cognitive bias is going to be there. The police officers are a paramilitary unit, and they have that sense of camaraderie, and that sense of cooperation, and they know what they are there for. The second is the appearance issue from the public's perspective. Having

a police officer analyze evidence to support a police case. They don't testify in uniform, but they come in and they testify. Who are you? I'm Sergeant So and So, Michigan State Police. Now judges instruct juries that the testimony of a police officer is not any more or less believable than any other person; and if you believe that, I got a bridge to sell you. The appearance is there, that this is the police testifying. That's different from I'm Sally Smith, I work at the Forensic Science Division. So those are the concerns for me. It's not about competence. It's about the cognitive bias that comes with their position, and the appearance of the perception of that kind of bias.

- Mr. Kent Gardner comments: It's just all perception. In our lab we just get physical evidence. The only person that can get a case file is a DNA analyst that may need it to do that analysis. So, I think it's all perception.
- Hon. (ret.) Dr. Donald Shelton comments: I think there is some significant scientific evidence that says it's not just perception. That cognitive bias is real. You can diminish that by the things Dr. O'Brien was talking about by trying to make sure they don't get domain irrelevant information from their colleagues and law enforcement. I hope the case manager recommendation goes a long way toward that, but I don't think you can eliminate it.
- Mr. Christopher Bommarito comments: I'd also like to say that this is something that has been happening through lab systems throughout the country, so I don't think it's so much of an issue legally whether or not a certain class of people are excluded from the positions throughout the country. I mean they are not allowed to be in the lab. As Mr. Nye said, it's happening already, because you are taking the most qualified person, which is typically the civilian scientist. Buy why not codify that? Because as soon as you hire a new enlisted person, maybe they are the most qualified person at that particular time, you're starting that clock again and it might be twenty years before you eliminate enlisted people from the laboratory. The third point is cost. I don't know why MSP would even want enlisted people in the lab because they are much more expensive. You have the cost of putting them through the Training Academy, which I don't know the exact cost, but I know it's not cheap. Then they go into the lab where that training is rarely used. Then the retirement is greatly enhanced. So, it's a much more expensive proposition to have enlisted people.
- Mr. Jeff Nye comments: I'm going to pick on Lori (Montgomery) for just a minute. This is a really slippery slope when you talk about law enforcement officers. Let's say Lori, and I think in an earlier part of her career described herself as "the DNA attorney". Let's say she decides she's had it with the Conviction Integrity Unit and she's going to go out and get a degree and she wants to come and work in the laboratory because she loves us so much. Is the potential not equally as biasing for her as an attorney or defense attorney? It is a very slippery slope once we start going down this way.
- Hon. (ret.) Dr. Donald Shelton comments: The cognitive bias may be there. The perception bias is not. Cognitive bias is not just by being a police officer, but as Dr. O'Brien was saying, we all have biases that we may or may not recognize. When we're talking about a particular examination for the purposes of prosecution, being a member of law enforcement, that carries with it some cognitive bias by virtue of the social group that you're in.

- Dr. Jeffrey Jentzen comments: If we are going to maintain the MSP administrative bubble over the top of the laboratory, is the perception of bias going to be important in the hiring aspect? Is there going to be the perception that MSP is running the lab? Is it going to filter down to the individual analyst or does it make any difference?
- Dr. Barbara O'Brien comments: That's there. We are not going to be able to change that. If we were designing the system from the ground up, I would definitely have an independent lab. But just to eliminate any exacerbation of existing biases, I don't know if there's a difference between somebody who comes in as a civilian employee in the lab, whatever bias there is, they are sort of absorbing. I don't know how much greater it is if you're coming in as a police officer.
- Mr. Jonathan Sacks comments: I think there are a few minimal things that maybe we can do. Maybe we should recognize there are real advantages, especially on the issues of bias, on the perception with an independent lab, but recognizing that's not where we are in Michigan. So that's not a change that would happen right now. But, as a result of those recognitions, here

are some things we can do. A group of them are already listed in the report: the case manager issue; the bias training; hiring practices from the survey; hiring and the enlisted personnel. We can at a minimum clarify that, I don't know if it becomes a part of the Michigan State Police enabling act, it's a completely level playing field and it's not in any way a plus factor, which means I can see a situation where a civilian with a master's degree should never lose out to enlisted personnel without a master's degree, even if they've done great work for many years.

- Mr. Jeff Nye comments: It's tough. Because I think education is just one part of what you're hiring. You could have a person with a master's degree and not be the best employee in the world for a million different reasons. When you get into hiring practices, that's a very challenging thing to get into to prescribe certain things. It's a big challenge, and I think from a bias standpoint, I can't think of a time I haven't testified that I haven't been asked about my employment, or if I get paid for a conviction. So, there are ways that it can be addressed that doesn't involve restrictions in other areas.
- Dr. Jeffrey Jentzen comments: I'm wondering, in the Judge's section, when he talks about testimony, that we actually document that the individuals will at all times, avoid any perception of being law enforcement, or being biased in one area or something. Is there some way we can put it in there that it actually says it in the report.
- Hon. (ret.) Dr. Donald Shelton question: Instructing the jury?
- Dr. Jeffrey Jentzen comments: No, instructing and documenting that we understand here may be a perception. You don't wear your uniform; at all times you don't make references to law enforcement activities, etc.
- Mr. Jonathan Sacks continuing comments: In this list are the sort of internal practices. I've talked a lot about the external piece and the possibility of external governance on policy issues. So maybe the thing, as opposed to administration which would continue to be under the Michigan State Police umbrella, but maybe a way to do the policy issues and to have that separate policy-making body that makes the policy decisions would be to actually list them out. For example, hiring, setting up internal structures for independence, training requirements for all labs analysts and maybe come up with a half dozen functions like that that full under a separate policy making body. Not sure it will fix the perception piece, but it will at least fix some of the practical pieces. I'm going to look at the MCOLES (Michigan Commission on Law Enforcement Standards) statute again. I know that to be the example of an agency within the Michigan State Police that has an independent board that drives certain policy questions.
- Col. Joseph Gasper comment: They (MCOLES) are completely independent from MSP. It is 100% appointed positions by the Governor's office. The Commission hires the director. So, we (MSP) have absolutely zero control over anything.
- Mr. Jonathan Sacks questions: So, would it be a good thing to have something like that, but specify what the areas of control are? Some issues named would be under this governing policy group and then other issues, administration, and budgets.

- Col. Joseph Gasper comments: To an extent there's philosophical differences and efficiencies. With that Commission being 28 strong now, that's kind of a large bus to turn when you need to. One of the things we discussed here today is that need to be nimble and flexible, particularly when it comes to technology, which literally changes overnight.
- Mr. Jonathan Sacks comments: So maybe there's a middle ground, operations that stay under the director and maybe some other larger policy questions. My starting point was: Well, this Houston thing this is amazing. Let's make everything a non-profit and then it sort of evolved to: Well, okay, but at the very least, Virginia. There it's a completely separate agency. We're not. We know because of all sorts of practical pragmatic reasons that's difficult to realize anytime soon. What can we set up as an alternate that otherwise keeps the parts of the structure that works. That's what I'm sort of struggling with in my head.
- Mr. Christopher Bommarito question: I would like to know from Mr. Nye: If you're hiring a latent print person, what advantage is there to having an enlisted person over a civilian person for the laboratory?
- Mr. Jeff Nye comments: It comes down to the competencies we interview for. How they communicate, what are their technical abilities, what sort of background do they have that's beneficial to the discipline? It is the same interview process for a civilian or whether they're enlisted. They compete through the same process. So, the qualities we are looking for are the same.
- Mr. Christopher Bommarito follow-up question: What inherently, from their training as police officers, is helpful for the laboratory?
- Mr. Jeff Nye comments: Again, we're just looking for the qualities. Their background, like the comment about having a master's degree or something like that should trump some other aspects of it, that we're not giving them an extra point because they're coming from law enforcement. They're competing for the same qualities that we're looking for, whether they're a civilian or whether they're enlisted.
- Mr. Christopher Bommarito comments: I wouldn't presume to have guidelines as far as a degree, because that is all candidate specific, and you may be right in that on occasion. You might have the enlisted person be slightly more qualified, or interview better, or do a lot of things. But does that outweigh the issue of bias for the laboratory? I mean, I wouldn't think it would. The ask is not to get rid of people that are already there. We're just asking about the people that are coming in.
- Col. Joseph Gasper comments: We definitely hear what you (Mr. Bommarito) are saying, and it makes a lot of sense. To Kent's (Mr. Gardner) comment earlier, we do have some labor contract issues there too. That I'm not sure we would be able to trump. Maybe we could, maybe we couldn't. It sounds like maybe what we need to do with this issue is probably have some additional conversation in subcommittee and produce some type of a statement that we would want to poll the group and see what kind of support we have from a standpoint of trying to take this issue on, or whether or not the group is good with concentrating on some other points. Looking down the road as this being one of those future opportunities for the entity to deal with from there. I'm not sure the best subcommittee for that to be, maybe the subcommittee chairs can probably identify which one that would be. Maybe at our next meeting we can have some type of statement that we could definitively vote on if it comes down to that. One of the goals over the course of the very near future, between here and the next meeting, is to have some type of final draft if you will. For some of those points of potential contention or disagreement, we would look for specificity among the group to say I support it, or I do not support it. If you don't support it, you're looking at the mechanisms for being able to explain why. So, I think this would be a good opportunity for us to move that to the subcommittee.
- Hon. (ret.) Dr. Donald Shelton comments: I don't think this topic relates to any of the committees. I think we are charged by the Governor with making an assessment of the state of forensic science in Michigan, both to her, and eventually perhaps to the Legislature. My perception of that the state of forensic science in this state is influenced by the lack of enough resources. We have backlogs that are important for victims. They're important for the whole justice process, and I would hope that we could find a way of addressing that, particularly as

part of all of these recommendations that we're making which are going to impose some significant resource obligations on the Michigan State Police and our Forensic Science Division. I would like the Task Force to say something. I don't know what it is in particular, but something to the Governor and the Legislature about the importance of forensic science, and, more importantly, the importance of funding the State Police laboratory, where I don't know what the percentage is, ninety percent of the forensic science evidence comes from in this state, and I think if we're going to assess the state of forensic science, we need to tell the Governor and tell the Legislature that the current level of funding is inadequate and that it results in an unfairness to victims and an unfairness to defendants, just by virtue of the lack of resources. Primarily I'm thinking about people and facilities that cause everything to slow down, and that benefits no one. I don't know how to put a number on that. I hope we can gather some backlog. Maybe Mr. Nye or the Colonel can probably provide it some information on backlog and information about processing time, information about the people and facilities then. I'm saying in support, not as an offense, but that is insufficient right now. That's my

perception of the state of forensic science. Maybe between now and the next meeting, when we're going to put that maybe somebody smarter than me can put a recommendation like that into words with information from Jeff.

- Dr. Barbara O'Brien comments: I'm in support of that. The one thing that gets lost is that penny wise, pound foolishness of cutting and not supporting it. Because even if you just look at people who have been falsely convicted in this state, to what extent did forensic errors contribute? How much does it cost a state? Not only in incarcerating the wrong person, but also in any sort of compensation. I mean it's such an obvious point. I feel like it shouldn't have to be made, and sometimes I think it kind of gets lost that it costs us more in the long run to make errors, and not just the cost of that, the cost of letting the guilty person still be free.
- Dr. Jeffrey Jentzen comments: You know the benefits of automation in the laboratory are expensive. But, on the other hand, you see money in personnel, as you're automating and buying these exorbitantly expensive machines. They do turn around, and they do run by themselves sometimes.
- Mr. Jeff Nye comments: All our backlogs, our submissions, our cases completed, and maybe our turn-around-time are all on the website. You can actually search. It's a dynamic website, so you could actually go back and look in time versus what it is today. When hired in a while ago, our turn around time for DNA was 18 months. We're significantly better than that now. If you take a look at where we're at specific to DNA compared to the other 300 public DNA labs in the US, we're probably in the top 30th percentile. We're doing okay. Can we do better? We live in a world that wants immediacy and that's a problem. Everyone wants an answer tomorrow and it just doesn't work that way, sometimes for some disciplines you can do that, other disciplines it doesn't. When you're talking about the return on investment, I was just having a conversation last week almost exactly the opposite from what you were saying, but in the same area, which is somebody would like to do a study on the actual cost of having a commission, and all the things that we're talking about versus what is being saved on the wrongful incarcerations or exonerations. What you're saying is in the same realm which is investing in forensics versus the cost of having a wrongful incarceration. But it's really interesting and that would be really interesting academic study.
- Hon. (ret.) Dr. Donald Shelton question: How did the impact of COVID have on those turn-around numbers? The courts, for a significant period of time, just weren't trying cases. And now, hopefully, we're rounding that bend, and I wonder what that demand, and whether the demand is going to go back to the level it was before, may be higher.
- Mr. Jeff Nye response: So, in general, we stayed operational the whole time. We're a vital service. We stayed operational. Our submissions went down considerably in those early days during the spring of 2022 in the early summer, which gave us an opportunity to get our backlogs down. As things have picked up, it's getting to be a bit of a strain on us, and the other thing that we're balancing, which kind of goes to my recommendation about training and what not, is our vacancies have gone up significantly. The world is different today. People are reassessing their lives, and what they want to do, and their careers and early retirements. Competitors, not Oakland County, are offering fully remote work, and all those things that the

dynamics are changing considerably. And I think we're still trying to figure out and what all that means in the longer term. But it's a difficult situation at times, for sure.

- Hon. (ret.) Dr. Donald Shelton comments: I think that all of those changes, coupled with the tremendous scientific developments and technological developments that are happening, I guess, support my concern. The resources that are being allocated are simply not sufficient to keep up with any of those things. I think, from a resource standpoint.
- Mr. Jeff Nye comment: We are resourced well to do the job today, but we're not resourced to have that spare capacity when you go through something like early retirements, and sometimes they come in phases. But you don't have the resources to support that, and you have a two-to-three-year recovery to get somebody hired, and to get them trained, that's probably no different than any organization that anybody works in right now is you don't have that spare personnel capacity without departures being significant and impactful.
- Col. Joseph Gasper comment: To put the explanation point on that, our newest lab literally took us 50 years, five-zero, literally. And that just has to do with the way bureaucracy exists in our state. Where the influence is, and where it isn't. The economics, budgets, and everything. It can be a challenge. But we just opened that lab last year. It's a consolidated facility. The process was started 50 years ago.
- Judge Paul Denenfeld comments: In my view, the equation isn't whether or not a commission is going to pay for itself with cutting down our wrongful convictions. In my view, I want to be proud of my criminal justice system. I want to be one of the beacons of the fact that we are proactively trying to improve criminal justice. Of course, the wrongfully convicted are critically important, and they're the ones paying the price. There are a whole lot of other criminal defendants that may not be getting the rights or the good science, to which they are entitled when the power of the State comes against them. So, you know, cost benefit analysis...I just want to improve our criminal justice system and be part of that. Certainly, we hopefully cut down on the wrongfully convicted.
- Col. Joseph Gasper closing comments: I think that might bring us to the conclusion of today's meeting. Our next meeting is scheduled for November 1, 2022. It is again scheduled for an all-day event, 9:30 AM - 4:00 PM, location to be determined. And again, I think it's a forgone conclusion that we'll have some type of a virtual component for not only Task Force members, but for others to participate also.

X. Next Meeting

- DATE: Tuesday, November 1, 2022
- TIME: 9:30 a.m. – 4:00 p.m.
- LOCATION: TBD – (Remote or in-person at Michigan Hall of Justice, 925 W. Ottawa, Lansing, MI)

XI. Adjournment

- A motion to adjourn was given by Mr. Johnathan Sacks and seconded by Dr. Barbara O'Brien.
- With none opposed and no discussion, this Task Force meeting was adjourned by Col. Joseph M. Gasper at 2:46 p.m.