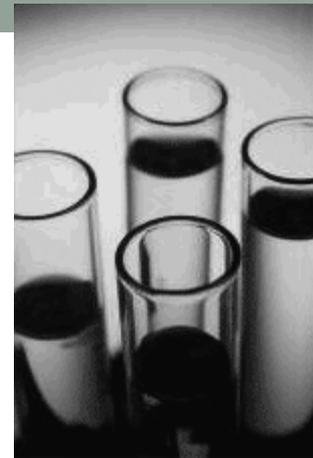


TEXAS FORENSIC SCIENCE COMMISSION



Justice Through Science

Presentation to the Southwest
Association of Forensic Scientists
October 3, 2011

HISTORY

- In May 2005, the Texas Legislature created the Commission by passing HB 1068 which amended the Texas Code of Criminal Procedure to add Article 38.01.
- FSC created mainly in response to problems in the Houston crime lab, as well as broader concerns regarding the integrity and reliability of forensic science in the wake of emerging DNA exonerations.
- Also in response to the requirements of the federal Paul Coverdell grant program (that there be an independent entity to investigate allegations of negligence and misconduct).

MEMBERSHIP

- 4 appointments by the Governor (1 prosecutor, 1 defense attorney, 2 experts in forensic science).
- 3 appointments by the Lt. Governor (non-forensic scientists): 1 from UT (clinical lab medicine), 1 from Texas A&M (clinical lab medicine), 1 from TSU (pharmaceutical lab research).
- 2 appointments by the Attorney General (UNT Director of Missing Persons DNA Database, SHSU CJ faculty with forensic science expertise.)
- Of this group, 7 appointments expired on September 1, 2011.
- Presiding Officer is appointed by the Governor. FSC's Presiding Officer is Dr. Nizam Peerwani, CME of Tarrant Cty.

PURPOSE

- Under Art. 38.01(4)(a)(3) of the Act, the Commission shall:
 - investigate, in a timely manner, any allegation of professional negligence or misconduct that would substantially affect the integrity of the results of a forensic analysis conducted by an accredited laboratory, facility or entity.
 - "forensic analysis" means a medical, chemical, toxicological, ballistic, or other examination or test performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action.

AG OPINION: JULY 2011

Limits FSC jurisdiction significantly:

1. No investigations involving evidence tested or offered into evidence *before* September 1, 2005.
2. Investigations are limited to laboratories, facilities, or entities that were accredited by Texas DPS at the time the forensic analysis took place.
3. FSC may investigate any field of forensic science that meets the statutory definition of “forensic analysis,” as long as the discipline is not expressly exempt from accreditation by DPS.

82ND LEGISLATIVE SESSION: SB 1658

Senator Hinojosa introduced a bill, that would have:

- *Clarified the Commission's jurisdiction into 3 categories:*
 - Complaints involving post-2005 accredited labs with forensic science on list of forensic disciplines pursuant to DPS regulation.
 - All other complaints limited to observations, best practices & recs.
 - Commission-initiated investigations for educational purposes.
- *Changed the Commission's composition:*
 - Moved all appointments to Governor.
 - Retained number and university affiliations but require all scientists to have forensic science experience.
- *Specified FSC Report inadmissible in court.*
- *Required annual report.*

CURRENT FSC COMMITTEES

- Complaint Screening Committee
- Legislative
- Forensic Development
- Investigative Panels

COMPLAINT PROCESS

- FSC complaint form received.
- Initial notification letter sent to complainant and lab.
- First reviewed and summarized by staff.
- General counsel prepares analysis pursuant to policies & procedures; may request information from lab or complainant.
- Complaint screening committee reviews complaints and recommends to FSC whether to accept or deny.
- Full FSC considers committee's recommendation and votes.

INVESTIGATION PROCESS

- Complainant and subject of complaint notified.
- Investigative panel established (typically 3 members).
- Investigative process begins (documents, interviews, possible hiring of subject matter expert, etc.)
- Report drafted (rough draft only) and may be reviewed by panel during public meeting.
- Report discussed, revised and issued by full FSC during public meeting.

ACCEPTED COMPLAINTS: WILLIS/WILLINGHAM

WILLINGHAM BACKGROUND FACTS:

- 1991 fire in Corsicana killed 3 young children.
- Willingham sentenced to death in 1993.
- In January 2004, expert reviews original arson report and submits affidavit to Governor's office.
- Willingham executed on February 17, 2004.

WILLIS BACKGROUND FACTS:

- 1986 fire killed two women in Iraan, TX.
- Willis sentenced to death in 1987.
- In 1996, Willis wins new trial based on ineffective assistance of counsel, withheld psychological profile and anti-psychotic drugs administered during the trial.
- In 2004, Pecos County DA asks expert to review arson evidence. Concludes there was no evidence of arson. DA Ori White declines to re-prosecute case.
- Willis is exonerated in October 2004.

ACCEPTED COMPLAINTS: WILLIS/WILLINGHAM

COMMISSION'S INVESTIGATION:

- Worked with several fire scientists to evaluate science used.
- No question that scientific community's understanding of incendiary indicators has changed since cases were tried.
- Significant concerns emerged regarding FSC's jurisdiction.
- Commission submitted legal opinion request to Attorney General.
- In light of opinion, Commission declined to issue finding of negligence or misconduct (either affirmative or negative).
- FSC issued 17 recommendations designed to improve arson investigation and related testimony in Texas courts.
- FSC is working collaboratively with the SFMO and IPOT to implement the recommendations.

ACCEPTED COMPLAINTS: WILLIS/WILLINGHAM

COMMISSION'S RECOMMENDATIONS:

- Strategic plan in compliance with national standards.
- Retroactive review.
- Enhanced certification (NFPA 1033).
- Collaborative training on incendiary indicators.
- Use of ignition matrix as investigative tool.
- Periodic curriculum review (TCFP, TEEEX and SFMO).
- Involvement of SFMO in local investigations.
- Establishment of peer review/multidisciplinary teams.
- Standards for testimony (master and advanced CFI's).

ACCEPTED COMPLAINTS: WILLIS/WILLINGHAM

COMMISSION'S RECOMMENDATIONS:

- Evaluating courtroom testimony.
- Minimum reporting standards for fire scene reports.
- Preservation of original documentation.
- Dissemination of information regarding scientific advancements.
- Code of Conduct/Ethics.
- Training for Judges/Lawyers.
- Enhanced admissibility hearings in arson cases.
- Funding/Legislative Support.

ACCEPTED COMPLAINTS: MOON

- Moon convicted of sexual assault in January 1988.
- Released from prison in December 2004 based on DNA test showing he was not donor of seminal fluid on two pieces of evidence at crime scene.
- Key testimony included DPS serologist who testified that the seminal fluid belonged to a “non-secretor.” Moon was a “non-secretor.” Only 15% of population is “non-secretor.”
- In 1989, Moon obtained DNA test that appeared to exclude him as the source of semen found on comforter.
- In 1996, Austin DPS lab tested evidence using DQ-Alpha.
- DPS lab found different profiles on bathrobe & comforter. Asked DA for reference samples. No samples obtained.

ACCEPTED COMPLAINTS: MOON

- In 2001, Texas passed landmark post-conviction DNA testing legislation.
- Moon filed request for testing; granted in 2002.
- DPS El Paso lab conducted short tandem repeat (STR) testing on evidence.
- Both samples tested contained victim's DNA and an unknown male's DNA, but neither contained Moon's DNA.
- El Paso DA wanted to obtain samples from son and husband to rule them out as contributors.
- Reference samples finally obtained in early 2004; Moon excluded as a contributor.
- Moon released from prison in December 2004, and exonerated in April 2005.

ACCEPTED COMPLAINTS: MOON

COMMISSION'S INVESTIGATION:

- Commission reviewed extensive documents, expert affidavits.
- Considered (but ultimately did not hire) an independent expert in serology.
- Same jurisdictional concerns raised in this case as in Willingham/Willis.
- Commission declined to issue any finding of negligence or misconduct but issued four recommendations.
- Recommendations were result of collaborative process with DPS leadership.

ACCEPTED COMPLAINTS: MOON

COMMISSION'S RECOMMENDATIONS:

- Continue DPS internal review.
- Consider peer-review team to determine scope of potential interpretative issues in serology.
- Develop mechanism for red-flagging delayed responses from prosecutors.
- Enhanced training for analysts regarding language used to explain degrees of association.

ACCEPTED COMPLAINTS: APD LAB

BACKGROUND FACTS:

- In July 2010, Travis County DA and APD Chief contacted FSC re: complaint filed by former lab analyst.
- Complaints fell into 2 categories: personnel issues and quality assurance problems in DNA analysis.
- Many agencies reviewed lab during that period (internal review, Texas Rangers, ASCLD-LAB, FBI for CODIS audit), at different levels.
- Consensus was that allegations were unfounded. Rangers noted failure to complete a CAR (remedied immediately). Lab reinforced process regarding protection against contamination when controlled substance test conducted before DNA analysis.
- Commission decided not to re-investigate case but rather to issue a memo summarizing conclusions and highlighting best practices (see recent email to accredited labs).

ACCEPTED COMPLAINTS: APD LAB

COMMISSION RECOMMENDATIONS:

1. Laboratories should take proactive steps whenever they are faced with complaints.
2. Alert the criminal justice system and the appropriate accrediting agency whenever substantive allegations are made, especially where the outcome of a specific criminal case may have been impacted.
3. Develop clear policy on when to contact outside agencies to report allegations.

ACCEPTED COMPLAINTS: EPPD LAB

- Complaint accepted for investigation by FSC in Sept. 2011.
- Complaint is result of ASCLD-LAB audit revealing deficiencies in lab's controlled substance analysis.
- FSC has elected an investigative panel (Eisenberg, Kerrigan and prosecutor to be appointed).
- Will engage in a systematic review of documents, interviews of relevant witnesses.
- Lab is already engaged in extensive remedial work with ASCLD-LAB.
- EPPD has been very cooperative, and FSC will work collaboratively with the lab (and DPS as necessary) to make recommendations needed to improve the integrity and reliability of controlled substance analysis in El Paso.

FUTURE DIRECTION

- Increased pace in resolution of complaints.
- More self-reporting by labs (required by statute).
- Likely to see another attempt at clarifying legislation during next legislative session.
- More efforts to encourage communication and collaborative initiatives among stakeholders.
- Policies and procedures developed further based on lessons learned.
- Increased activity on the forensic development front.

QUESTIONS?

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