

**Texas Forensic Science Commission
Minutes from February 6, 2009 Meeting in Houston, Texas**

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

(Additional attendees included: Veena Mohan, Assistant Attorney General, Leigh Tomlin, TFSC Coordinator; Irma Rios, Houston Police Department Crime Lab; Lori Wilson, Houston Police Department Crime Lab; Gabriel Oberfield, Innocence Project; David Layton, Picturebox; and Mark Adams, Office of the Governor)

Bassett began with opening comments, discussing funding and commission activities. Bassett facilitated questions regarding the Commission's current investigations and their dependency on State budget. The Commission expects they will be funded this session, but does not know at what level. Bassett and Tomlin have communicated with Ms. Hayes, one of the Commission's legislative liaisons, on budget and funding issues for the Commission since the last meeting.

The minutes from the December 2008 meeting were approved by Motion from Eisenberg. The Motion was seconded by Kerrigan. The December 2008 meeting minutes will be posted on the Commission's website.

Tomlin provided an update of activities in the TFSC office at Sam Houston State University. She reported on office purchases and provided an updated accounting to Commission members. Tomlin informed Commission members that a UPS account was set up for the Texas Forensic Science Commission at the University, so that the Commission can send documents via UPS. Tomlin reported on all office correspondence since the Commission's last meeting. Commission members were informed of a memo created by request from the Texas State University System's legislative liaison, Patricia Hayes, regarding unexpended funds for the Commission. The Commission created the memo to help explain why full funds were not utilized in 2007 and 2008 and also to present information on why additional funding will be necessary for the Commission's upcoming investigations. Tomlin informed Commission members of her correspondence with fire expert, Craig Beyler, and reported sending him all of the documents for the Willis/Willingham matter. Beyler provided the TFSC with a reasonable estimate on the cost of the Willis/Willingham investigation upon receiving the documents from Tomlin. Tomlin also reported on her conversations with Fire Marshal, Paul Maldonado. Tomlin sent Mr. Maldonado copies of the Invitation for Offers for the Willis/Willingham case, showing what the scope of the investigation would entail. Tomlin also reported on the status of the contract between Dr. Beyler and the University. In addition, Tomlin reported on drafting a presentation for Commission member Watts to present at a forensic analyst meeting for 60-70 forensic experts. Watts gave details on the presentation and the audience's comments. Some Commission members presented the idea of attending more forensic functions to raise awareness to forensic practitioners about the

Commission. Tomlin will look at the Commission's mailing list and work with Kerrigan on how to expand awareness of the Commission's functions by attending forensic meetings, etc. before the next Commission meeting.

The Commission meeting proceeded with a discussion on the Mobile Crime Lab protocol. Kerrigan reported that Judge Hervey is still working on the protocol for her idea, and she expects something to happen with the idea this legislative session. Kerrigan mentioned that the mobile unit would be very limited and would require some sort of testing facility. Judge Hervey is making changes to the proposal, but is still extremely enthused about the idea. Kerrigan is to contact Judge Hervey for an update on the mobile crime lab protocol before the next Commission meeting.

The meeting continued with a discussion of the National Academy of Science report that is to be released in the next month. Once the report is released, it was decided that Kerrigan, Eisenberg and Watts would funnel information to the Commission about the report and come up with a press release to put on the Commission's website. The press release will be about a ½ page and will be posted within a few days of the report's release date. Tomlin was instructed to provide this information to any inquiries on the report.

The next item on the agenda included a discussion of the Commission's self-reporting procedures. It was decided by Commission members that they would come up with an editable PDF file so that complainants can type the information in, making it clearer. The Commission will develop a reporting form for labs to be approved at the next meeting. Oberfield commented on the importance of issues arising within the walls of the laboratory itself. He mentioned that there is not a clear avenue for lower level analysts and management to share issues and concerns they may have in their laboratories, leaving a hugely untapped resource for allegations. Continuing the discussion, Eisenberg mentioned that the Commission should publish a posting with our contact information in every lab showing them how to contact the Commission and file a complaint.

Following the discussion on self-reporting for labs, reporting of anonymous complaints was discussed. Bassett discussed confidentiality issues and the dilemma that names would be revealed as public information for any of the complaints. Any complaints submitted to the Commission are considered public record under State law. It was discussed that perhaps the Commission statute needs to be amended to protect those filing anonymous complaints. The issue is something that may not have been anticipated in the drafting of the initial statute and ought to be revisited by the legislature. Kerrigan mentioned that there should be a disclaimer/statement on the Commission's complaint form, showing that our documents are subject to public information request. Before the next meeting, the Commission will come up with ideas for anonymous complaints, develop a new PDF for their original complaint form, and develop a self-reporting form. The Commission meeting continued with a review of any complaint forms received. The Commission reviewed 6 complaints and each complaint was discussed in detail. It was decided that five of the complaints needed more information in order for the Commission to make a decision to deny or accept the complaint. Tomlin is to contact to the

appropriate agencies or individuals to obtain more information on the cases. One of the complaints submitted to the Commission was denied due to lack of jurisdiction.

Tomlin presented a list of re-appointment dates for the Commission members, showing the office and dates from which each Commission member was appointed. Tomlin explained the instructions for each Commission member to be re-appointed once their term expires.

Issues concerning legislative budgeting were discussed next. Bassett explain that he and Tomlin have communicated with Patricia Hayes, legislative liaison. Bassett made the point that this will be a difficult year to get an increase in the Commission's budget. Bassett reported that he expects the Commission's budget to remain static and that the Commission should plan accordingly. Bassett made general contact with Senator Whitmire's office, and Whitmire's staff informed Bassett that the Commission had done everything they could in regard to a budget increase request submission.

The Commission proceeded with a public comment period in which members of the public where invited to comment on Commission activities. Each attendee introduced themselves during the public comment period. Filmmaker David Layton informed Commission members that he intends to make proposals to the Commission down the road on a film/video regarding the Willis/Willingham matter. Irma Rios provided insight on the Houston Police Department crime lab and its activities in response to questions from Commission members.

After the public comment period, the Willis/Willingham investigation was discussed. Bassett gave an update on the contract with Dr. Beyler, the expert to review the Willis/Willingham matter. The contract with Dr. Beyler is not yet finalized. Levy and Bassett are to finalize the contract within the next 3 weeks. At that time, Tomlin will work with Sam Houston State University and Dr. Beyler to get the contract signed.

Issues regarding confidentiality for the Willis/Willingham investigation were discussed. It was decided that the Commission would do their best to avoid corrupting the investigation with public comment. Bassett instructed Commission members to focus any comment on issues of the TFSC to issues of forensic science only and avoid invitations to comment on innocence, guilt and other issues outside of the jurisdiction of the Commission. He further stated that TFSC is not an "innocence commission" but is focused on maintaining and improving the quality of forensic science in Texas.

It was decided that the Commission would send an appropriate letter to the Fire Marshal's office inviting the agency to submit a response to the Willis/Willingham complaint. Tomlin and Bassett will work on drafting a letter to Fire Marshal Paul Maldonado, requesting a response from Mr. Maldonado by mid-March, before the Commission's next meeting.

The meeting continued with a discussion of the Moon investigation. Eisenberg identified three individuals that would be qualified to conduct the investigation. Kerrigan will also contact experts and invite them to submit proposals to investigate the Moon matter. Kerrigan also proposed publishing something about future investigation in the AAFS publication. It was discussed that the Moon investigation needs to be a thorough review of the testimony given at the trial. There will be a pool of candidates to investigate the Moon case at the Commission's next meeting. Tomlin is to send the Invitation for Offers to the AAFS, to Kathy Reynolds' attention.

The Commission reviewed several agenda items to be completed before the next meeting. Kerrigan will take the lead on a self-reporting form and revising the current complaint form. Commission members will discuss at the next meeting whether it would be appropriate to develop a single-page to be posted in forensic labs throughout the State. Pat Johnson of DPS could possibly distribute the posting to all of the DPS accredited labs. Watts and Tomlin will work on drafting the poster.

The meeting was adjourned by Motion from Adams. The Motion was seconded by Kerrigan.

The next meeting for the Commission is to be held in Austin on March 27th, 2009, beginning at 9:30 a.m.

The meeting following the March meeting shall take place in June, and the date and location will be determined at the March 27th, 2009 meeting.