

Request for Information on the Development of the Organization of Scientific Area Committees (OSAC) for Forensic Science 2.0

Response by:

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My response broadly addresses questions A through E, but should be read as a coherent whole rather than as a series of disjointed answers.

The 2009 NRC report and the 2016 PCAST report emphasize the need for reform. The status quo cannot continue. Reform must include logically correct evaluation of forensic evidence, meaningful empirical validation, measures to reduce the potential for cognitive bias, and adherence to the principle set out in FRE 702 and the rulings in *Daubert*, *Joiner*, and *Kumho Tire*. This represents a paradigm shift. The nature of a paradigm shift does not allow for a blend of old and new paradigm. They are incommensurate. One must either continue to adhere to the old paradigm, or abandon it and embrace the new paradigm.

OSAC 1.0 has been largely ineffective because of too much influence from members who are either passive resisters because they do not understand the fundamental need for reform, or who are active resisters because they have a vested interest in the continuation of the status quo. For forensic practitioners who have always done things a certain way, change would be disruptive and costly, and they may not perceive the status quo as broken. Prosecutors who achieve a high conviction rate under the status quo may also fail to perceive it as broken. There is a great need to understand the technical details and background knowledge in each branch of forensic science if developing standards and guidelines particularly applicable to those branches of forensic science, but progress must not be hindered by repeated attempts to enshrine current practice rather than to effect real reform.

The DOJ's response to the PCAST report demonstrated a lack of willingness to accept the problem and be willing to embrace reform. A recent press release by NIST also potentially undermined reform efforts – see my response at http://forensic-evaluation.net/NIST_press_release_2017_10/index.html. In order to effectively implement reform, control of OSAC 2.0 must not be under the influence of those who do not understand the need for and who are not committed to reform. On present evidence, this rules out OSAC falling under either DOJ or (unless the recent press release was an aberration) NIST. It also rules out most organizations dominated by practitioners unless they have demonstrated themselves to be progressive on this topic. There remains the danger that a resistant group could gain control, but in general I would recommend greater independence for OSAC 2.0.

Perhaps OSAC 2.0 should be somewhere between OSAC 1.0 and the defunct National Commission on Forensic Science (NCFS). NCFS was not without resisters, but its membership (including document drafting committees) was more weighted toward those who understood the need for change and who had deep knowledge in relevant areas. NCFS also tended to address overarching issues relevant across forensic science, rather than try to develop different documents for different branches of forensic science. NCFS was much more efficient and effective than OSAC 1.0 has been. OSAC 2.0 should perhaps have a size of membership that is somewhere between OSAC 1.0 and NCFS. The primary focus of OSAC 2.0 should be on articulating broadly applicable principles. Its secondary focus should be on the application of those principles, the details of which may vary somewhat between different branches of forensic science. Broadly applicable principles should be the drivers. This is a hierarchical structure with bi-directional flow, but probably with greater top to bottom flow than in OSAC 1.0. Human Factors, Legal Resources, and Forensic Inference and Statistics committees should have leading roles.

Like NCFS, OSAC 2.0 should be able to develop and self-publish views documents (or best practices, or guidelines). NCFS had a rigorous review process, but was not delayed by having to develop standards via other organizations. Views documents (or best practices, or guidelines) may be sufficiently influential, whereas timely development of formal standards may be intractable.

One of the advantages of NCFS and PCAST was that their membership included eminent scientists who were outsiders to forensic science but applied norms of modern science, and were therefore highly

critical of current practice in forensic science. In general I think this was a good thing, but in the case of PCAST, I think it went too far. I absolutely support what I understand to be the thrust of the PCAST report, but the problem with its membership being primarily non-forensic-science scientists, was ignorance of forensic science and thus being too easily influenced early on by particular points of view. Contrary to what is stated in the PCAST report, forensic science is not a branch of metrology, forensic science is its own discipline. Insufficiently appreciated in the PCAST report was the work of scholars in forensic inference and statistics who for many years have been making arguments similar to those found in the PCAST report. Note that these are scholars for whom forensic inference and statistics is a primary focus, not statisticians in general. Those with expertise in forensic inference and statistics (applicable across branches of forensic science) should be given much greater influence in OSAC 2.0.