

1 Final Minutes
2 Forensic Science Board Meeting
3 January 14, 2009
4 Department of Forensic Science Central Laboratory, Classroom 1
5

6 Board Members Present
7

8 Ms. Rochelle Altholz (Designee for Leah Bush, M.D.)
9 Mr. Steven Benjamin
10 Mr. Joseph Bono, Chair
11 Dale Carpenter, Ph.D.
12 Mr. John Colligan (Designee for Mr. Leonard Cooke)
13 Mr. Alan Katz
14 Mr. Karl Hade
15 Sheriff F. W. Howard, Jr.
16 Mr. Robert Jensen
17 Lieutenant Colonel Robert Northern (Designee for Colonel W. Steven Flaherty)
18 Ms. Elizabeth Russell
19 Mr. S. Randolph Sengel
20 Ms. Kristen Howard (Designee for Delegate Albo)
21

22 Board Members Absent – None
23

24 Staff Members Present
25

26 Ms. Wanda Adkins, Office Manager
27 Mr. Henry Bosman, Senior Accountant
28 Mr. Jeffrey Ban, Central Laboratory Director
29 David Barron, Ph.D., Technical Services Director
30 Ms. Guinevere Cassidy, Legal Assistant
31 Mr. Douglas Chandler, Manager Information Technology Services
32 Ms. Ann Davis, Physical Evidence Program Manager
33 Ms. Shelley Edler, Forensic Scientist, Forensic Biology
34 Ms. Leslie Ellis, Human Resources Director
35 Mr. Tom Gasparoli, Public Information Officer
36 Ms. Gail Jaspen, Chief Deputy Director
37 Mr. Bradford Jenkins, Biology Program Manager
38 Ms. Alka Lohmann, Training and Calibration Program Manager
39 Mr. Pete Marone, Director, Department of Forensic Science
40 Ms. Elizabeth Mirza, Grants Administration/Policy Analyst
41 Mr. Kevin Patrick, Western Laboratory Director
42 Mr. Steven Sigel, Deputy Director
43 Mr. Sherwood Stroble, Policy, Planning and Budget Manager
44 Ms. Lisa Schiermeier-Wood, Section Supervisor, Forensic Biology
45 Ms. Amy Wong, Northern Laboratory Director
46

47 Call to Order:

48

49 Chairman Bono called the meeting to order at 9:04 a.m.

50

51 Adoption of Agenda:

52

53 Chairman Bono asked if there were any additions or changes to the draft agenda. There were
54 none. Mr. Benjamin moved that the draft agenda be adopted. The motion was seconded by
55 Sherriff Howard and adopted without amendment by majority vote.

56

57 Adoption of Minutes

58

59 Chairman Bono asked if there were any additions or changes to the draft minutes from the
60 October 31, 2008 meeting. There were none. Ms. Russell moved that the draft minutes of the
61 October 31, 2008 meeting is adopted. The motion was seconded by Lt. Col. Northern and
62 adopted without amendment by unanimous vote.

63

64 Chairman's Report

65

66 Chairman Bono introduced Dr. Dale Carpenter, Chairman of the Scientific Advisory Committee
67 (SAC) and new member of the Forensic Science Board (the Board).

68

69 Chairman Bono informed the Board that he sent a letter to the Secretary of Finance requesting
70 that the Department of Planning and Budget (DPB) appear at this meeting of the Board and give
71 a presentation on the scope and nature of a best practices management audit/assessment. No
72 response was received.

73

74 Director's Report

75

76 Regarding DFS's Budget, Director Marone informed the Board that there has been a
77 restructuring of technical services. The eight Section Chief positions overseeing Drugs,
78 Toxicology, Trace Evidence, Latents/Imaging, Firearms, Nuclear DNA, Breath Alcohol and the
79 Training Academy were restructured into four Program Manager positions overseeing Training
80 and Calibration, Physical Evidence, Chemistry, and Biology. Also, the Director of
81 Administration and Finance position was eliminated; the training academy was reduced from
82 three sessions to two sessions with no subsidy for lodging of participants and open positions are
83 remaining open. A total of five positions were cut as a result of the budget reduction.

84

85 Discussion by the Board ensued regarding the impact of the DFS budget reduction. Further
86 discussion ensued regarding the Board's review of all budget and appropriations requests prior to
87 being submitted to the Governor. Mr. Benjamin requested that DFS report to the Board at the
88 next meeting DFS's proposed course of conduct in providing the Board with all budget and
89 appropriations requests for review prior to submission to the Governor.

90

91 Regarding grants, Director Marone informed the Board that there are currently two grants from
92 the U.S. Department of Justice, Office of Justice Programs, National Institute of Justice (NIJ)

93 that DFS requests Board approval to pursue. The first grant seeks applications for research and
94 development funding to enhance the forensic uses of DNA solicitation technology. DFS has
95 drafted its application titled *DNA Analysis from Compromised Evidence: Fired Cartridge Cases*
96 *and Submerged Weapons* with a funding request of \$110,000.

97
98 Discussion by the Board ensued regarding the DNA Analysis from Compromised Evidence grant
99 application. Mr. Benjamin requested that he be provided with a copy of the grant solicitation and
100 application.

101
102 Mr. Jensen moved that the Board grant its permission for DFS to move forward with the
103 application process regarding the DNA Analysis from Compromised Evidence grant. Sheriff
104 Howard seconded the motion which passed by majority vote with one abstention.

105
106 Director Marone also informed the Board that a second NIJ solicitation seeks applications for
107 funding under the Forensic Science Training Development and Delivery Program. Of the five
108 priority content areas for training development and delivery listed for possible grant funding
109 DFS proposes to apply for funding under the section on Education of criminal justice
110 practitioners and policymakers other than forensic scientists on relevant aspects of forensic
111 science. DFS has not yet drafted an application for this grant.

112
113 Discussion by the Board ensued regarding the Forensic Science Training Development and
114 Delivery Program grant. Mr. Benjamin requested that he be provided with a copy of the
115 solicitation, and the application when it becomes available.

116
117 Mr. Sengel moved that the Board grant its permission for DFS to draft an application for the
118 Forensic Science Training Development and Delivery Program grant. The motion was seconded
119 by Lt. Col. Northern and passed by unanimous vote.

120
121 Regarding the Workload Summary, Director Marone reported that the Board received a copy of
122 the 30-60-90 day backlog spreadsheet in the handout packet.

123
124 Discussion by the Board ensued regarding the backlog and any foreseeable need to replace open
125 examiner positions.

126
127 Regarding Facilities, Director Marone stated that the Northern laboratory construction is on track
128 with move-in expected in April, 2009. Regarding the Eastern laboratory's expansion, we are
129 waiting for the tenants on the 5th floor to move out after their lease expires. The status of the
130 Western laboratory is the same as reported in the last meeting.

131
132 Regarding the DNA Data Bank Requirements under VA Code § 19.2-310.2 *et seq.*, Director
133 Marone informed that there are now checks and balances in place utilizing the LIDS system to
134 have multiple checks of in custody individuals regarding their status in the DNA bank from
135 sentencing through incarceration and release.

136
137 Regarding compliance with revised quality assurance standards for forensic DNA testing
138 laboratories, Director Marone introduced Brad Jenkins, DFS Biology Program Manager. Mr.

139 Jenkins informed the Board that the revised standards are effective July 1, 2009. Most of the
140 standards have been expanded and further defined. DFS is currently following many of the new
141 standards but edits to the manuals are needed to document compliance. Validation guidelines
142 have been expanded. Quantitative PCR kits have been added to critical reagents, quality
143 controlled prior to use. The list of critical instruments required to have yearly quality control
144 reviews have been expanded. CODIS review of DNA data has been added. Requirements for
145 outsourcing have been expanded including audits and required on-site visits.

146
147 Regarding publication of protocols on the DFS website, Director Marone informed the Board
148 that due to the reduced budget new changes/additions to the website are slow because the
149 webmaster for the DFS website is a subcontractor and a new webmaster is cost prohibitive.
150 David Barron, DFS Technical Services Director informed the Board that the new DNA protocols
151 will be posted in the next couple of days followed by the new breath alcohol protocols a little
152 later. Dr. Barron stated that he would provide the Board with exact dates of when new protocols
153 are slated to be posted to the DFS website.

154 155 SAC Chairman's Report

156
157 Dr. Carpenter informed the Board that at yesterday's SAC meeting a new subcommittee was
158 formed to review the validations and protocol manuals of the PowerPlex 16 on the 3130x1, the
159 new DNA platform.

160
161 The Board broke from meeting proceedings at 10:08 a.m. for a fifteen minute break.

162
163 The Board meeting resumed at 10:24 a.m.

164 165 Old Business

166
167 Regarding the Post-Conviction DNA Testing Program, Chief Deputy Director Gail Jaspen
168 reported on the status of the program and provided the Board with a handout listing current data.
169 The number of case files found with evidence suitable for DNA testing totals 3,054, of which
170 766 cases have evidence and a named suspect that was known to have been convicted. 830 cases
171 have been sent to the contractor for DNA testing, of which 748 are cases with felony convictions.
172 406 cases have preliminary case results returned from the contractor; 70 cases have complete
173 case results returned from the contractor; and 355 cases are awaiting contractor testing. 268
174 contractor case results have been reviewed by DFS examiners from which 41 Certificates of
175 Analyses have been completed and mailed and 27 cases have Certificates of Analyses in the final
176 stages of completion.

177
178 There was discussion of the term "qualifying conviction" as used in the Post-Conviction DNA
179 Testing Program. Ms. Jaspen reported that the term was first used in connection with the 31
180 original cases in the program. Next, the term was used as defined by the state's statute that
181 defines and lists 9 "crimes against persons." This list of crimes against persons became the state
182 criteria for testing. Subsequently, the term has been used as defined by the NIJ grant list of
183 crimes that meet the criteria for testing under the grant. The NIJ criteria crime list is more

184 specific than the state's criteria list. More recently, the term has been used as defined by the
185 2008 Budget language, i.e., "individuals convicted of crimes."

186
187 Discussion ensued with Ms. Jaspen and the Board regarding the data and definitions of "cases"
188 and "convicted suspects." Ms. Jaspen stated that a "case" is a single criminal event that was
189 investigated. "Convicted suspect" is the individual convicted of the crime that was investigated.
190 A "case," therefore, can have more than one "convicted suspect."

191
192 Further discussion ensued with Ms. Jaspen, Mr. Jenkins and the Board regarding the use of the
193 term, "Not Indicated." Mr. Jenkins informed the Board that the term has not/will not be used in
194 Certificates of Analysis. The use of the term is not in compliance with the established protocols.
195 Ms. Jaspen stated that the term has been used as a category definition in reporting to the Board.
196 Ms. Jaspen noted that the Board also used the term in its November 2008 report to the Governor.

197
198 Regarding the Post-Conviction DNA Notification Project, Ms. Jaspen reported on the status of
199 the project and provided the Board with two handouts listing the various data categories and
200 current statistics. To date, the total number of convicted suspects eligible to be notified under
201 2008 Budget Language is 1,051 of which 206 are determined to be deceased and 845 are living.
202 Of the 845 living suspects entitled to notification, 196 are currently incarcerated and 58 have
203 undetermined addresses. To date, 317 suspects have confirmed receipt of the notification letter of
204 which 169 were hand-delivered to incarcerated suspects and 148 suspects returned the
205 confirmation post card or were confirmed by Mid-Atlantic Innocence Project (MAIP). An
206 additional, 100 green certified mail return receipts have been received signed by the suspect
207 addressee but with us other confirming information. 528 notification letters were returned as
208 "undeliverable" or no confirmation postcard was received.

209
210 Discussion by the Board ensued.

211
212 Ms. Jaspen introduced Col. Kemmler of the Virginia State Police (VSP) who reported to the
213 Board on VSP's identification of current addresses of convicted individuals for the Post-
214 Conviction DNA Notification Project. Col Kemmler informed the Board of the multiple step or
215 tiered investigation that took place to acquire the most current address for a convicted suspect.
216 Ms. Jaspen noted that this was a very time and labor intensive project for VSP.

217
218 Discussion by the Board ensued. Chairman Bono thanked Col. Kemmler and VSP for all their
219 work in acquiring addresses for the Post-Conviction DNA Notification Project.

220
221 Ms. Jaspen then introduced Shawn Armbrust of the Mid-Atlantic Innocence Project (MAIP) who
222 reported on the numbers and types of contacts made to MAIP as a result of notification letters
223 sent to the convicted suspects in the Post-Conviction DNA Notification Project. Ms. Armbrust
224 stated that to date she has been contacted by 172 people, 99 of whom required a follow-up call
225 and 20 with whom she has not yet contacted. 130 of the 172 stated that they are the person the
226 letter is addressing, 19 are unsure and 3 believe they are not the person addressed in the letter.
227 Ms Armbrust indicated that she has encountered the following issues: (1) there is continued
228 confusion by the recipients regarding the notification letter; (2) the letters continue to have

229 conviction accuracy problems; and (3) there are inconsistencies and confusion regarding what a
230 “qualifying conviction” as relates to testing status.

231
232 Discussion by the Board ensued. Chairman Bono thanked Ms. Armbrust and MAIP for all their
233 work in assisting the individuals receiving the notification letter in the Post-Conviction DNA
234 Notification Project.

235
236 Regarding the NIJ Post-Conviction Grant and the cooperative agreement, Ms. Jaspen informed
237 the Board that it is common with NIJ grants that in the award letter there is a request to sign an
238 accompanying cooperative agreement.

239
240 Regarding the review and approval from the Board for DFS to submit an application and enter
241 into the cooperative agreement regarding the latest NIJ grant, Ms. Jaspen reported to the Board
242 that in early 2008, NIJ posted the grant solicitation. On February 12, 2008, DFS discussed the
243 grant with Chairman Bono. DFS records do not reflect approval by Chairman Bono. In March
244 2008, DFS submitted its grant application to NIJ. At the May 7, 2008 Board meeting, DFS
245 presented the NIJ grant with other grants that were available. The Board took action to approve
246 moving forward with all the available grants. In July 2008, DFS received the pre-award letter.
247 At the August 8, 2008 Board meeting, DFS reported that the NIJ grant was pending. In
248 September 2008, DFS received the official NIJ grant award letter with the cooperative
249 agreement. On September 24, 2008, Director Marone signed the cooperative agreement. At the
250 October 8, 2008 Board meeting, Director Marone reported that DFS was awarded the NIJ grant.
251 Ms. Jaspen further stated that the grant review and approval process needed to be tightened up
252 and that it should be a shared responsibility DFS and the Board. To date DFS has incurred
253 \$10,392.13 in expenses regarding the NIJ grant, and no receipts have been submitted to NIJ for
254 reimbursement.

255
256 Discussion by the Board ensued. Mr. Benjamin and Mr. Jensen requested that they be provided
257 with copies of DFS’s reports to NIJ regarding the grant prior to submission.

258
259 Mr Sengel moved that the Board retroactively approve DFS’s application for the NIJ grant. Mr.
260 Katz seconded the motion. The motion passed by majority vote with two abstentions.

261
262 Mr. Katz moved that the Board retroactively approve DFS’s acceptance of the grant award. Mr.
263 Sengel seconded the motion. The motion passed by majority vote with two abstentions.

264
265 Regarding the NIJ – Urban Institute Study, Ms. Jaspen informed the Board that DFS has been
266 approached to participate in the study. The Institute would like to draw demographic data from
267 the Post-Conviction DNA Testing Program and Notification Project. DFS is currently in
268 discussion with the Urban Institute regarding what data they are seeking. The Urban Institute
269 Study is part of the NIJ Post-Conviction Grant.

270
271 New Business

272
273 Regarding the Crime Commission’s action on legislation relating to the DNA Notification
274 Project and the Board’s membership, Ms. Howard informed the Board that there are two pieces

275 of legislation recommended by the Crime Commission slated to be considered at the upcoming
276 General Assembly. The first is legislation to allow the Board to utilize the services of *pro bono*
277 volunteer attorneys in the Post-Conviction Notification Project. The patron of this legislation is
278 Senator Stolle. The second is legislation to add two legislators as members to the Board. The
279 patron of this legislation is Senator Howell.

280

281 Discussion by the Board ensued.

282

283 Public Comment

284

285 None

286

287 Next Board Meeting

288

289 The next meeting of the Board will be Wednesday, May 13, 2009, to begin at 9:00 a.m.

290

291 Adjournment

292

293 Mr. Sengel moved that the meeting be adjourned. Mr. Bono seconded the motion which passed
294 by unanimous vote. The Board meeting adjourned at 12:30 p.m.