

1 Final Minutes  
2 Forensic Science Board Meeting  
3 May 13, 2009

4 Department of Forensic Science Central Laboratory, Classroom 1  
5

6 Board Members Present  
7

8 Mr. Steven Benjamin

9 Leah Bush, M.D.

10 Mr. Joseph Bono, Chair

11 Dale Carpenter, Ph.D.

12 Mr. John Colligan (Designee for Mr. Leonard Cooke)

13 Colonel W. Steven Flaherty

14 Ms. Katya Herndon (Designee for Mr. Karl Hade)

15 Sheriff F. W. Howard, Jr.

16 Ms. Kristen Howard (Designee for Senator Howell and Senator Stolle)

17 Mr. Robert Jensen

18 Mr. Alan Katz

19 Ms. Elizabeth Russell

20 Mr. S. Randolph Sengel  
21

22 Board Members Absent  
23

24 None  
25

26 Legal Counsel for the Forensic Science Board  
27

28 Amy Dilworth, Assistant Attorney General  
29

30 Staff Members Present  
31

32 Ms. Wanda Adkins, Office Manager

33 Mr. Henry Bosman, Senior Accountant

34 Mr. Jeffrey Ban, Central Laboratory Director

35 Ms. Donna Carter, Finance Manager

36 Ms. Guinevere Cassidy, Legal Assistant

37 Ms. Ann Davis, Physical Evidence Program Manager

38 Ms. Shelley Edler, Senior Forensic Scientist, Forensic Biology

39 Ms. Leslie Ellis, Human Resources Director

40 Mr. Tom Gasparoli, Public Information Officer

41 Ms. Linda Jackson, Chemistry Program Manager

42 Ms. Gail Jaspen, Chief Deputy Director

43 Mr. James Lavery, IT Supervisor

44 Mr. Bradford Jenkins, Biology Program Manager

45 Ms. Alka Lohmann, Training and Calibration Program Manager

46 Mr. Pete Marone, Director, Department of Forensic Science

47 Ms. Elizabeth Mirza, Grants Administration/Policy Analyst  
48 Mr. Steven Sigel, Deputy Director  
49 Mr. Sherwood Stroble, Policy, Planning and Budget Manager  
50 Ms. Lisa Schiermeier-Wood, Section Supervisor, Forensic Biology  
51 Ms. Susan Uremovich, Eastern Laboratory Director

52

53 Call to Order:

54

55 Chairman Bono called the meeting to order at 9:05 a.m.

56

57 Adoption of Agenda:

58

59 Chairman Bono asked if there were any additions or changes to the draft agenda. There were  
60 none. The agenda was adopted as written with no revisions.

61

62 Adoption of Minutes

63

64 Chairman Bono asked if there were any additions or changes to the draft minutes from the  
65 January 14, 2009 meeting. There were none. The minutes were adopted as written with no  
66 revisions.

67

68 Director's Report

69

70 Regarding the Department of Forensic Science ("DFS") facilities, Director Marone informed the  
71 Forensic Science Board Members ("the Board" or "Board") that the Northern Lab took  
72 occupancy of the new facility May 1, 2009, with moving occurring this week. A Grand Opening  
73 event is scheduled for June 18, 2009 at 10:30 a.m. The Eastern Lab is slated to expand to the 5<sup>th</sup>  
74 floor of their facility in December of 2009. The Governor approved funding for the purchase of  
75 the vacant land adjacent to the Western Lab and the land was purchased for future expansion of  
76 the facility.

77

78 Regarding DFS's Budget planning process for FY 2010 and beyond, Director Marone informed  
79 the Board that the budget consists of six categories: Personnel, Facilities, Laboratory,  
80 Equipment, Administration and Travel. The Personnel category consists of all costs related to  
81 salaries, wages and benefits. The Facilities category consists of expenses related directly to  
82 operation and maintenance of the buildings. The Laboratory category consists of costs related  
83 directly to functions within the laboratories with most of these expenses going to supplies used in  
84 the labs. The Equipment category consists of expenses related to fixed assets (non-consumable)  
85 that are not considered part of the building and are used in the labs or by the administrative  
86 personnel. The Administrative category consists of expenses that support the agency such as  
87 postage, shipping, printing, recruitment, office supplies, etc. The Travel category consists of  
88 expenses related to court testimony, travel between labs, and travel training. Prior to the state  
89 budget reductions, this included expenses related to lodging and per diems for Breath Alcohol  
90 students and lodging for the Forensic Science Academy students. DFS Resources under the FY  
91 2009 General Fund Budget, by category, consist of: Personnel-\$25,765,224 (75%); Facilities-  
92 \$4,300,000 (12%); Laboratory-\$2,240,000 (6%); Equipment-\$900,000 (3%); Administration-

93 \$1,009,000 (3%); and Travel-\$267,000 (1%). Additional DFS Resources under the FY 2009  
94 Active Grants Budget, by category, include: Laboratory-\$5,517,641 (72%); Equipment-  
95 \$1,141,086 (15%); Personnel-\$777,475 (10%); and Travel/Other-\$250,710 (3%). DFS's FY  
96 2009 Active Grants Budget, broken out by service area, are as follows: Biological Analysis  
97 Services-\$7,285,375 (95%); Chemical Analysis Services-\$228,774 (3%); Training and Standard  
98 Services-\$172,762 (2%).  
99

100 Regarding grants, Director Marone informed the Board that DFS has developed a tracking form  
101 for the grant application/review/award acceptance process and notification to Board members  
102 who requested copies of grant reports and other grant documentation. The following grant  
103 applications were submitted since the last Board meeting: *Solving Cold Cases with DNA*,  
104 application deadline January 23, 2009, Board Chair and Vice Chair approval received on January  
105 21, and 22, 2009; *Forensic DNA Unit Efficiency Improvement Grant*, (software for data-banking  
106 not investigation) application deadline March 26, 2009, Chair and Vice Chair approval received  
107 on February 27, 2009.  
108

109 Discussion by the Board ensued regarding the *Forensic DNA Unit Efficiency Improvement*  
110 *Grant*.  
111

112 Director Marone continued regarding the grant applications that were submitted since the last  
113 Board meeting: *Convicted Offender and/or Arrestee DNA Backlog Reduction Program*,  
114 application deadline April 17, 2009, Chair and Vice Chair approval received on March 18 and  
115 19, 2009; *2009 Highway Safety Program Grant*, (breath alcohol training) application deadline  
116 March 31, 2009, Chair and Vice Chair approval received March 24, 2009; *Recovery Act: Edward*  
117 *Byrne Memorial Competitive Grant Program*, (personnel and equipment) application deadline  
118 April 27, 2009, Chair and Vice Chair approval received April 22, 2009. None of the grants have  
119 been awarded.  
120

121 Discussion by the Board ensued regarding the *Recovery Act: Edward Byrne Memorial*  
122 *Competitive Grant Program*.  
123

124 Col. Flaherty moved that the Board grant its permission for DFS to accept any/all awards from  
125 the five grants for which DFS has submitted applications. The motion was seconded by Mr.  
126 Sengel and passed by unanimous vote.  
127

128 Director Marone informed the Board that DFS seeks the Board's approval to submit applications  
129 for following two grants: *FY09 Forensic DNA Backlog Reduction Program*, application deadline  
130 June 4, 2009 (To assist eligible states and local governments to reduce the overall turnaround  
131 time for the handling, screening, and analysis of forensic DNA samples, increase the throughput  
132 of DNA laboratories, and reduce existing DNA forensic casework backlogs); *Paul Coverdell*  
133 *Forensic Science Improvement Grants Program*, application deadline May 29, 2009 (Coverdell  
134 Program awards grants to States and units of local government to improve the quality and  
135 timeliness of forensic science and medical examiner services).  
136

137 Dr. Bush moved that the Board grant its permission for DFS to submit applications for and  
138 accept any/all awards from the *FY09 Forensic DNA Backlog Reduction Program* and *Paul*

139 *Coverdell Forensic Science Improvement Grants Program* grants. The motion was seconded by  
140 Sheriff Howard and passed by unanimous vote.

141  
142 Director Marone continued regarding DFS's Budget planning process for FY 2010 and beyond,  
143 stating that a preliminary needs assessment was conducted with four areas identified: Positions,  
144 Instrumentation, Travel/Training, and Building Maintenance. Regarding positions, DFS will  
145 maintain current staff numbers to meet the needs of DFS and the Commonwealth. Regarding  
146 instrumentation, DFS will keep abreast of emerging technologies and diligently repair and  
147 replace instruments. The areas of essential business travel to testify at court and travel for  
148 continuing education for examiners are the areas of need and consideration for training/travel.  
149 Regarding building maintenance, DFS will continue with capital planning for the Roanoke site  
150 and building a maintenance reserve.

151  
152 Regarding the recent DFS management reorganization, Director Marone informed the Board that  
153 the restructuring of technical services involved the elimination of the eight Section Chief  
154 positions overseeing Drugs, Toxicology, Trace Evidence, Latents/Imaging, Firearms, Nuclear  
155 DNA, Breath Alcohol and the Training Academy and the creation of four Program Manager  
156 positions overseeing Training and Calibration, Physical Evidence, Chemistry, and Biology. The  
157 four Program Manager positions have been filled.

158  
159 Director Marone introduced the Program Manager for Chemistry, Linda Jackson. Ms. Jackson  
160 provided an overview of her background and explained that the Chemistry Program Area  
161 consists of three sections: Controlled Substances, Trace Evidence and Toxicology. Ms. Jackson  
162 further informed the Board regarding the achievements and needs of the specific sections.

163  
164 Discussion by the Board and Ms. Jackson ensued regarding the toxicology area and recruiting  
165 qualified examiners for open positions.

166  
167 Director Marone then introduced the Program Manager for Physical Evidence, Ann Davis. Ms.  
168 Davis provided an overview of her background and explained that the Physical Evidence  
169 Program Area consists of five sections: firearms and tool-marks, latent prints, questioned  
170 documents, bloodstain analysis, and digital and multimedia evidence. Ms. Davis further  
171 informed the Board regarding the achievements and needs of the specific sections.

172  
173 Discussion by the Board and Ms. Davis ensued regarding certification of examiners.

174  
175 Director Marone also introduced the Program Manager for Biology, Brad Jenkins. Mr. Jenkins  
176 provided an overview of his background and explained that the Biology Program Area consists  
177 of five areas of testing: Mitochondrial DNA; YSTR DNA; STR DNA; Screening samples for  
178 DNA testing; and, the DNA Databank. Mr. Jenkins also stated that the Biology Program Area  
179 included the Post Conviction DNA Testing Project. Mr. Jenkins further informed the Board  
180 regarding the achievements and needs of the testing areas.

181  
182 Discussion by the Board and Mr. Jenkins ensued regarding the DNA platform change.

183

184 Finally, Director Marone introduced the Program Manager for Training and Calibration, Alka  
185 Lohmann. Ms. Lohmann provided an overview of her background and explained that the  
186 Training and Calibration Program Area consisted of the Forensic Science Academy and the  
187 Breath Alcohol section. Ms. Lohmann further informed the Board regarding the achievements  
188 and needs of the Forensic Science Academy and the Breath Alcohol Section.  
189

190 Discussion by the Board and Ms. Lohmann ensued regarding the Forensic Science Academy and  
191 regional training academies.  
192

193 The Board broke from meeting proceedings at 10:15 a.m. for a fifteen minute break.  
194

195 The Board meeting resumed at 10:30 a.m.  
196

197 Director Marone directed the Board's attention to the backlog report in the handout packet and  
198 reminded them that the DNA numbers are skewed because of the Post Conviction DNA Testing  
199 Project. Mr. Jensen requested that at the next Board meeting a section regarding the DNA  
200 Databank be included in the backlog report.  
201

202 Regarding the National Academy of Sciences ("the Academy") Report on the Needs of the  
203 Forensic Science Community, Director Marone informed the Board of the major findings of the  
204 report. The findings include: standardization of norms and methods of training; implementation  
205 of the medical examiner system in place of the coroner system; an across the board increase of  
206 budgets; more research; more education; standardization of Firearms, Latent Prints and  
207 Questioned Document sciences; and separation of laboratories from law enforcement agencies as  
208 independent entities. The report proposed the creation of a new federal entity/agency that would  
209 be a national institute of forensic science. Comparing the Academy's findings to DFS, the  
210 implications for DFS are good with DFS continuing to be a leader in the field. Two weeks ago  
211 DFS went through the ASCLD/LAB International Assessment, the first step in an international  
212 certification. DFS also continues to be a leader in working with educational institutions to give  
213 students real world experience.  
214

215 Discussion by the Board and Director Marone ensued regarding the Academy Report,  
216 specifically: the standardization of language in reports; laboratory certification; and separate  
217 examiner certification in the disciplines of latent prints, trace evidence, digital evidence and  
218 firearms.  
219

220 Director Marone introduced the new DFS department counsel, Stephanie Merritt. Ms. Merritt  
221 comes to DFS from the Commonwealth's Attorney's Office for the City of Richmond.  
222

### 223 Old Business 224

225 Regarding the Post-Conviction DNA Testing Project ("PC-DNA Project"), Chief Deputy  
226 Director Gail Jaspen reported on the status of the program. The PC-DNA Project consists of two  
227 parts: the notification of the convicted persons and the testing of the DNA. Currently there are  
228 1,087 convicted suspects who are eligible to be notified under the 2008 Budget Language of  
229 which 206 are convicted suspects determined to be deceased. Of the 881 living convicted

230 suspects entitled to notification, 194 are currently incarcerated and 89 have not had an address  
231 determined. To date, 336 confirmed notifications have been received of which 172 were hand-  
232 delivered to incarcerated suspects and 164 were post card confirmation from non-incarcerated  
233 suspects or suspects confirmed by the Mid-Atlantic Innocence Project (“MAIP”). 106 green  
234 certified mail return receipts signed by the addressee were received. 545 convicted suspects’  
235 notifications are undelivered or delivered but unconfirmed.  
236

237 Ms. Jaspens informed the Board that Senate Bill 1391 (Stolle) was signed into law on March 23,  
238 2009, authorizing the use of pro bono attorneys and other volunteers in connection with the PC-  
239 DNA program notification efforts. DFS, the Virginia State Police (“VSP”), the Office of the  
240 Attorney General (“OAG”) and MAIP formed an informal work group and developed a work  
241 plan to implement SB 1391, a copy of which is in the hand-out packet. OAG has prepared  
242 Waiver of Liability and Confidentiality Agreement forms. Under the proposed work plan, MAIP  
243 would develop training for the pro bono attorneys/volunteer which will be subject to Virginia  
244 State Bar (“VSB”) approval. DFS Chief Deputy Director would be the Board’s point of contact.  
245 MAIP would be the pro bono attorney point of contact. DFS and VSP will provide the  
246 information necessary to locate and notify convicted suspects eligible for notification. On  
247 October 1, 2009, volunteers will report back to the Board. On December 1, 2009 the Board will  
248 report to the General Assembly, the Governor and VSCC.  
249

250 Mr. Benjamin proposed the following motion to modify the work group’s proposed work plan to  
251 implement SB 1391 (2009):

252 1. The Executive Director of VSCC will serve as chair of a  
253 subcommittee which she/he will appoint from the Board or any such individual  
254 she/he feels necessary to perform the duties of the Board as described by SB 1391  
255 (2009).

256 2. The subcommittee shall communicate with the Chief Deputy  
257 Director of DFS, as may be needed, for day-to-day assistance with agencies,  
258 organizations, and other persons participating in the project.

259 3. The OAG will prepare a waiver of liability and confidentiality  
260 agreement forms as specified in SB 1391 (2009). All individuals, state agencies,  
261 or private organizations volunteering services in the program pursuant to § 4 of  
262 SB 1391 (2009) shall execute a waiver of liability and a confidentiality agreement  
263 on those forms.

264 4. The required training for individuals, agencies and organizations  
265 volunteering services in connection with the notification program on the process,  
266 manner and conduct of notifications shall be developed by MAIP and submitted  
267 for approval to VSB.

268 5. Training shall become available no later than July 21, 2009 and  
269 shall be offered live at a minimum of four locations in the Commonwealth and via  
270 teleconferencing if possible.

271 6. The Subcommittee will secure, coordinate, and implement the  
272 assistance described in SB 1391 (2009). The Chair of the Subcommittee will  
273 designate a member of the subcommittee to be the pro bono attorney point of  
274 contact. The Subcommittee may utilize the volunteer service of other individuals  
275 or private organizations, including MAIP, to help recruit and manage assignments

276 to pro bono attorney and others, and to serve as a conduit of information to  
277 volunteers and for collection of information from volunteers. A memorandum of  
278 understanding shall memorialize the responsibilities of MAIP.

279 7. The Board, DFS and VSP will provide to the Chair of the  
280 Subcommittee the information that is needed to discharge the responsibilities  
281 described in SB 1391 (2009). This information will include, at a minimum, the  
282 information described on page two of the work group's work plan, and will be  
283 provided for use by pro bono attorneys and others subject to the terms of the  
284 waiver of liability and confidentiality agreement approved by the Board.

285 8. The pro bono attorneys and other volunteers will report on a  
286 continuing and ongoing basis to the Subcommittee on the results of their  
287 notification efforts and other particulars of the program. The Subcommittee will  
288 report these results and particulars to the Board on or before October 1, 2009 and  
289 at such other times as may be appropriate.

290 9. The Board will make a final report to the General Assembly, the  
291 Governor, and VSCC detailing the program, including the notification procedures  
292 used, the number of individuals contacted, responses made by contacted  
293 individuals, resources utilized and aggregated results of any DNA testing  
294 performed as a result of the notifications and responses, no later than December 1,  
295 2009.

296  
297 Mr. Benjamin's motion was seconded by Ms. Russell.

298  
299 Discussion by the Board ensued regarding a subcommittee chair's authority to appoint members  
300 to the subcommittee.

301  
302 Mr. Benjamin amended section 1 of his motion regarding the implementation of SB 1391 (2009)  
303 to read:

304 1. The Board will create a Subcommittee consisting of the Executive  
305 Director of VSCC, Col. Flaherty of VSP or his designee and Board member  
306 Steven Benjamin. The Executive Director of VSCC will serve as Chair of a  
307 Subcommittee and will have the authority to appoint Board members or other  
308 individuals as needed for their expertise to perform the duties of the Board as  
309 described by SB 1391 (2009).

310  
311 Mr. Benjamin's amended motion was seconded by Ms. Howard.

312  
313 Discussion by the Board ensued regarding the duties and responsibilities of the Subcommittee.  
314 Mr. Benjamin stated that the Subcommittee has the responsibility to ensure that the  
315 implementation and execution of SB 1391 moves forward.

316  
317 Discussion of the Mr. Benjamin's amended motion ended and a roll call vote was taken: Mr.  
318 Benjamin – Aye, Dr. Bush – Aye, Dr. Carpenter – No, Mr. Colligan – No, Mr. Katz – No, Col.  
319 Flaherty – No, Ms. Herndon – Aye, Ms. Howard – Aye, Mr. Jensen – Aye, Ms. Russell – Aye,  
320 Mr. Sengel – No. Six – Aye, Five – No, motion carried by majority vote.

321

322 Regarding the DNA testing in the PC-DNA Project, Ms. Jaspen informed the Board that to date  
323 the total number of case files found with evidence suitable for DNA testing is 3,054 of which  
324 2,210 cases contain a named suspect and 769 cases contain a named suspect known to have been  
325 convicted in the case. 803 cases have been sent to the contracting laboratory for DNA testing of  
326 which 721 are felony convictions. Of the 721 cases, 612 cases meet the NIJ grant criteria  
327 (homicide, rape and non-negligent manslaughter); 104 cases meet the State criteria (other violent  
328 crimes against a person; and in 5 cases, NIJ conviction confirmation is pending. Preliminary case  
329 results have returned in 406 cases. The final completed case results were returned in 141 cases  
330 and 256 cases wait contactor testing. The contractor test results in 324 cases have been reviewed  
331 by DFS examiners of which Certificates of Analysis have been completed and mailed in 91  
332 cases. There are no Certificates of Analysis in the final review stage. The following are the case  
333 test results: 10 convicted suspects were not indicated; 25 convicted suspects were not eliminated;  
334 known samples are needed for 10 convicted suspects; and there are 33 convicted suspects whose  
335 cases have insufficient scientific data upon which to draw a conclusion.

336  
337 Discussion by the Board and Ms. Jaspen ensued regarding testing priority for NIJ eligible and  
338 State criteria eligible cases. Ms. Jaspen stated that currently only NIJ eligible cases are being  
339 tested by the contract laboratory with incarcerated convicted suspect cases given priority of  
340 testing. It is the intent of DFS to test every piece of evidence in every eligible case file by the  
341 end of the project. Mr. Benjamin requested clarification regarding language he believes is  
342 included in the NIJ grant that specifies that federal grant money cannot be used for testing cases  
343 already tested using state funding.

344  
345 Further discussion by the Board, Ms. Jaspen and Program Manager Jenkins, ensued regarding the  
346 retesting of cases. Ms. Jaspen stated that this project has always strived to do the most thorough  
347 testing available. Mr. Jenkins stated that the cases were sent back for consumptive testing  
348 because not enough data was produced by the first round of tests. The contracting laboratory has  
349 been instructed to preserve  $\frac{1}{4}$  of the extracts for later testing. Mr. Benjamin requested that he be  
350 informed of the results of the four non-eligible NIJ cases that have been tested.

351  
352 Regarding the NIJ – Urban Institute Study, Mr. Jenkins informed the Board that the Urban  
353 Institute Study is the research aspect of the NIJ grant. The Urban Institute periodically comes  
354 and collects demographic data from the PC-DNA Project.

355  
356 New Business

357  
358 Regarding the passage of SB 1435 (2009), Ms. Jaspen informed the Board that two members  
359 have been added to the Board, the chairmen of the House and Senate Courts of Justice or their  
360 designees.

361  
362 Regarding the request for review of analysis under VA Code § 9.1-1113.C, Chairman Bono  
363 stated that Mr. Benjamin received the request which he forwarded to the Board. The request for  
364 review was then reviewed by Chairman Bono and Dr. Carpenter pursuant to the procedures  
365 established by the Board.

366



367 Discussion by the Board ensued regarding the request's underlying case that is currently a  
368 pending matter in the court system. The Board also discussed the need to convene the meeting in  
369 a closed executive session.

370  
371 Ms. Russell proposed the following motion to convene the meeting into closed executive session:

372 In accordance with the provisions of Section 2.23-711 (A)(1), (A)(7) and (A)(36)  
373 of the Code of Virginia, I move that the Board go into closed meeting for the  
374 purposes of discussion or consideration of the performance of specific employees  
375 of DFS. I further move that a representative of DFS Director and the Chief  
376 Deputy Director as Board liaison be present for the Executive Session as needed  
377 participants.

378  
379 Ms. Russell's motion was seconded by Col. Flaherty and passed by majority vote.

380  
381 At 12:45 p.m. the Board dismissed the public and DFS employees in attendance and convened  
382 the closed executive session. At 1:15 p.m. the Board reconvened meeting in open session.

383  
384 Regarding the certification of the closed executive session, Ms. Russell moved for the adoption  
385 of the following resolution:

386 WHEREAS, the Forensic Science Board has convened a closed meeting on this  
387 date pursuant to an affirmative recorded vote and in accordance with the  
388 provisions of The Virginia Freedom of Information Act; and WHEREAS, Section  
389 2.2-3712 of the Code of Virginia requires a certification by this Board that such  
390 closed meeting was conducted in conformity with Virginia law; NOW,  
391 THEREFORE, BE IT RESOLVED, that the Forensic Science Board certifies that,  
392 to the best of each member's knowledge, (i) only public business matter lawfully  
393 exempted from open meeting requirements under the Virginia Freedom of  
394 Information Act and (ii) only such public business matters as were identified in  
395 the motion convening the closed meeting were heard, discussed or considered by  
396 the Board in the closed meeting.

397  
398 Ms. Russell's motion was seconded by Col Flaherty. A roll call vote was taken: Mr. Benjamin –  
399 "I certify." Dr. Bush – "I certify." Dr. Carpenter – "I certify." Mr. Colligan – "I certify." Mr.  
400 Katz – "I certify." Col. Flaherty – "I certify." Ms. Howard – "I certify." Mr. Jensen – "I certify."  
401 Ms. Russell – "I certify." Mr. Sengel – "I certify." Motion carried by unanimous vote.

402  
403 Mr. Benjamin moved that the request for review of analysis under VA Code § 9.1-1113.C be  
404 referred to the Scientific Advisory Committee for review. There was no second to Mr.  
405 Benjamin's motion. Motion died.

406  
407  
408 Public Comment

409  
410 None

411  
412

413 Next Board Meeting

414

415 The next two meetings of the Board will be Wednesday, August 13, 2009, and Wednesday  
416 October 14, 2009, both to begin at 9:00 a.m.

417

418 Adjournment

419

420 Dr. Carpenter moved that the meeting be adjourned. Mr. Jensen seconded the motion which  
421 passed by unanimous vote. The Board meeting adjourned at 1:30 p.m.

1  
2  
3 **Transcription of Audio Recording from**  
4 **May 13, 2009 Forensic Science Board Meeting**  
5

6 Mrs. Jaspen: Let me see if I can give you the explanation for what has occurred. In those 91  
7 cases reported (...inaudible...) there were 129 total suspects. Of those 129 total suspects in the 91  
8 cases, 82 of the suspects were convicted. Forty-seven of suspects were not convicted. Of the 82  
9 suspects, 78 of them were suspects with NIJ eligible convictions (...inaudible...) convictions that  
10 are specified in the NIJ grant for funding. Four of the suspects had convictions that were not NIJ  
11 eligible. Our system is constructed so it allows us to track the suspects with the four categories  
12 at the bottom can only be tracked for NIJ eligible suspects. Those four numbers add up to 78 and  
13 78 suspects that are NIJ eligible. Most people are probably scratching their heads but this sort of  
14 thing is kind of what we live with on a day-to-day basis with the testing and notification project.  
15 The cases are very individual; there are different circumstances in the cases. There are cases that  
16 have convicted and not convicted suspects even just identifying who is entitled to notification is  
17 sometimes a complicated process. So that's the answer to why 10, 25, 10 & 33 add up to 78 and  
18 not 97.

19  
20 Mr. Benjamin: So the 78 that those four categories add up to, are those just the NIJ eligible  
21 convictions?

22  
23 Mrs. Jaspen: They are

24  
25 Mr. Benjamin: O.k. What are the results for the four non NIJ people?

26  
27 Mrs. Jaspen: I can't tell you immediately but I will find out and let you know.

28  
29 Mr. Benjamin: O.k.

30  
31 Mrs. Jaspen: We will get some clarification (...inaudible...)

32  
33 Mr. Benjamin: Do you or does anyone with the Department who is here today know if there were  
34 any, if any of those four non NIJ convictions, if any of those resulted in exclusions?

35  
36 Mrs. Jaspen: I don't think that we can confirm that

37  
38 Mr. Jenkins: We will get that information back for you once we have looked those numbers up.

39  
40 Mr. Benjamin: Whether it was an exclusion that would be reported in the certificate, right?

41  
42 Mr. Jenkins: Yes sir.

43  
44 Mr. Benjamin: You just don't know?

45  
46 Mrs. Jaspen: I don't know of any. I don't want to give specifics of those 4 cases.

47  
48 Mr. Benjamin: You are using the terms not indicated instead of excluded and I think Brad told  
49 us at the last meeting that the Department would no longer be using these words not indicated  
50 and you would be using the usual protocol language.  
51  
52 Mrs. Jaspen: The usual protocol is to use the word eliminated that's the way the reports are  
53 written.  
54  
55 Mr. Benjamin: O.k.  
56  
57 Mrs. Jaspen: And I only have "not indicated" there because we were tripping over ourselves  
58 when we wrote the November 1 report. For the November 1 report the proffered language was  
59 "not indicated". I think it's probably (...inaudible...) we moved to use the word we use in report  
60 writing.  
61  
62 Mr. Benjamin: The word eliminated is used in the certificate.  
63  
64 Mrs. Jaspen: Yes and (...inaudible...)  
65  
66 Mr. Jensen: Mr. Chairman,  
67  
68 Mr. Bono: Robert  
69  
70 Mr. Jensen: I have a couple of questions and I know that number can be frustrating but I would  
71 like to understand. You said back in the January Board meeting that 830 cases had been sent to  
72 Bode. We now say 803, is there just an accounting error or typographical or  
73  
74 Mrs. Jaspen: (...inaudible...)  
75  
76 Mrs. Schiermeier-Woods: The difference between those numbers, you are correct that at the  
77 January meeting 830 was reported as cases sent to Bode. During the time between January and  
78 now more conviction information came back that there were a number of cases up at Bode that  
79 were not NIJ eligible convictions so those cases were terminated and they were pulled back.  
80  
81 Mr. Benjamin: But I thought that we weren't testing just NIJ eligible but were also testing all  
82 crimes against a person.  
83  
84 Mrs. Jaspen: Bode is testing just NIJ eligible cases  
85  
86 Mr. Benjamin: Who's doing the others?  
87  
88 Mrs. Jaspen: At the conclusion of the Bode testing NIJ eligible cases, we will have a  
89 determination when the rest of the testing will be done. We have to have funding to do the  
90 testing.  
91  
92 Mr. Benjamin: So the only testing that is being done now is of NIJ eligible cases, is that right?

93  
94 Mrs. Jaspen: Yes  
95  
96 Mr. Benjamin: And the Department is not testing those non NIJ eligible cases that are otherwise  
97 crimes against a person?  
98  
99 Mrs. Jaspen: Not at this time  
100  
101 Mr. Benjamin: That's because there is no money?  
102  
103 Mrs. Jaspen: That is because (...inaudible...)  
104  
105 Mr. Benjamin: Because there isn't any money? Look I thought we were doing it all along. I  
106 thought we were testing both NIJ eligible and all crimes against a person and you are telling me  
107 now that we are not testing those and my question is why are aren't we and if can't why can't  
108 we?  
109  
110 Mrs. Jaspen: Because we have grant funding to do the NIJ eligible testing, but we don't have  
111 funding to do the other testing at the present time.  
112  
113 Mr. Benjamin: Have we applied for that funding?  
114  
115 Mr. Jenkins: No we have not applied for that at this time.  
116  
117 Mr. Benjamin: Do we have any idea where it will come from?  
118  
119 Mrs. Jaspen: Until we identify a source, we don't know.  
120  
121 Mr. Benjamin: Why hasn't the Board been told this until just now?  
122  
123 Mrs. Jaspen: I think we have been (...inaudible...) NIJ Bode doing NIJ eligible testing in the  
124 past. The cases are prioritized. In any case, when testing for incarnated persons on the NIJ  
125 grant. That's being done first and we are working on a way to prioritize (...inaudible...) obviously  
126 the Department is mindful of the fact that all testing has to be done eventually.  
127  
128 Mr. Benjamin: I got to tell you that I'm very upset and I remember specifically asking the  
129 Director at the last meeting whether for example when we were discussing crimes against a  
130 person whether malicious wounding were being tested and the answer was yes and other crimes  
131 against a person. This Board has always been told by the Department that all crimes against a  
132 person  
133  
134 Mrs. Jaspen: All those cases (...inaudible...)  
135  
136 Mr. Benjamin: That they were being testing not that the Department hoped to test them one day.  
137 Wanted to test them was looking for money to test them, but that these convictions were being  
138 tested and I'm just telling you I am very upset and surprised to find out that we are not despite

139 what the Board has been told testing, actively testing those cases and I'm concerned that the  
140 Department has no idea where to get the money to do that. I want answers.

141  
142 Mrs. Jaspen: I think that (...inaudible...) when Bode testing is completed that the remaining  
143 (...inaudible...) cases in the project (...inaudible...) NIJ grant. The worst case scenario from a  
144 budget perspective, those cases will get tested in-house if other funding hasn't been identified if  
145 we can't do it any other way, that testing can be done in our laboratories. It would be at the  
146 expense of current case work but if there's no funding for outside testing, like we are doing  
147 outside testing now, then those cases can be tested in-house.

148  
149 Mrs. Howard: Mr. Chairman

150  
151 Mr. Bono: Kristen

152  
153 Mrs. Howard: I just had a quick question. I was looking back at some of the reports and in  
154 February 2007 is that the correct date that the Department began transferring the first cases to the  
155 contract lab for testing?

156  
157 Mrs. Jaspen: Is that right?

158  
159 Mrs. Howard: Is that correct?

160  
161 Mrs. Schiermeier-Wood: I believe it was November 2006 for this phase of the project.

162  
163 Mrs. Howard: Thank you. What was the date that the NIJ grant was awarded, that funding was  
164 received by the Department.

165  
166 Mrs. Jaspen: The NIJ grant was finally awarded in September 2008.

167  
168 Mrs. Howard: So the testing was occurring prior to funding for the Department. Do I hear that  
169 correctly?

170  
171 Mrs. Jaspen: I'm sorry; can you repeat your question?

172  
173 Mrs. Howard: The testing had already begun and cases were already being sent to the contract  
174 laboratory prior to receiving the award?

175  
176 Mrs. Jaspen: There was state funding at the time to start the initial testing.

177  
178 Mr. Bono: Robert and then Steve we'll go back to you.

179  
180 Mr. Jensen: I appreciate the patience. Numbers again can be confusing but my concern as a  
181 Board member and having the statutory responsible or accountability is I'm not; I'm trying to  
182 phase this. I don't believe that there's anything going on that contentious there's a lot of  
183 confusion to me as a Board member and I'm not quite sure how to understand the confusion and  
184 a lot of it comes from reports. I'm looking at January 14, 2009 FSB meeting your update report

185 printed and right here it says “Cases sent to contractor additional cases sent for testing meeting  
186 state criteria was 128”. Now I read that to mean or my understanding at the time was that those  
187 were not NIJ cases those were the cases on top of that. So as recently as January I understood  
188 128 cases had gone. That’s your report and I have a copy.

189  
190 Mrs. Jaspens: Information changes based, as I think Lisa said, on changing conviction  
191 information in some cases. Information that was originally understood as confirmed, as the  
192 process (...inaudible...) and sometimes a cases where someone was convicted, based on  
193 subsequent confirming information, if we find no one was convicted, so the case comes off the  
194 list.

195  
196 Mr. Bono: Is it fair to say that you are giving us the most accurate information available with the  
197 data that you have available, understanding that as more information becomes available those  
198 numbers change.

199  
200 Mrs. Jaspens: Yes, I think we have tried to counsel the Board that the numbers change pretty  
201 much on a, weekly if not daily, basis. Information comes to the attention of the Department that  
202 causes us to recategorize the case. It is hard to; it has proven to be difficult to be absolutely  
203 certain about cases that are 20 and 30 years old.

204  
205 Mr. Jensen: Mr. Chairman and Deputy Director I understand that things change but the number  
206 of cases that you get conviction data on I understand that. The challenge I have is we send  
207 something to the lab or we don’t send something to the lab that shouldn’t be a change. It either  
208 went or it didn’t go a result came or didn’t come back. Then if we said well we shouldn’t have  
209 sent that or we shouldn’t had a result. That’s where I have a challenged. It’s hard to have a  
210 confidence in a system that has so much confusion or change from my perspective.

211  
212 Mr. Bono: I don’t know if it’s a question of confusion as it is again understanding the updated  
213 information is being provided that changes the numbers. There is no intent here to mislead the  
214 Board or to mislead the Commonwealth.

215  
216 Mr. Jensen: I believe that

217  
218 Mr. Bono: It is simply a matter of providing the most accurate information available at the time.

219  
220 Mrs. Jaspens: The Department has every intent to identify every appropriate case, every  
221 appropriate subject and test every appropriate case by the end of this project and provide to law  
222 enforcement agencies, Commonwealth Attorneys and the subject of these reports themselves, if  
223 we can find them, the information that develops from this project.

224  
225 Mr. Jensen: My final one is in January we had 355 cases awaiting testing by Bode they have  
226 done 90 cases. How are we telling them how fast to work or not work? What’s the process on  
227 how quickly they are moving through these? Is it by billing?

228  
229 Mrs. Jaspens: There’s lots of different measures and while I’m not...well, I’ll be the first to tell  
230 you, I wish there were more reports that had been issued by this point in time. In the January

231 meeting, there were 41 cases in which reports had been issued. At this point of time there are 91.  
232 Is that progress, yes? Great progress I wish there was more progress. Maybe that's the best  
233 measure we are getting through these cases.

234  
235 Mr. Jensen: By that I mean is the testing a Bode issue or DFS issue or both?

236  
237 Mrs. Jaspen: An issue? It's a process and Bode is working as fast as it can possibly produce  
238 cases and we talk to them regularly about producing them faster. Our own review is a laborious  
239 process and we have recently devoted more staff to the review process. We turn out reports  
240 when the test results are provided to us.

241  
242 Mr. Bono: What are you proposing Robert?

243  
244 Mr. Jensen: I'm just trying to understand Mr. Chairman

245  
246 Mrs. Jaspen: I'm happy to share these numbers with you and the aspects of the process. The  
247 Board and I guess the administration too had a view at the beginning of this process that this  
248 program should not impinge on day-to-day operations of the Department. So it's been a striking  
249 of the balance, getting work done on the outside and getting reasonably fast and getting it back as  
250 quickly as possible. But also as accurately as possible. This is a (...inaudible...) and should  
251 make sense that this is a process that requires a lot of decisions.

252  
253 Mr. Benjamin: Gail I don't think any of us have ever been told that this project was impinging  
254 on the day-to-day casework. We all feel very

255  
256 Mrs. Jaspen: We hope we do not (...inaudible...) casework

257  
258 Mr. Benjamin: And if and let me say just as one member that if we should ever arrive at a point  
259 where it would impinge on day-to-day casework, I as a Board member would want to know so  
260 that we can provide (...inaudible...) so that we can completing this project. I don't think anyone  
261 wants that to happen. Let me ask you something. We've been sending out letters to defendants  
262 and I think in these letters we've been telling them that, I'm paraphrasing because I don't have  
263 the letter, that evidence old biological material has been discovered in their case that may be  
264 susceptible to DNA analysis. I think the letter also said that material either was or was not being  
265 tested. O.k., is it a fact then that some of those letters were inaccurate. That if the case involved  
266 a non NIJ conviction that if we said to the individual that the evidence in their case was being  
267 tested that was inaccurate.

268  
269 Mrs. Jaspen: The letters ...there were two versions of letters sent out. One said the evidence is  
270 being testing and the other said the evidence is not being tested. Individuals who got  
271 (...inaudible...) with NIJ eligible, their letters should have said their evidence is being testing. If  
272 they are not NIJ eligible, it should have said evidence is not being tested at this time and they  
273 could request to have it tested.

274



275 Mr. Benjamin: O.k. so did we send any letters to people who are convicted of felony crimes  
276 against a person that did not constitute an NIJ conviction telling them that the evidence in their  
277 case was being tested?  
278

279 Mrs. Jaspen: Perhaps inadvertently. When these cases come to our attention we try to correct  
280 them (...inaudible...). I'll tell you that I know (...inaudible...) so when these cases come to our  
281 attention in the notification process we correct it.  
282

283 [Tape changed]  
284

285 Mr. Benjamin: ...not available. Is that an accurate conviction of that money?  
286

287 Mrs. Jaspen: There are certain cases, cases of homicide; rape and non negligent manslaughter  
288 are the eligible NIJ grant funded.  
289

290 Mr. Benjamin: Then I just make it part of my concern. My understanding of the grant or the  
291 cooperative agreement was that the \$4.4 or 5 million that we received that the condition was that  
292 the money was only to be used where there was not state money available. The reason I'm  
293 concerned about that condition is that we reported to the General Assembly in November 2008  
294 that the Department had used the entire \$1.4 million of state money to test more than 300 cases  
295 and at that time it was up to 360 cases and so my concern, Gail, is that if we have 612 NIJ  
296 qualified cases, no 803 total cases, and we subtract 360 that the state had already paid for, that  
297 leaves only 443 for which we could lawfully accept federal money for testing. Leaving yet  
298 another deficit in funding. Obviously we can't use federal funds for testing that state funds have  
299 already been used for.  
300

301 Mrs. Jaspen: I am not familiar with that term of the grant that you described and (...inaudible...)  
302 I have never heard of that term (...inaudible...)  
303

304 Mr. Benjamin: Thank you  
305

306 Mr. Bono: Any other questions for Mrs. Jaspen?  
307

308 Mr. Benjamin: I heard that some cases are being sent back for retesting.  
309

310 Mrs. Jaspen: There are cases that are represented here; they are cases with preliminary case  
311 results returned. We informed the Board in the past that we have asked additional testing be  
312 conducted on those cases (...inaudible...) a new report.  
313

314 Mr. Benjamin: 406 cases are being returned for additional testing?  
315

316 Mrs. Jaspen: They are going to be the subject of additional testing  
317

318 Mr. Benjamin: Why?  
319

320 Mrs. Jaspén: Because when the first set of case results came back, when they were thoroughly  
321 examined, when examined by staff here, initially for their preliminary results (...inaudible...)  
322 Upon further examination for the purpose of this program, it was determined that more thorough  
323 testing than had been performed (...inaudible...)  
324

325 Mr. Benjamin: What do you mean more thorough testing? Meaning what you may not be able  
326 to explain it. May be the DNA folks.  
327

328 Mrs. Jaspén: I'll give a shot and I'll ask for help.  
329

330 Mr. Benjamin: And I'll tell you, maybe I'm telling the Board. My concern here is about  
331 consuming up the entire evidentiary sample and that's one of the reason I'm concerned about  
332 retesting. My sense is then that the contracting lab has been very carefully to only use so much  
333 as necessary to deliver results so that the entire evidentiary sample wouldn't be consumed. So  
334 whenever you talk about sending cases back for retesting I'm concerned about consuming the  
335 entire evidentiary sample. I'm also concerned about spending money that I'm now learning that  
336 we don't have. Because I assume when we send it back for retesting we are paying for it again  
337 aren't we?  
338

339 Mrs. Jaspén: Let me give you the layman explanation and I'll call for the scientific assistance  
340 (...inaudible...). The purpose of this testing program has always been to do the most appropriate,  
341 most thorough testing available. This has obviously occasioned a new set of requirements  
342 associated with this program. Evidence was not going to the laboratory that resembled the  
343 evidence that goes to them in current casework. The cases going to the laboratory and what we  
344 test in these cases are swabs, cuttings and threads (...inaudible...) to produce the needed amount of  
345 information from these cuttings, swabs and threads. These cases have always been subjected to  
346 very thorough testing. The cases that came back with preliminary results turned out to have been  
347 appropriately worked, but probably more in line with the kind of work that's done in current  
348 cases.  
349

350 Mr. Benjamin: I'm not following you?  
351

352 Mrs. Jaspén: Where prime suspect physical evidence would be preserved. Yet there has always  
353 intended to be very thorough testing of the evidence in this case, with the preservation of extract  
354 from the testing that could be used for additional testing if needed after the test results were  
355 found. That's what was learned about this initial set of test results. When the preliminary testing  
356 was done it was not as complete as the Department felt appropriately.  
357

358 Mr. Benjamin: In what way though? That's what I don't understand.  
359

360 Mrs. Jaspén: Not all of the evidence was tested.  
361

362 Mr. Benjamin: We don't want it all tested do we? We don't want it consumed.  
363

364 Mr. Jenkins: Our position is that we do want that evidence, all of that evidence tested.  
365

366 Mr. Benjamin: Even if it means consuming the evidentiary sample?  
367  
368 Mr. Jenkins: Yes.  
369  
370 Mr. Benjamin: So that if somebody disagrees with the results wants a retesting they can't do it?  
371  
372 Mr. Jenkins: No  
373  
374 Mr. Benjamin: Well that would be a practically (...inaudible...) wouldn't it?  
375  
376 Mr. Jenkins: No, what provisions we have put in place is for and what we have seen in the  
377 testing since 1999 is that to get as much as a profile from those samples that we can that we had  
378 to test three swabs and three cuttings there we had to test those three cuttings to get results.  
379 What provision we put in place was that Bode has to conserve 25% of the liquid extract that  
380 remains. That is plenty for any additional testing. They cannot consume that liquid extract that  
381 remains of all these samples without written authorization from us.  
382  
383 Mr. Benjamin: So if you sent three swabs, then Bode is then extracting from those three swabs,  
384 is that correct so far?  
385  
386 Mr. Jenkins: All three of those swabs.  
387  
388 Mr. Benjamin: All three and is that all then being combined.  
389  
390 Mr. Jenkins: Yes sir, that correct. It's from the sample it's all combined in the same tube. That  
391 tube (...inaudible...) and then 25% of the DNA extract that remains is preserved for any future  
392 testing.  
393  
394 Mr. Benjamin: That is what you are asking Bode to do now?  
395  
396 Mr. Jenkins: That is correct.  
397  
398 Mr. Benjamin: What have they not done before that requires this retesting?  
399  
400 Mr. Jenkins: In some of the cases that you see, some of the 406 cases, they have tested the entire  
401 sample. We've looked at some of the other samples and maybe five samples in a case one of  
402 those samples may not have consumptive testing, and we look at that and we want to know, is  
403 there a better DNA profile of that? Can we eliminate people from that sample? That one sample  
404 would be returned to them for additional testing on that sample and combine it with the original  
405 abstract which they still have.  
406  
407 Mr. Benjamin: O.k., you have lost me. Do we pay extra for each retesting? We are paying more  
408 each time it's tested, I assume.  
409  
410 Mr. Jenkins: There are fees associated with any testing in the lab.  
411

412 Mr. Bono: Steve, can you basically compress your questions so we, you seem to be going in a  
413 circle at this point.

414  
415 Mr. Benjamin: No I'm not going in a circle, but I have no further questions at this point. Thank  
416 you, Joe.

417  
418 Mr. Bono: Thank you Steve. Any other questions for Gail?