Draft Minutes
Forensic Science Board Meeting
May 13, 2009
Department of Forensic Science Central Laboratory, Classroom 1

Board Members Present

Mr. Steven Benjamin
Leah Bush, M.D.
Mr. Joseph Bono, Chair
Dale Carpenter, Ph.D.
Mr. John Colligan (Designee for Mr. Leonard Cooke)
Colonel W. Steven Flaherty
Ms. Katya Herndon (Designee for Mr. Karl Hade)
Sheriff F. W. Howard, Jr.
Ms. Kristen Howard (Designee for Delegate Albo)
Mr. Robert Jensen
Mr. Alan Katz
Ms. Elizabeth Russell
Mr. S. Randolph Sengel

Board Members Absent

None

Legal Counsel for the Forensic Science Board

Amy Dilworth, Assistant Attorney General

Staff Members Present

Ms. Wanda Adkins, Office Manager
Mr. Henry Bosman, Senior Accountant
Mr. Jeffrey Ban, Central Laboratory Director
Ms. Donna Carter, Finance Manager
Ms. Guinevere Cassidy, Legal Assistant
Ms. Ann Davis, Physical Evidence Program Manager
Ms. Shelley Edler, Senior Forensic Scientist, Forensic Biology
Ms. Leslie Ellis, Human Resources Director
Mr. Tom Gasparoli, Public Information Officer
Ms. Linda Jackson, Chemistry Program Manager
Ms. Gail Jaspen, Chief Deputy Director
Mr. James Lavery, IT Supervisor
Mr. Bradford Jenkins, Biology Program Manager
Ms. Alka Lohmann, Training and Calibration Program Manager
Mr. Pete Marone, Director, Department of Forensic Science

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

Call to Order:

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

Adoption of Agenda:

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

Adoption of Minutes

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

Director's Report

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

<u>Old Business</u>

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

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

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

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

> 1. The Executive Director of VSCC will serve as chair of a subcommittee which she/he will appoint from the Board or any such individual she/he feels necessary to perform the duties of the Board as described by SB 1391 (2009).
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> 2. The subcommittee shall communicate with the Chief Deputy Director of DFS, as may be needed, for day-to-day assistance with agencies, organizations, and other persons participating in the project.
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> 3. The OAG will prepare a waiver of liability and confidentiality agreement forms as specified in SB 1391 (2009). All individuals, state agencies, or private organizations volunteering services in the program pursuant to § 4 of SB 1391 (2009) shall execute a waiver of liability and a confidentiality agreement on those forms.
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> 4. The required training for individuals, agencies and organizations volunteering services in connection with the notification program on the process, manner and conduct of notifications shall be developed by MAIP and submitted for approval to VSB.
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> 5. Training shall become available no later than July 21, 2009 and shall be offered live at a minimum of four locations in the Commonwealth and via teleconferencing if possible.
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> 6. The Subcommittee will secure, coordinate, and implement the assistance described in SB 1391 (2009). The Chair of the Subcommittee will designate a member of the subcommittee to be the pro bono attorney point of contact. The Subcommittee may utilize the volunteer service of other individuals or private organizations, including MAIP, to help recruit and manage assignments

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

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

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

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

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

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

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

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

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

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

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

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

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

Further discussion by the Board, Ms. Jaspen and Program Manager Jenkins, ensued regarding the retesting of cases. Ms. Jaspen stated that this project has always strived to do the most thorough testing available. Mr. Jenkins stated that the cases were sent back for consumptive testing because not enough data was produced by the first round of tests. The contracting laboratory has been instructed to preserve ¼ of the extracts for later testing. Mr. Benjamin requested that he be informed of the results of the four non-eligible NIJ cases that have been tested.

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

New Business

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

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

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

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

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

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

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

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

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

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

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

<u>Public Comment</u>

None

Next Board Meeting

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

Adjournment

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