

1 Final Minutes  
2 Forensic Science Board Meeting  
3 October 8, 2008  
4 DFS Central Laboratory, Classroom  
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 Mr. Leonard Cooke  
12 Ms. Marla Decker  
13 Mr. Seth Ginther (Designee for Mr. Robert Jensen)  
14 Ms. Katya Herndon (Designee for Mr. Karl Hade)  
15 Lieutenant Colonel Robert Northern (Designee for Colonel W. Steven Flaherty)  
16 Ms. Elizabeth Russell  
17 Mr. S. Randolph Sengel  
18 Mr. James Towey (Designee for Delegate Albo)  
19

20 Board Members Absent  
21

22 Sheriff F. W. Howard, Jr.  
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. Donna Carter, Office of Financial Management Services Manager  
31 Ms. Guinevere Cassidy, Legal Assistant/Forensic Science Board Secretary  
32 Mr. Douglas Chandler, Manager Information Technology Services  
33 Ms. Leslie Ellis, Human Resources Manager  
34 Mr. Tom Gasparoli, Public Information Officer  
35 Ms. Michele Gowdy, Department Counsel  
36 Ms. Linda Jackson, Controlled Substances Section Chief  
37 Ms. Gail Jaspen, Chief Deputy Director  
38 Mr. Bradford Jenkins, Section Chief Forensic Biology  
39 Mr. Ronald Layne, Director of Administration and Finance  
40 Ms. Alka Lohmann, Breath Alcohol Section Chief  
41 Mr. Pete Marone, Director, Department of Forensic Science  
42 Ms. Elizabeth Mirza, Grants Administration/Policy Analyst  
43 Mr. Kevin Patrick, Western Laboratory Director  
44 Mr. Steven Sigel, Deputy Director  
45 Mr. Sherwood Stroble, Policy, Planning and Budget Manager  
46 Ms. Susan Uremovich, Eastern Laboratory Director

47 Ms. Lisa Schiermeier-Wood, Section Supervisor, Forensic Biology  
48 Ms. Amy Wong, Northern Laboratory Director

49  
50 Call to Order:

51  
52 Chairman Bono called the meeting to order at 9:05 a.m.

53  
54 Adoption of Agenda:

55  
56 Chairman Bono asked if there were any additions or changes to the draft agenda. There were  
57 none. A motion was made to adopt the agenda by Ms. Herndon, seconded by Ms. Decker and  
58 adopted without amendment by unanimous vote.

59  
60 Adoption of Minutes

61  
62 Chairman Bono asked if there were any additions or changes to the draft minutes from the  
63 August 6, 2008 meeting. There were none. A motion was made to adopt the minutes of the  
64 August 6, 2008 meeting by Mr. Cooke, seconded by Lt. Col. Northern and adopted without  
65 amendment by majority vote.

66  
67 Old Business: Department of Planning and Budget – Risk Management Assessment and Request  
68 for Management Audit and Assistance

69  
70 Director Marone informed the Board that he had met with the Secretary of Public Safety on  
71 several occasions and had discussions regarding a Best Management Audit of the Department of  
72 Forensic Science (DFS) by the Department of Planning and Budget (DPB). After review of the  
73 2006 audit of DFS by the Auditor of Public Accounts (APA); the 2008 follow-up review of the  
74 DFS IT system and audit of the financial records and operations of DFS from July 1, 2006 – June  
75 30, 2008; the Department of Accounts audit of DFS's implementation of Agency Risk  
76 Management and Internal Control Standards for FY 2008; and the process for accreditation by  
77 the American Society of Crime Laboratory Directors/Laboratory Accreditation Board the  
78 Secretary declined recommendation that DPB conduct a Best Management Practices Evaluation  
79 for DFS.

80  
81 Discussion by the Forensic Science Board (the Board) ensued.

82  
83 Mr. Benjamin moved that the Board ask the Secretary of Public Safety to request a Best  
84 Practices Management Audit by DPB. Mr. Towey seconded the motion.

85  
86 Discussion by the Board ensued followed by a vote on Mr. Benjamin's motion. The motion  
87 failed by majority vote.

88  
89 Ms. Decker moved that the Chairman of the Board draft a letter to the Secretary of Finance  
90 requesting that DPB appear at the next meeting of the Board and give a presentation on the scope  
91 and nature of a best practices management audit/assessment consistent with the assessment DPB  
92 provided to the Indigent Defense Commission. Mr. Towey seconded the motion.

93  
94 Discussion by the Board ensued followed by a vote on Ms. Decker's motion. The motion carried  
95 by unanimous vote.

96  
97 Old Business: DNA Notification Project – Mid Atlantic Innocence Project (MAIP) Report and  
98 Further Action

99  
100 Director Marone informed the Board of the current status of the DNA Notification Project,  
101 regarding the letters that were sent out since the last Board meeting. Director Marone cautioned  
102 that the numbers on the PowerPoint presentation were approximate numbers. These numbers are  
103 being updated on nearly a daily basis as new information is received and the data is refined.

104  
105 Director Marone further reported that the 2008 Budget language required notification of 1,018,  
106 individuals who were suspects convicted of a felony and/or convicted of a crime against persons.  
107 Of the 1,018 individuals, 128 are Department of Corrections (DOC) inmates and have been  
108 mailed notification letters via 1<sup>st</sup> class mail. Regarding the certified mail letter to the inmates,  
109 due to the inability to accurately track receipt of certified mail to incarcerated individuals the  
110 letters are being sent to the wardens of the correctional institutions for distribution and  
111 documentation of return receipt. Of the 1,018 individuals, 890 names were provided to the  
112 Virginia State Police for determination of best addresses.

113  
114 Lt. Col. Robert Kemmler of the Virginia State Police (VSP) explained the details of the process  
115 the VSP uses to locate best addresses. It is a multi-level/multi pass process that provides further  
116 investigative avenues through which an individual's best address can be found if not initially  
117 found in the initial search/first pass of Virginia's criminal history data base.

118  
119 Director Marone added that of the 890 names provided to VSP for address determination, 440  
120 addresses were provided by VSP upon the initial search/first pass of VSP's best address process.  
121 First class and certified mail letters were sent to the 440 addresses. Of the 890 names, 50 were  
122 found to be deceased; 194 individuals do not have documented criminal history information in  
123 the Virginia criminal history database from which VSP could provide an address and further  
124 research is ongoing; approximately 80 individuals are believed to be currently incarcerated; and  
125 all remaining names are currently being research by VSP.

126  
127 Director Marone further informed the Board that of the 556 letters mailed: 116 were mailed to  
128 DOC inmates with approximately 85% of these being cases that are being tested; and 440 were  
129 mailed to persons not incarcerated with 65% of these being cases that are being tested.

130  
131 Director Marone introduced Gail Jaspen, new Chief Deputy Director of DFS and liaison to the  
132 Board and SAC.

133  
134 Ms. Jaspen described DFS's process of tracking the sending of notification letters and the  
135 documentation of the various types of responses received. Each letter requests confirmation of  
136 receipt via an enclosed postage paid white response card that provides a check box response for  
137 the recipient of the letter to indicate whether they are or are not the individual intended to receive  
138 the letter. Of the 116 letters that were sent via 1<sup>st</sup> class mail to inmates, 42 white response cards

139 were received and 4 letters were returned by the United States Postal Service (USPS) as  
140 undeliverable. Of the 440 non-inmate letters sent via 1<sup>st</sup> class and certified mail, 28 white  
141 response cards were received; 120 green certified return receipt cards were returned; and 56  
142 letters were returned by the USPS as undeliverable. The names of the letters returned as  
143 undeliverable will be resubmitted to VSP for further best address research.

144  
145 Director Marone advised that the notification form letters were developed in collaboration with  
146 the Mid-Atlantic Innocence Project (MAIP) and that the actual process of confirming addresses  
147 and sending mailings only commenced within the past 45 days.

148  
149 Discussion by the Board ensued.

150  
151 Chairman Bono introduced Shawn Armbrust of MAIP.

152  
153 Ms. Armbrust reported regarding the response she has received at MAIP as a result of the  
154 mailing of the notification letters. Ms. Armbrust indicated that like the numbers presented in the  
155 DFS PowerPoint, the numbers listed on her memorandum are the numbers as of the date of the  
156 document. Of the 394 letters that were mailed by DFS: 153 individuals are incarcerated; and 241  
157 are released. MAIP has been contacted by 66 individuals. Of the 66 individuals: 47 are  
158 released; 19 are incarcerated; 48 believe they are the correct person contacted; 18 believe they  
159 are not the correct person contacted; and 29 letters indicate that their case is tested or being  
160 tested with 13 not being tested.

161  
162 Ms. Armbrust further stated that she has observed several problems with the notification process.  
163 First, recipients were confused about the intent and content of the letter due to the language/word  
164 choice and due to the literacy level of the recipients. Second, there are errors or omissions in the  
165 information provided in the letters such as jurisdiction, court case number, crime committed and  
166 date of offense thus making it hard for the recipient to determine if they are the correct person  
167 receiving the letter. Finally, DFS is unable to share certain information they have acquired from  
168 VSP about the cases for the individuals who have contacted MAIP.

169  
170 Ms. Armbrust advised the Board that it would be much simpler to have pro bono attorneys  
171 ensure the accuracy of any contact and conviction information in advance and then fully explain  
172 the post conviction DNA project to convicted individuals. In the alternative, the Board should  
173 draft a letter that people can actually understand as opposed to a letter that has provoked a  
174 significant amount of confusion.

175  
176 Discussion by the Board ensued.

177  
178 Mr. Benjamin moved that DFS shall provide copies of all letters sent to defendants pursuant to  
179 the DNA Notification effort (i) for which no confirmation of receipt by the addressee has been  
180 received; (ii) for which an envelope has been returned to DFS; or (iii) for which a postcard has  
181 been returned to DFS indicating the wrong person received the letter, to James Towey, Executive  
182 Director of the Virginia State Crime Commission and further, that James Towey shall provide  
183 the letters to Virginia State Bar attorneys in good standing who are willing to provide pro bono

184 assistance and best efforts to ensure that the correct person is notified of the existence of physical  
185 evidence in their case file. Mr. Towey seconded the motion.

186  
187 Discussion by the Board ensued.

188  
189 Mr. Benjamin amended his motion as follows: DFS shall provide copies of all letters sent to  
190 defendants pursuant to the DNA Notification effort: (i) for which no confirmation of receipt by  
191 the addressee has been received; (ii) for which an envelope has been returned to DFS; or (iii) for  
192 which a postcard has been returned to DFS indicating the wrong person received the letter to  
193 MAIP. Mr. Towey seconded the amended motion.

194  
195 Discussion by the Board ensued.

196  
197 The Board broke from meeting proceedings at 10:50 a.m. for a ten minute break.

198  
199 The Board meeting resumed at 11:00 a.m.

200  
201 Ms. Decker offered a substitute motion that the Board recommend to the General Assembly that  
202 it amend the language in item 408, of the 2008 budget to provide a procedure for notification of  
203 all individuals who fall within the category of those convicted due to criminal investigations for  
204 which case files from 1973 through 1988 were found to contain evidence possibly suitable for  
205 DNA testing. This modified procedure should contemplate notification of all individuals in the  
206 most effective manner, with sufficient resources to accomplish this important task. The  
207 substitute motion was seconded by Lt. Col. Northern.

208  
209 Discussion by the Board ensued.

210  
211 Ms. Decker amended her substitute motion as follows: that the Board recommend to the General  
212 Assembly that it amend the language in item 408, of the 2008 budget, or use any other  
213 expeditious means deemed appropriate, to provide a procedure for notification of all individuals  
214 who fall within the category of those convicted due to criminal investigations for which case  
215 files from 1973 through 1988 were found to contain evidence possibly suitable for DNA testing.  
216 This modified procedure should contemplate notification of all individuals in the most effective  
217 manner, with sufficient resources to accomplish this important task. The substitute motion was  
218 seconded by Ms. Russell.

219  
220 Ms. Decker's amended substitute motion carried by a majority roll call vote of 8 yes and 3 no;  
221 specifically: Ms. Alholz, yes; Mr. Benjamin, no; Chairman Bono, yes; Mr. Cooke, yes; Ms.  
222 Decker, yes; Mr. Ginther, no; Ms. Herndon, yes; Lt. Col. Northern, yes; Ms. Russell, yes; Mr.  
223 Sengel, yes; Mr. Towey, no.

224  
225 Ms. Decker requested that the Chairman draft a letter to the General Assembly, specifically the  
226 Chairs of the Finance, Appropriations, and respective Courts Committees to memorialize the  
227 amended substitute motion. Specifically, the letter is to include the motion, the vote, the reasons  
228 for the motion, and the intent of the motion. A draft of the letter is to go to Mr. Ferguson for  
229 word smithing and then to the Board for review prior to sending.

230  
231 Ms. Decker requested that progress reports be presented to the Board at the next meeting by the  
232 DFS, VSP and MAIP.

233  
234 Chairman Bono and Ms. Decker thanked Ms. Armbrust and MAIP for their assistance with the  
235 DNA Notification Project.

236  
237 Ms. Decker moved that the Board allow DFS in collaboration with MAIP to modify and clarify  
238 any troublesome language of the notification template letter to those remaining to be mailed and  
239 those to be sent. Ms. Herndon seconded the motion which carried by unanimous vote.

240  
241 Mr. Towey requested that for the next Board meeting the DNA Notification Charts distributed to  
242 the Board by the DFS be clarified and modified to include headings on the charts.

243  
244 Ms. Decker requested that hard copies of next Board meeting's PowerPoint presentations be  
245 distributed to the Board.

246  
247 New Business – DNA Data Bank Collection

248  
249 Mr. Benjamin requested that a full report be presented to the Board by the DFS regarding the  
250 collection of DNA from inmates in the Department of Corrections.

251  
252 Director's Report

253  
254 Director Marone informed that the following Federal Grants were awarded to DSF:  
255        2008, *Forensic DNA Backlog Reduction Program* – \$942,280, for FY 2009, from (NIJ)  
256        to reduce the forensic casework backlog in the Forensic Biology Section  
257        2008, *Byrne Memorial Justice Assistance/Criminal Justice System Improvement Grants*  
258        – \$60,000, (with a \$20,000, state match) through DCJS for FY 2009, to purchase a GC/MS  
259        unit for the Controlled Substances Section in the Northern Lab.  
260        *Paul Coverdell National Forensic Science Improvement Program* – \$59,000, through  
261        the OCME for FY 2009, to purchase equipment and supplies for the Controlled Substances and  
262        Toxicology Sections statewide  
263        2009, *U.S. Department of Transportation Highway Safety Project Grants* – \$40,674.47,  
264        (with a \$10, 168.62, state match) through DMV for FY 2009, to train law enforcement officers  
265        across the Commonwealth on the new Breath Alcohol equipment.  
266        2008, *Using DNA Technology to Identify the Missing* – \$443,682, form NIJ in FY 2009,  
267        to assist OCME in identifying human remains via nuclear and mitochondrial DNA analysis  
268        2008, *Post-Conviction DNA Testing Assistance Program* – \$4,520,295, from NIJ in  
269        FY 2009, to support the post conviction DNA testing of forensic samples associated with case  
270        files from 1973 to 1988

271  
272 Mr. Benjamin requested that DFS send a copy of the 2008 Post Conviction DNA Testing  
273 Assistance Program award to any Board member that requests it.

274

275 Regarding Accreditation Activities, Director Marone reported that DFS remains accredited  
276 through the ASCLD/LAB Legacy Program. DFS has submitted application materials to the  
277 ASCLD/LAB for accreditation through their International Program. The ASCLD/LAB  
278 accreditation process should be completed in mid 2009.

279  
280 Regarding APA audits, Director Marone reported that a copy of the report for the period of July  
281 1, 2006 through June 30, 2008 has been provided to the Board. The summary of the IT security  
282 states, "Forensic Science has implemented adequate data security measures, policies, and  
283 procedures, and this implementation complies with the Commonwealth's standards." The audit  
284 states also that, "During our audit of the period from July 1, 2006 through June 30, 2008, we  
285 reviewed the \$1.42, million spent from the Governor's Economic Contingency account and  
286 found that the expenses were proper and reasonable."

287  
288 Director Marone introduced Donna Carter the Office of Financial Management Services  
289 Manager for DFS who informed regarding the DOA Audit.

290  
291 Ms. Carter stated that the DOA did the audit per the Agency Risk Management and Internal  
292 Control Standards (ARMICS) which is a set of standards that were designed to be consistent  
293 with the private sector's standards in the Sarbanes-Oxley Act. The audit looked at the following:

- 294 Determine the Agency's approach and methodology to ARMICS
- 295 Determine if all of the following internal control components were addressed by the  
296 Agency: control environment, risk assessment, control activities, information and  
297 communication, and monitoring.
- 298 Review any internal control weaknesses identified by the ARMICS process.
- 299 Review the agency's methodology for determining significant fiscal processes and if  
300 all fiscal processes were identified and documented.
- 301 Document Agency methodology for identifying and defining controls over fiscal  
302 processes and determining if any controls are missing or if any unnecessary controls exist.
- 303 Document Agency's Key Controls and determine the Agency's process for testing key  
304 controls and re-test key controls to determine operational effectiveness.

305 DFS did not have any significant internal control weaknesses.

306  
307 Regarding the Workload Summary, Director Marone reported that the Board received a copy of  
308 the 30-60-90 day backlog spreadsheet in the handout packet. Note that the Forensic Biology  
309 numbers include the Post-Conviction Cases.

310  
311 Regarding the Breath Alcohol Program, Director Marone reported that the new instruments are  
312 being certified for field use and placement will begin in the next two weeks. The process will  
313 begin in the central area of the state with the western area to follow.

314  
315 Regarding the Budget, Director Marone reported that as requested by the Chief of Staff,  
316 reduction plans have been submitted to DPB. DFS has not received any information from DPB  
317 regarding the submitted reduction plans. The Governor will announce projections and release  
318 the reductions for FY 2009 this Thursday.

319  
320 Discussion by the Board ensued.

321

322 Chairman's Report

323

324 Chairman Bono stated that Barry Fisher has resigned from the SAC due to personal reasons. The  
325 Chairmanship of SAC will be decided at the next SAC meeting on January 13, 2008. The new  
326 SAC Chairperson will be introduced and will present a SAC report at the next Board meeting.

327

328 Public Comment

329

330 None

331

332 Next Board Meeting

333

334 Chairman Bono informed that the next meeting of the Board will be Wednesday, January 14,  
335 2009, to begin at 9:00 a.m.

336

337 Closing Remarks

338

339 Ms. Decker thanked the State Bar of Virginia for their letter to the Board regarding pro bono  
340 attorneys. She also thanked the VSP for putting the DNA notification project best address  
341 project on the front burner. In addition, she thanked the Board, DFS and Director Marone for  
342 their efforts to move the notification project forward.

343

344 Chairman Bono thanked VSP. He also thanked the State Bar of Virginia and the attorneys that  
345 volunteered their assistance with the DNA notification.

346

347 Chairman Bono adjourned the meeting at 11:55 a.m.