

1
2 **Minutes**
3 **FORENSIC SCIENCE BOARD MEETING**
4 **August 8, 2007 at 10:00 a.m.**
5 **DFS Central Laboratory, Training Room 1**
6

7 Board Members Present:
8

9 Mr. Steven Benjamin
10 Mr. Joseph Bono, Chair
11 Mr. Leonard Cooke
12 Dr. Marcella Fierro
13 Mr. Barry Fisher
14 Colonel W. Steven Flaherty
15 Ms. Katya Herndon (designee for Mr. Karl Hade)
16 Sheriff F. W. Howard
17 Mr. Robert Jensen
18 Mr. Alan Katz (designee for Ms. Marla Decker)
19 Mr. S. Randolph Sengel
20 Mr. James Towey (designee for Delegate D. Albo)
21

22 Board Members Absent:
23

24 Ms. Elizabeth Russell
25

26 Staff Members Present:
27

28 Ms. Wanda Adkins, Office Manager
29 Mr. Jeff Ban, Forensic Biology Section Chief
30 Dr. Dave Barron, Technical Services Director
31 Ms. Betsy Bratton, Procurement Specialist
32 Ms. Donna Carter, Fiscal Officer
33 Ms. Leslie Ellis, Human Resources Director
34 Ms. Michele Gowdy, Department Counsel
35 Ms. Meghan Kish, Board Secretary
36 Mr. Ron Layne, Director of Administration and Finance
37 Mr. Pete Marone, Department Director
38 Mr. Steve Sigel, Deputy Director
39 Mr. Sherwood Stroble, Policy, Planning and Budget Manager
40 Ms. Susan Uremovich, Eastern Laboratory Director
41

42 Call to Order:
43

44 The meeting was called to order at 10:00 a.m.
45
46

47 Adoption of Agenda:

48

49 Mr. Bono announced that there were two amendments to the agenda. *Item IX. November*
50 *I Report* would be discussed at the next meeting of the Board, and *Item X. Legislative*
51 *Proposals* would be addressed within the Director's Report.

52

53 Colonel Flaherty made a motion to approve the agenda with the two changes. The motion
54 was seconded by Mr. Sengel. The motion passed by unanimous vote.

55

56 Approval of draft minutes:

57

58 Mr. Bono asked if there were any changes to be made to the draft minutes from the May
59 9, 2007 meeting.

60

61 Mr. Benjamin requested that a full transcription of the discussion generated by Director
62 Marone's May 9, 2007 update on the status of the post-conviction testing project be
63 included as an addendum to the minutes.

64

65 Ms. Kish reported that two spelling mistakes needed to be corrected. On the second page,
66 Intoxilyzer was spelled wrong, and the vendor is CMI. On the third page, Breathalyzer
67 was misspelled.

68

69 Mr. Cooke moved that the minutes be approved with the transcription and the changes.
70 Dr. Fierro seconded the motion. All were in favor, and the motion passed.

71

72 Chairman's Report:

73

74 Mr. Bono introduced Mr. James Towey, designee for Delegate Albo, who has succeeded
75 Senator Stolle as the Chairman of the Crime Commission. He also acknowledged the
76 other designees present, Mr. Alan Katz for Ms. Marla Decker, and Ms. Katya Herndon
77 for Mr. Karl Hade.

78

79 Mr. Bono referred to Item VIII on the agenda, and explained that Mr. Sengel had visited
80 each of the regional laboratories and developed a report to present to the Board. Mr.
81 Bono thanked Mr. Sengel for his efforts.

82

83 Scientific Advisory Committee Chairman's Report:

84

85 Mr. Fisher announced that there were several seat changes to be recognized on the
86 Committee. Mr. Bono was appointed to the position of director of a private or federal
87 forensic lab, from the position of Quality Assurance Monitor. Filling that vacancy was
88 Ms. Deborah Friedman of the Broward County Sheriff's Office. Mr. Fisher next
89 introduced Dr. Norah Rudin, a Forensic DNA consultant from Mountain View, CA, who
90 succeeded Ms. Demris Lee as the Forensic Biologist.

91

92 Mr. Fisher also explained that the Committee had heard several reports. Dr. Barron gave
93 a presentation on the Department's training process, which was followed by a discussion.
94 Staff from the Department was asked to compare and contrast their training methods with
95 those recommended by the Scientific Working Groups (SWGs) and other relevant
96 certifying bodies, and to report back on these findings.

97
98 Mr. Fisher reported that a discussion regarding the possibility for contextual bias also
99 took place. Some Committee members felt that evidentiary DNA samples should be
100 analyzed completely separate from the suspect known sample, and that to run the samples
101 concurrently introduces the possibility for contextual bias. Mr. Fisher reported that Mr.
102 Ban, in consultation with Dr. Rudin and Dr. Eisenberg, will provide a report at the next
103 meeting.

104
105 Mr. Benjamin commented that he felt the Committee's action regarding the review of
106 current DNA practices was both commendable, and necessary. As a defense attorney, he
107 felt that Department protocols allowed for the bias argument to be made. Dr. Fierro
108 suggested that the issue was not so clear cut. She stated that running samples at the same
109 time, on the same instrument, served as an additional control. A lapse in time between the
110 samples, especially in cases when years pass between running the evidence and the
111 suspect known, creates the added risk of technologies, markers, or procedures changing.
112 It was decided that the Committee would look into the issue and report back to the Board
113 at a later date.

114
115 Mr. Fisher continued his report, informing the Board that the Committee had voted to
116 change the required qualifications for Forensic Scientist positions to include a Bachelor's
117 degree, to become more consistent with the requirements of relevant certifying bodies.

118
119 Mr. Fisher discussed changes to language found in drug case reports, to clarify sampling
120 procedures.

121
122 As a side note at the end of discussion, Mr. Bono requested that reports to the Board by
123 DFS be made using terminology that would be appropriate for non-scientists, as not all
124 members of the Board are scientists.

125
126 Subcommittee on Familial Searches Report:

127
128 Mr. Fisher reported that, at the February meeting, a subcommittee had been created to
129 look into the possibility of performing familial searches. The Subcommittee met on May
130 8, 2007 and on August 6, 2007, and had drafted a summary report, which was provided to
131 the Board. The members were: Dr. Bieber (Chairman, May meeting), Mr. Denio, Dr.
132 Eisenberg, Ms. Lee (May meeting only), Dr. Krane (Chairman, August meeting), and Dr.
133 Rudin (August meeting only). Mr. Fisher summarized the report, and responded to
134 questions from the Board.

135
136 There was a detailed discussion on whether DFS should take action to notify agencies
137 that would be affected should a request for familial search be received from another state.

138 Mr. Benjamin made a motion that the Board advise the Attorney General and the
139 Governor's Office of the study that has been conducted by the Scientific Advisory
140 Committee concerning the utility of familial DNA searches, and any possible legislative
141 changes that might be necessary depending on Board and Committee recommendations.
142 The motion was seconded by Dr. Fierro.

143

144 Colonel Flaherty asserted that he felt the Board was looking for answers before knowing
145 all of the questions. He explained that the Board would risk telling them how to do their
146 jobs. Discussion followed. Ms. Herndon pointed out that representatives of those
147 agencies were present, and suggested that including the topic of familial searches in the
148 November 1 Report would be more appropriate. Mr. Cooke agreed that the necessary
149 agencies likely were aware, or would be made aware shortly, of the issue.

150

151 Mr. Bono suggested that, to provide clarification, the Board revisit its statutory
152 responsibilities at the next meeting. In response to the discussion, Mr. Benjamin
153 withdrew his motion.

154

155 Director's Report:

156

157 Mr. Marone directed everyone's attention to the charts that had been provided, reporting
158 quarterly statistics from all of the laboratory sections in response to the request from Mr.
159 Jensen at the last meeting. Mr. Marone then used the statistics to explain the success of
160 the backlog reduction efforts that had been put into place last year.

161

162 Mr. Marone introduced Dr. Barron, formerly the Central Laboratory Director, and now
163 the new Technical Services Director. He announced that Mr. Ban, former DNA Section
164 Chief, had been hired as the new Central Laboratory Director to replace Dr. Barron. He
165 described their individual qualifications, and explained that both were selected after
166 public hiring processes.

167

168 Next, Mr. Marone provided an update on the breath alcohol equipment: the evaluation
169 units have just arrived and will undergo a minimum of six months of testing by the
170 Department of Forensic Science. If, after the evaluation period, the instruments meet all
171 the set requirements, a contract will be awarded.

172

173 Mr. Marone reported that the Department had applied for and received the following
174 grants:

175

2007 NIJ Forensic DNA Backlog Reduction Program – (\$1,019,118)

176

Coverdell Forensic Science Improvement Grants Program – (\$50,000 with
177 \$8,500 match)

177

DMV Grant – received \$150,088.00 in funds with a \$30k match

178

179

180 He informed the Board that the Department had also applied for a Convicted Offender
181 and/or Arrestee DNA Data Bank Reduction grant, which was not granted due to the fact
182 that the DNA Data Bank did not have a backlog.

183

184 Mr. Marone announced that the Department has hired three new controlled substances
185 examiners (trainees through VIFSM) and two new Digital Evidence Examiners (one from
186 VIFSM, one is an external recruit).

187
188 Additionally, the Department has hired eight new DNA trainees, 5 of which will train at
189 the Central Laboratory and 3 at the Eastern Laboratory. The Department also has eight
190 Firearms trainees, four starting in Central, two starting in Eastern, and two more in their
191 second year of training.

192
193 Mr. Marone announced that construction is expected to begin at the Northern Laboratory
194 on August 15, 2007 with an expected move-in date in February of 2009. A Capital
195 Budget Proposal has been submitted to buy the land next to the Western Laboratory and
196 expand the lab into that space. The Administration Section at the Central Laboratory is
197 expected to move into their new space on the third floor of the new building across the
198 street sometime in late January. Negotiations are still ongoing at the Eastern Laboratory.

199
200 Mr. Marone explained to the Board that the Department was requesting budgetary
201 increases in a number of areas, specifically for increased utility costs for all the labs (but
202 especially Northern, which is being expanded), for new scientific and support positions
203 necessary to fill future voids, and for the purchase/replacement of scientific equipment.

204
205 Mr. Marone next addressed the DNA/Serology case file review that is underway. He
206 reported that 117 files have been sent to BODE for testing, approximately 68 of which
207 have been returned. A report on the results of the re-testing is being prepared for the
208 Governor's review. Many cases containing only fibers are coming back with no results,
209 but as the Department moves into the later cases, more conclusive results are being seen.

210
211 The Department has two legislative proposals that are currently with the Secretary of
212 Public Safety. The first seeks to define "Ammunition." Due to the fact that there is no
213 clear statutory definition, the Department regularly receives submissions of unfired
214 ammunition for testing that, should the definition be added, will no longer be necessary.
215 The second of the proposals, initially submitted by both the Department and State Police,
216 seeks clarification of Sex Offender Registry, to codify the fact that misdemeanors shall be
217 placed into the DNA data bank.

218
219 Mr. Benjamin inquired if everyone that had to be sampled is now included in the data
220 bank. Department staff explained that, because other agencies are compiling the lists of
221 samples still required, and actually gathering those samples, we don't have an accurate
222 estimate. Mr. Marone explained that, as these samples from past offenders are gathered
223 and submitted along with new offenders, the Department expects to see a backlog
224 develop. With a backlog, the Department will then be eligible to seek funding through the
225 DNA Data Bank backlog reduction grant that was previously withheld.

226
227 Sheriff Howard made a point of commending Department staff on their hard work to
228 reduce the backlog, noting that their efforts have been recognized and appreciated by the
229 law enforcement community.

230

231 Mr. Jensen agreed with the sentiment, and asked if the reduction was expected to
232 continue at the same pace. Mr. Marone explained that, although the Department no longer
233 has the funding for the overtime, they hope to continue the trend. Mr. Jensen asked if
234 staffing will support that trend. Mr. Marone replied that yes, it does, but that the length of
235 some training programs requires that the Department project two years out.

236

237 When asked if there was any final discussion to be had regarding the Director's Report,
238 Mr. Benjamin stated that he would like to see the Scientific Advisory Committee review
239 the Department's protocol for determining case eligibility for the review of the "Mary
240 Jane" Files. He made a motion that the question be referred to the Scientific Advisory
241 Committee to study, report, and make recommendations on the criteria being used by the
242 lab to report a case as inconclusive in the Mary Jane case file review. Colonel Flaherty
243 seconded the motion.

244

245 Ms. Herndon recused herself from the vote, and the motion passed unanimously.

246

247 Report on Regional Laboratory Visits:

248

249 Mr. Sengel presented a summary of discussions that he had had with Department staff at
250 each of the regional laboratories. His report had six main points:

251

- 252 1. Forensic Scientists felt it would be worthwhile for the Department to increase the
253 number of Laboratory Specialists.
- 254 2. Northern Laboratory staff felt that the Department should look into the possibility
255 of a salary increase for those who work at that lab, so as to balance out the
256 increased cost of living in the area.
- 257 3. Many scientists indicated that they The Department should explore additional
258 methods to allow a greater number of Forensic Scientists to attend regional and
259 national conferences.
- 260 4. It may be helpful to create a subcommittee of members from the Department's
261 Toxicology section, and from the Medical Examiners office to address the flow of
262 evidence from OCME to DFS, and to determine if the process can be made more
263 efficient.
- 264 5. Department should look into implementing a system to allow for regular
265 communication with user agencies to ensure that important information is not lost
266 when those agencies experience turnover.
- 267 6. The Department should review the blood kits from DUI/DUID cases. The number
268 of kits that have been put together incorrectly suggest that the users may not
269 understand how to use them. The Department may want to consider redesigning
270 the kits to make them more user-friendly.

271

272 After Mr. Sengel's report, the Board asked that Mr. Marone review and evaluate the
273 possibility of implementing the suggestions made, and report back at the October
274 meeting.

275

276 Update Contact Information:

277

278 Mr. Bono directed the board's attention to the contact sheet that had been provided, and
279 asked the members to fill out the form with their current contact information. He also
280 explained that Ms. Kish was leaving the Department, and asked that members direct their
281 communications to Ms. Gowdy, as a new Board secretary would not be appointed until
282 the October meeting.

283

284 Selection of future meeting date(s):

285

286 Mr. Bono reminded the Board that the regular November meeting is moved to October
287 17, 2007 at 10:00 a.m. in order to meet before legislative deadlines.

288

289 He reported that the 2008 meetings were scheduled for January 9, 2008, May 7, 2008,
290 and August 6, 2008, all starting at 10:00 a.m. The final meeting of 2008 was tentatively
291 scheduled for November 8, 2008, but will likely change to allow the Board to meet
292 before the November 1 report is due.

293

294 New Business:

295

296 Mr. Jensen stated that he felt it would be helpful if the Board could get a report from each
297 of the sections on the number of slots they have for each position, the number of people
298 they have on hand, the number of people in training, and the shortfall. He offered to
299 provide the Department with a template.

300

301 Public Comment:

302

303 Dr. Rudin, a member of the Scientific Advisory Committee commented on two matters.
304 She explained that the Subcommittee on Familial Searches was waiting for guidance, and
305 would not take any further steps unless asked.

306

307 She also responded to an earlier comment made by Dr. Fierro during the contextual bias
308 discussion. She stated that Dr. Fierro had mentioned methods and markers in her
309 statement, and Dr. Rudin wanted to address the difference between the two. Dr. Rudin
310 explained that the marker system in place for CODIS is unlikely to change, simply
311 because of the finances and resources that have been invested. The markers may be
312 determined by different methods, but the markers themselves are unlikely to cause
313 problems for comparisons. Dr. Fierro responded that she understood.

314

315 Adjourn:

316

317 The meeting adjourned at 12:13 p.m.

318

319

320

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322
323
324 **Transcription of Audio Recording from**
325 **August 8, 2007 Forensic Science Board Meeting**
326 **Mary Jane DNA/Serology Case File Review**
327

328 Mr. Marone: Where are we with the post conviction testing also known as the Mary Jane
329 files? This project turned out to be a lot bigger than was projected when we first looked
330 at and I remember Paul telling everybody it was going to 164,000 case files well what we
331 found out early on that was just in the Central Laboratory. When we looked at all four
332 laboratories that's a total of 530,079 case files that we are reviewing. Currently we have
333 been through 500,945 case files with about 29,000 left to go. At that point we have 4,568
334 cases that have some kind of evidence in them and what we are doing if it has any kind of
335 blood stain, whatever evidence that fits into that category we are pulling it out and
336 inventorying it because all these case files were before we had any LIMS system and
337 those things were tracked. So we are setting up a tracking inventory system so if the
338 question comes up we at least know what case files we have. Of those 4,568, 1554 have
339 only known blood samples only so they not in the category of things that have to go
340 forward. 1554 had known samples so there will be a blood swatch in it that says that we
341 have the blood sample of (name) it was taken as a matter of course and stored in the case
342 file. There's nothing to compare it to, there's no case evidence. There was a time when
343 we were just getting blood samples in to be run for ABO typing and that blood sample
344 was stored.

345
346 Mr. Benjamin: That would be the sample from an individual evidential sample?
347

348 Mr. Marone: That is correct, only knowns and they aren't going any where. We have
349 cases with crime scene evidence and no named suspect. There are 831 of those.
350

351 Mr. Benjamin: With only evidential samples?
352

353 Mr. Marone: That is correct.
354

355 Mr. Benjamin: And no suspect?
356

357 Mr. Marone: And no suspect.
358

359 Mr. Benjamin: Obviously nobody convicted?
360

361 Mr. Marone: Nobody that we can track, there may have been a conviction at some time
362 later but we have no way of finding out who that might be, if ever. If they went on with a
363 conviction but never came back to us with a sample and the person was tried on other
364 evidence other than the serology type evidence we have no way of knowing that.
365

366 Mr. Benjamin: But what we do have is 831 cases we have
367

368 Mr. Marone: Crime scene evidence
369
370 Mr. Benjamin: We have complete profiles?
371
372 Mr. Marone: No, we just have crime scene evidence, we haven't looked at anything.
373
374 Mr. Benjamin: We don't know if we have DNA profiles or not?
375
376 Mr. Marone: That's correct. We just have the material. We have the material, yes.
377
378 Mr. Benjamin: O.k., all right.
379
380 Mr. Marone: We have crime scene evidence and a named suspect. There are 2,183 of
381 those. That's crime scene evidence and a named suspect, those are the ones that go
382 forward and there are really two levels of triage there: 1) we are looking to see if that
383 individual was convicted of that crime and 2) if the evidence that's in that file folder
384 actually is sufficient for testing or the item of evidence there is probative to the issue.
385 For example if there's a piece of evidence in there and its not linked to anywhere and its
386 just something that was taken somewhere but you really can't put it back to anybody
387 those are by directions by original charge from the Governor those are the items that,
388 those are the cases that we are not going forward on. Of the 2,183 – 470 cases have been
389 reviewed to this point.
390
391 Mr. Benjamin: 470 that's the situation where you have
392
393 Mr. Marone: We have looked at of the 2,183 cases that have a named suspect and
394 evidence we have looked at 470 of them. Of those 220 don't fit the criteria, either the
395 evidence there is not good evidence or its not probative evidence or when we looked at it
396 and researched it that person was not convicted of that crime. So those are cases that are
397 not going forward.
398
399 Mr. Benjamin: Do you mind defining for me what you mean by not good or not
400 probative, not probative I guess you mean the DNA was situated in such a way that it
401 would bear on guilt or innocence?
402
403 Ms, Gowdy: There was one example, that's exactly right.
404
405 Mr. Benjamin: O.k.
406
407 Mr. Marone: You got a blood stain shirt where there's a bullet hole in the middle of it
408 and looking at the evidence the blood typing was the victim's type. Those are in there.
409
410 Mr. Benjamin: That wouldn't be probative then?
411
412 Mr. Marone: Exactly, so that's what we are looking at
413

414 Mr. Benjamin: The first category is where
415
416 Mr. Marone: The person was not convicted of that crime
417
418 Mr. Benjamin: Of the 220 of those that you reviewed don't fit the criteria either because
419 they are not good, the evidence is not good
420
421 Mr. Marone: Not probative
422
423 Mr. Benjamin: Non probative
424
425 Mr. Marone: That's what I meant, there may be instances where you got one tiny little
426 fragment and its not anything in particular, it's interiorly to the case. If you are reading
427 the whole case file.
428
429 Mr. Benjamin: Of these 220 even if there were complete DNA profile it just wouldn't
430 matter.
431
432 Mr. Marone: It wouldn't matter.
433
434 Mr. Benjamin: Exactly
435
436 Mr. Marone: Right
437
438 Mr. Benjamin: O.k. got it.
439
440 Mr. Marone: O.k., 114 have been sent to the outside vendor to be worked, of those 114
441 after the fact as part of the process 7 of them have been pulled back by DFS after
442 consultation with the vendor saying these really don't fit the criteria either are you sure
443 you want us to work them? And we have looked through it again, so again 7 more have
444 been pulled back and are not continuing in the process. 61 cases have been returned with
445 work done and of those 45 have been reviewed and they are in the process of being
446 reported to the Governor's office. 46 cases are still there and the rest of the cases are in
447 still in cue to be sent with the next couple of batches. So we are proceeding.
448
449 Mr. Benjamin: In the 45 that have been reviewed and are being reported to the Governor
450 that no yet public information?
451
452 Mr. Marone: That is correct, and a number of those things for example we are still
453 trying, we got results back but there's not a full profile or we don't have a suspect
454 sample, we're attempting to get samples in so that we can make a meaningful analysis of
455 what's there. Any questions?
456
457 Mr. Benjamin: I do, there are I understand there are cases where you have an evidentiary
458 sample incomplete DNA profile
459

460 Mr. Marone: Correct.
461
462 Mr. Benjamin: And in some of those cases although you have some DNA reported the
463 current assessment would be that it would be inconclusive and of no value.
464
465 Mr. Marone: What we are dealing here with is, I'm hesitant because the information is
466 part of the Governor's report
467
468 Mr. Benjamin: I'm not talking about that
469
470 Mr. Marone: O.k.,
471
472 Mr. Benjamin: For example let's talk about the original 10.
473
474 Mr. Marone: Right
475
476 Mr. Benjamin: They don't have a report
477
478 Mr. Marone: Right
479
480 Mr. Benjamin: We had nine that the lab concluded were inconclusive
481
482 Mr. Marone: O.k.
483
484 Mr. Benjamin: In five of those there were 1 or 2 loci
485
486 Mr. Marone: O.k.
487
488 Mr. Benjamin: And the Department's conclusion was that, that would be reported as
489 inconclusive
490
491 Mr. Marone: Yes sir.
492
493 Mr. Benjamin: And so even if 1 or 2 DNA loci did not match the victim or the person
494 who was convicted the lab did not feel it could eliminate the person convicted.
495
496 Mr. Marone: That's correct; it wouldn't be a scientifically sound process to eliminate
497 someone based on 1 locus.
498
499 Mr. Benjamin: Eliminate one person on 1 locus, I think at the very least and I would, I
500 have a number of feeling, I think the very least we should be alerting the convicted
501 defendants that there retained evidentiary samples in that, there DNA profile is at 1 locus
502 does not appear in what the retest is. I not going to put that in the form of a motion, I
503 think that, I'm not going to do that, but at the very least I think that we should, and are
504 prepared to move, I think we should ask the Scientific Advisory Committee to review the
505 criteria that you used by the lab for determining that evidentiary sample is inconclusive

506 and make some sort of recommendation to us. I want to proceed as cautiously and slowly
507 but I do want and I am concerned that we have evidentiary samples in Mary Jane Burton
508 files that do report some DNA that don't match the victim or the person who was
509 convicted and I'm concerned about our not doing anything about that. I would like
510 further input, and it seems to me that the most conservative approach Mr. Chairman is to
511 defer this to the Scientific Advisory Committee.

512

513 Mr. Bono: Before a motion is made, Jeff you have your hand up.

514

515 Mr. Ban: Yes, actually if I can just address so that the whole Board understands a little
516 bit more of what we are talking about, when you are seeing results at 1 or 2 areas of the
517 DNA the tests that are coming back are very weak results. So therefore as Director
518 Marone has indicated you can't put any competency into that because you don't really
519 know whether you are actually seeing enough information whether an individual could be
520 included or eliminated. It's a weak profile therefore its very possible that the defendant
521 who might be there you might not be detecting or the victim who may be you are only
522 detecting a small portion. So you just don't have a lot of information, you are not talking
523 about a strong result in 1 or 2 loci. It's a very weak result at 1 or 2 loci and there's just
524 not enough information to reach a conclusion one way or another.

525

526 [Tape was changed at this point]

527

528 Mr. Jensen: What's the threshold you're using? Where is your line that says that there is
529 enough or not enough?

530

531 Mr. Ban: Without showing you images or (inaudible) what you are talking about is you
532 have a very weak, what we're doing trying to get as much information as we can, we're
533 pushing the system as hard as we can trying to get information that would be valuable.
534 So even if there is a very weak profile, what we're looking at is a band, very weak band if
535 comes down sometimes to the judgment on the analyst part but this is also what's being
536 done by the private laboratory that we are contracting with as well as the Department of
537 Forensic Science. It's just there is not enough information there and I don't know give
538 you agility for a measurement whatever it's a very, it's just nothing more you can do with
539 it.

540

541 Mr. Jensen: The post objective there's not a point that puts it from one side to the other?
542 It's in the judgment of the examiner?

543

544 Mr. Ban: It is

545

546 Mr. Jensen: Whether they are Bode or here?

547

548 Mr. Bono: Can Barry have the con?

549

550 Mr. Fisher: Jeff are there any written standards for this practice or policy and how this is
551 done?

552

553 Mr. Ban: Yeah, there's in our protocol in order to report an inclusion you have to get
554 results at least 4 loci, so like I said this is half that much that keep us from going forward
555 and in this situation you know you are trying to provide as much information as you can
556 based on this nature of these cases, like I said the type that seen is a very type. You don't
557 know if you are missing something, you don't know if you're seeing all the information
558 you are suppose to see at that particular area of the DNA but you can't reach a conclusion
559 and that one reason the policy was developed at 4 loci because you got at least 4 different
560 areas. You know that you got enough information possibly to make a decision but that's
561 not a guarantee that you are still going to reach a conclusion at 4 to report as DNA.

562

563 Mr. Bono: Steve I can tell you want to say something.

564

565 Mr. Benjamin: I'm, at one, someone tell me if this is incorrect. A person's DNA profile
566 at any particular location I will have the specific set of alleles, it will be expressed as a
567 number 14,15 and if at that location evidence has evidentiary sample at that same has a
568 DNA sample at that same location and it's not a 14,15 it's instead a 16,17 I did not
569 contribute that 16,17 period. And that result it seems to me that I on the basis of one
570 locus would be eliminated I'm a 14, 15 and the evidentiary sample is 16, 17 at that one
571 locus I am eliminated as a contributor period. And I just heard that the protocol is that the
572 lab needs 4 loci in order to go forward. I don't understand what go forward means but
573 this is why I want the input of the Scientific Advisory Committee because if we have old
574 evidentiary samples that report a profile that even one locus that is different from the
575 person who been convicted and is different from the person who was the victim it seems
576 to me that at the very least that convicted person should be notified that old evidence
577 exist at the very least so that they can do what they want or not do what they want. I
578 can't image any other result I can't image keeping that information let him argue or not
579 argue with anybody about whether its too weak or of no value but having discovered this
580 information having spent also two decades now doing the case by case search through
581 archives as people like Marvin Anderson ask for their samples and the lab is always good
582 about looking very hard for these old samples and finding them. We had who knows
583 how many exonerations now that we have found these if we have these cases it seems to
584 me that the only humane thing to do would be at the very least notify the people and then
585 if they petition for a writ of innocence or they seek further testing or they decide to do
586 something then it seems to me that an appropriate venue whether it be court or elsewhere
587 to argue over the significance but if we are sitting on evidence that might have probative
588 value for either guilt or innocence I think that at the least it should be publicize. But I
589 don't want to go to far so I open this for discussion without having made a motion but I
590 think that at the very least we should get the input of the Scientific Advisory Committee
591 on what crises, we're just talking about the original 10 we are not talking about what is
592 currently about to be reported to the Governor's office that is not public. Just the original
593 ten that have already gone by the way there are 9 of those original 31 have been reported
594 inconclusive, 4 because of the problem I'm talking about right now, 5 of them because
595 they don't they have profiles from the evidence from the Mary Jane Burton files but they
596 don't have anyone to compare it with. And it's my understanding that there's no one in
597 the data bank so this is a separate concern of mine and I hope of the Board that we need

598 to make effort to find those 5 people. We have 5 who are convicted and we have an
599 evidentiary profile that we need to find those 5 people and tell them. But again I don't
600 want to go too far I want to raise my concerns to these 31 that are already done with and I
601 would like the input of the Scientific Advisory Committee on the criteria being used to
602 report inconclusive so that we can make an informed position
603

604 Colonel Flaherty: Mr. Chairman let me ask this question, has the Scientific Committee
605 review the standards before, I mean before it was put into place.
606

607 Mr. Ban: Actually the, Dr. Arthur Eisenberg who sits actually on this committee he was
608 involved in the review of the case files for the laboratory and its his input that we drafted
609 and we rewrote our procedures manual to adopt that 4 locus decision for going forward if
610 you don't have enough information there.
611

612 Mr. Bono: Dr. Fierro you had your hand up?
613

614 Dr. Fierro: I was about to ask the same question, if you could theoretically have a
615 situation even with a number of loci less than 4 if a number less than 4 could be sufficient
616 for an exclusion. That was my question and the answer is yes.
617

618 Mr. Ban: Part of the problem with many of these cases we don't have as Mr. Benjamin
619 indicated here not only have the standard from the person who was charged and
620 convicted on this crime, but a lot of times we don't even have the victim's type so, or a
621 complete profile. So I guarantee if I went around this whole group and this is not that
622 large of a group if we looked at one or two of these areas I guarantee that several of you
623 will have that same band. O.k. and that's why there is just not enough information to
624 reach that conclusion.
625

626 Dr. Fierro: But if your examiner is in the process of looking at something and you have
627 the theoretical situation you can have the case when it's oops this is really an exclusion.
628 Even though it's incomplete, even though it's not perfect, you may not have everything
629 on the dead person nevertheless I can exclude Joe Kopoucho as being the positive of the
630 biological matter. It doesn't replace something.
631

632 Mr. Ban: I
633

634 Dr. Fierro: It allows the examiner to recognize and do something with it.
635

636 Mr. Ban: I assume you that if that was the case we would immediately, if there was
637 something that we had enough information to go forward and say listen there's no
638 justification for considering this individual in there or there's exploratory information we
639 would definitely bring that out. Even a loci in general analysis right now a loci we
640 consider inconclusive for whatever reason if there's exploratory information in there we
641 going to go back and do what we need to do to provide that information.
642

643 Dr. Fierro: I was just looking at that four

644

645 Mr. Marone: Well, in point of fact 25-30 % of the cases we get with name individuals as
646 suspects we eliminate them.

647

648 Dr. Fierro: That's right

649

650 Mr. Marone: The problem is we are looking at very scant results at very few areas and
651 it's just not scientifically sound to make that jump especially when you might not have a
652 profile or full profile of the victim even at that locus. I mean there are so many
653 permeations and variations that you are looking at here it's not wise to go that. It's not
654 scientifically sound to do that and that's why the determination of you need 4 to be able
655 to move forward and make a determination was set.

656

657 Mr. Bono: Steve do you want to make a motion?

658

659 Mr. Benjamin: I do – [the rest of this transcription in contained in Addendum #2]

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692 **Transcription of Audio Recording from**
693 **August 8, 2007 Forensic Science Board Meeting**
694 **Mr. Steven Benjamin's Motion**
695
696

697 Mr. Benjamin: I do moved that the question be referred to the Scientific Advisory
698 Committee to study, report on and make recommendations on the criteria being used by
699 the lab to report evidentiary samples as inconclusive in what we referred to as the Mary
700 Jane Burton files.

701
702 Mr. Bono: Just on those five?
703

704 Mr. Benjamin: No, I mean the criteria being used in the lab's ongoing interpretation of
705 all these old evidentiary files. It's the same criteria they will determine first if its an old
706 evidentiary sample, an old swab stapled inside a file and they look to see if there is DNA
707 and if there is any DNA whether it is inconclusive and I would like the criteria to be
708 again by the scientific advisory committee where a rating of inconclusive.
709

710 Mr. Bono: You are asking the Scientific Advisory Committee to look at the protocol not
711 to look at individual samples.
712

713 Mr. Benjamin: Correct, except at the extent that it is helpful in regards to the
714 understanding. I mean, for example we just talking about here five to fifty cases maybe if
715 would be helpful, I don't want to prevent them from looking at individual cases, I don't
716 want to get into that but I'm concerned about the criteria being utilized.
717

718 Mr. Bono: Meg would you please read back the motion again so that we know what it is.
719

720 Ms. Kish: Mr. Benjamin moved that the question be referred to the Scientific Advisory
721 Committee to study, report and make recommendations on the criteria being used by the
722 lab to report a case that is inconclusive in the Mary Jane case file review.
723

724 Mr. Bono: Is that it?
725

726 Mr. Benjamin: That is my motion.
727

728 [Transcription ends]
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