

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20

**Final Minutes**  
**Forensic Science Board Meeting**  
**October 15, 2010**  
**Department of Forensic Science, Central Laboratory, Classroom 1**

21  
22

**Board Members Present**

23 Steven D. Benjamin  
24 Dale Carpenter, Ph.D.  
25 Mark R. Davis (Designee for Attorney General Cuccinelli)  
26 Lieutenant Colonel Bob Kemmler (Designee for Colonel W. Steven Flaherty)  
27 Jo Ann Given  
28 Katya Herndon (Designee for Karl R. Hade)  
29 Kristen Howard (Designee for Senator Howell)  
30 Caroline Juran  
31 Sheriff A.A. Lipa Jr.  
32 Senator Roscoe Reynolds (Designee for Senator Henry L. Marsh III)  
33 Raymond F. Morrogh  
34 John Colligan (Designee for Garth L. Wheeler)

35  
36

**Board Members Absent**

37 Leah Bush, M.D.  
38 Delegate William R. Janis

39  
40

**Legal Counsel for the Forensic Science Board**

41 Amy Dilworth

42  
43

**Staff Members Present**

44 Wanda Adkins, Office Manager  
45 David Barron, Ph.D. Technical Services Director  
46 Henry Bosman, Senior Accountant  
47 Donna Carter, Finance Manager  
48 Doug Chandler, IT Manager  
49 Ann Davis, Physical Evidence Program Manager  
50 Leslie Ellis, Human Resources Director  
51 Linda Jackson, Chemistry Program Manager  
52 Gail Jaspens, Chief Deputy Director  
53 Brad Jenkins, Forensic Biology Program Manager  
54 Alka Lohmann, Training and Calibration Program Manager  
55 Pete Marone, Department Director  
56 Stephanie Merritt, Department Counsel  
57 Lisa Schiermeier-Wood, Section Supervisor, Forensic Biology  
58 Elise Stroble, Grants Administration/Policy Analyst

47 Carisa Studer, Legal Assistant  
48 Susan Uremovich, Eastern Laboratory Director

49

50 **Call to Order by Chairman Raymond Morrogh**

51

52 Chairman Morrogh called the meeting of the Forensic Science Board (“Board”) to order at 9:11  
53 a.m.

54

55 **Adoption of Agenda**

56

57 Chairman Morrogh asked if there were any additions or changes to the draft agenda for the  
58 meeting. Being none, Sheriff Lippa moved to adopt the agenda, which was seconded by Ms.  
59 Herndon and adopted by unanimous vote of the Board.

60

61 **Approval of Draft Minutes of August 11, 2010 Meeting**

62

63 Chairman Morrogh asked if there were any changes or corrections to the draft minutes from the  
64 May 12, 2010 meeting. Ms. Given requested a correction to Line 122, spelling out Liquid  
65 Chromatograph instead of using its initials. Ms. Given moved to adopt the minutes of the  
66 August 11, 2010 meeting with the correction to Line 22. Ms. Howard seconded the motion  
67 which was adopted by unanimous vote of the Board.

68

69 **Chairman’s Report**

70

71 Chairman Morrogh thanked the board for changing the meeting date to accommodate his  
72 schedule. Chairman Morrogh acknowledged and thanked the designees for attending today’s  
73 meeting.

74

75 **DFS Director’s Report – State of the Agency**

76

77 Regarding facilities, Director Pete Marone informed the Board that the Eastern Laboratory  
78 expansion anticipates the relocation of the latent print and administration sections to the  
79 renovated area within the next few weeks, with the next phase still at the 35% drawing stage.  
80 The other labs are at status quo.

81

82 Regarding the 30-60-90 day workload summary report, Director Marone informed the Board the  
83 statistics for the Forensic Biology Section’s 90-day backlog is not an accurate reflection of that  
84 section’s case backlog because the cases from the Post Conviction DNA Project (“PC-DNA”)  
85 are included in the numbers, along with the Mitochondrial DNA cases.

86

87 The Toxicology backlog in the 90 day report was 206 cases, with 404 cases over 60 days in the  
88 system. The Toxicology Section, as a consequence of the *Melendez-Diaz* decision, continues to  
89 spend more time in court and experience increased backlogs. Director Marone also discussed the  
90 increase in clandestine lab cases in the state.

91

92 Regarding grants, Director Marone informed the Board that NIJ awarded DFS a FY10 DNA  
93 Backlog Reduction grant for \$920,520, which has allowed DFS to hire staff to reduce the  
94 casework backlog in the Forensic Biology Section.

95  
96 Under the FY10 DNA Technology to Identify the Missing grant for \$468,640 from NIJ, DFS can  
97 continue its joint effort with the Office of the Chief Medical Examiner (OCME) to conduct DNA  
98 analysis and profiling of human remains currently in OCME storage, as well as other cases  
99 submitted by law enforcement. Director Marone discussed 3 hits made under the missing  
100 persons grant.

101  
102 Under the 2011 Highway Safety Grant Program, the Department was awarded \$173,958 to use  
103 for reimbursement to law enforcement agencies and their personnel for travel costs associated  
104 with attending Initial Breath Alcohol training.

105  
106 Director Marone discussed the FY 10 Paul Coverdell Forensic Science Improvement Grant  
107 Program for \$311,246 that was submitted jointly with the OCME. The grant was given to DFS  
108 as a sub-grantee of Department of Criminal Justice Services (DCJS) to conduct training in the  
109 Chemical Analysis and Physical Evidence sections and to purchase equipment and supplies for  
110 the Chemical Analysis section. The grant will fund 3 pathology fellows at the OCME, and  
111 provide funding to the Department for equipment and training. Director Marone noted that the  
112 majority of NIJ grant funding goes to Forensic Biology except for the Paul Coverdell Grant.

113  
114 Regarding grants not awarded, Director Marone informed the Board that DFS was not awarded a  
115 FY 10 Solving Cold Cases with DNA grant. The Department requested \$482, 971 from NIJ to  
116 pay the salaries and benefits of 2 new full-time scientists and to purchase the necessary  
117 equipment and supplies to continue to conduct in-house DNA analyses on cold cases.

118  
119 Also not awarded was the FY 10 Forensic Science Training Development and Delivery Program  
120 grant. The Department requested \$1,584,677 from NIJ in three separate applications under this  
121 solicitation for training projects in the Breath Alcohol Section, the Forensic Academy, and  
122 human Resources. Each project was proposed to last two years.

123  
124 Discussion by the Board ensued regarding why the Department was denied the grant. Elise  
125 Stroble, Grants Administrator informed the board that she had yet to receive the letter from NIJ  
126 explaining the particular reason for denying the grants to the Department.

127  
128 Regarding resources and budget for FY 10, the net effect of budget reductions and additional  
129 funds to address *Melendez-Diaz*-related expenses was a total reduction of \$889,263. At fiscal  
130 year end, agencies also were asked to return unspent moneys to the General Fund. The  
131 Department was able to return \$500,000 from one-time savings that resulted from  
132 turnover/vacancy of four toxicology and two latent print positions and savings derived from the  
133 Northern Laboratory first-year maintenance contracts.

134  
135 Regarding resources and budget, the toxicology positions that were created with *Melendez-Diaz*  
136 funding have been filled. Three new toxicologists have been hired, one each in the Northern,  
137 Eastern, and Central Laboratories.

138  
139 Discussion by the Board ensued regarding the turnover of staff in the Toxicology Section and the  
140 need to fill those positions. Mr. Marone explained to the Board that the Firearms Section will  
141 also be experiencing turnover in the future due to upcoming retirements. Consequently, DFS has  
142 identified the need to start the hiring process because it takes two years to train firearms  
143 examiners.

144  
145 Director Marone updated the Board on the VITA transition. He discussed the negotiation with  
146 VITA for full connection with the Department. DFS IT Manager Doug Chandler informed the  
147 Board that the VITA transition is expected to be completed in February 2011.

148  
149 Update on Impact of *Melendez-Diaz* Decision  
150 Chief Deputy Director Jaspén provided an update to the Board on the impact of the *Melendez-*  
151 *Diaz* decision on the Department, presenting graphs to demonstrate the effect on various sections  
152 over time. The increased number of subpoenas received has hit a plateau. The greatest impact  
153 continues to be on the Controlled Substances Section. Their time spent on administration of  
154 subpoenas and court travel has increased ten-fold. The examiners are testifying 40% of the time  
155 they appear in court. The Breath Alcohol Section is seeing its subpoena numbers go back to pre-  
156 *Melendez-Diaz* levels. Ms. Jaspén discussed that the result seemed to correlate with the General  
157 Assembly's action in August 2009. The Board requested that Ms. Jaspén continue with  
158 *Melendez-Diaz* updates at future Board Meetings.

159  
160 DFS Report on Study of Familial DNA Searching  
161 Brad Jenkins, Biology Program Manager, presented a PowerPoint on Familial DNA Searching.  
162 Mr. Jenkins provided an overview that included a definition of Familial DNA searching. He also  
163 gave an explanation of DNA within a family, discussed the history of Familial DNA searching,  
164 the legal authority, and Virginia legislation.

165  
166 Discussion by the Board ensued on the need for additional legislation in Virginia for Familial  
167 DNA searching.

168  
169 Mr. Jenkins continued with his presentation and mentioned the Scientific Working Group on  
170 DNA Analysis Methods (SWGAM). Mr. Jenkins explained how SWGAM works and its  
171 recommendations.

172  
173 Discussion by the Board ensued on single source DNA profiles. Mr. Jenkins continued with the  
174 presentation on SWGDAM recommendations and software.

175  
176 Discussion by the Board ensued on software and there was discussion on lineage testing being  
177 limited to approximately 200 individuals per case or search. The Board also discussed Law  
178 Enforcement's role and the Defense community's role in Familial DNA searching and the issue  
179 of privacy. The Board discussed privacy issues that have been raised and the perception that  
180 Familial searching involves the investigation of innocent persons.

181  
182 Mr. Jenkins gave concluding remarks and the Board discussed his presentation.

183

184 The Board took a break at 10:47 a.m. and resumed at 11:03 a.m.

185

186 Chairman Morrogh thanked Mr. Jenkins for his presentation, and asked him to clarify his use of  
187 the term “moderate searches.” Mr. Jenkins explained moderate searches and the different types  
188 of report outs. There was a comment from Rick Conway, Prince William County Assistant  
189 Commonwealth’s Attorney. Chairman Morrogh then asked the Board’s permissions to defer  
190 discussion and move to the public comment portion of the meeting. Chairman Morrogh then  
191 read aloud a letter from Paul Ebert, Prince William County Commonwealth’s Attorney on the  
192 issue of Familial DNA searching.

193

### 194 **Public Comment**

195

196 Bill Davenport, Chesterfield County Commonwealth’s Attorney, and Rick Conway, Prince  
197 William County Assistant Commonwealth’s Attorney, each commented to the Board on Familial  
198 DNA searching. Both advocated for the use of Familial Searching.

199

200 Chairman Morrogh expressed the sense of the Board that the Department should move forward  
201 with Familial DNA searching. He opened the floor to discussion on how the Board should  
202 proceed. Discussion by the Board ensued.

203

204 Mr. Benjamin made a motion that the Board recommends the General Assembly consider the  
205 implementation, funding and use Familial DNA searching, which was seconded by Ms. Howard  
206 and passed by unanimous vote of the Board.

207

### 208 **Old Business**

209

210 Ms. Merritt provide an update on Regulations for Obtaining Information from the DNA Data  
211 Bank and Procedures for Verification and Authorization of Persons Requesting Information from  
212 the DNA Data Bank, 6 VAC 40-60. The public comment period ended September 1, 2010, and  
213 no comments were received. Ms. Given made a motion that the Board approve the proposed  
214 language and move on the procedure, which was seconded by LTC. Kemmler and passed by  
215 unanimous vote of the Board.

216

217 The Board discussed the Scientific Advisory Committee’s recommendation on implementation  
218 of the Stochastic Threshold protocol. No vote was taken at the previous Board meeting. Ms.  
219 Given made a motion that the Board approves implementation of the Stochastic Threshold  
220 protocol, which was seconded by Mr. Carpenter and was passed by majority rule. Mr. Benjamin  
221 abstained since he had been absent from the room during the Board discussion..

222

### 223 **Post-Conviction DNA Testing Program and Notification Project**

224 Notification Subcommittee Chair Kristen Howard informed the Board the first round of cases  
225 assignments has been completed. Approximately 100 of the 150 original cases will be  
226 reassigned. There have been 22 successful in-person notifications made. There are currently no  
227 *pro bono* attorneys or students working on the project. The second phase is beginning, using the  
228 WestLaw People Finder database, and preparing additional training sessions for the *pro bono*  
229 volunteers. December 2010 is the projected date for the second round of training.

230  
231 Regarding notification and testing updates, Ms Jaspen informed the Board that there have been  
232 360 confirmed suspect notifications to date. Many suspects have been identified as deceased.  
233 There are 516 undelivered notifications. There has been significant progress in the testing  
234 program since 2009. There 800 cases with evidence and a named suspect confirmed convicted  
235 of a felony crime against a person. 640 fall under a subset which is NIJ grant eligible for testing  
236 and 108 meet the “state criteria” for testing. Cases with final completed case results returned are  
237 615, and a year ago it was at 288. To date there are 467 cases in which certificates of analysis  
238 have been issued. For suspects who meet NIJ criteria, 50 suspects were determined not indicated  
239 or eliminated on the tested evidence. Among suspects who do not meet NIJ criteria, 26 were not  
240 indicated or eliminated.

241  
242 Discussion by the Board ensued on Post-Conviction DNA testing.

243  
244 **New Business**

245  
246 Chief Deputy Gail Jaspen presented the Annual Forensic Science Board Report. The Board  
247 agreed to have Ms. Jaspen a summary of the Familial DNA report, make additions and  
248 corrections to the annual report, and send to the General Assembly on the Boards behalf. The  
249 Board asked for the following to be updated in the annual report

- 250 • Pg. 6 – add in FY ‘10
- 251 • Pg. 7 – add FY ’10-solving cold cases DNA grant applied for and not awarded
- 252 • Pg. 12 - reflect the Board’s action of the Scientific Advisory Committee’s
- 253 recommendation on implementation of the Stochastic Threshold protocol.
- 254 • Pg. 14 – the Board received a presentation by the Department and heard further comment
- 255 from two Commonwealth Attorneys and after further discussion the Board agreed to
- 256 recommend that the General Assembly consider the implementation, funding and use
- 257 Familial DNA searching.

258  
259 Mr. Morrogh made a motion that with the additional information inserted as discussed today the  
260 Board approves the report for submission to the General Assembly by November 1, and which  
261 was seconded by Ms. Juran and passed by unanimous vote of the Board.

262  
263 Ms. Howard made a motion that the Department and Mr. Benjamin be authorized to complete  
264 the report as discussed today, and which was seconded by Ms. Herndon and passed by  
265 unanimous vote of the Board.

266  
267 Chairman Morrogh reminded the Board of the Conflict of Interest training that needs to be  
268 completed, and the financial disclosure statements are due to the Department by January 5, 2011,  
269 for transmittal to the Secretary of the Commonwealth. If a member is in a position that requires  
270 filing of a Statement of Economic Interest, that will suffice.

271  
272 **Next Meeting**

273  
274 The Forensic Science Board set the following schedule for 2011: January 5, 2011, May 11, 2011,  
275 August 10, 2011, and October 12, 2011.

276

277 **Adjournment**

278

279 Chairman Morrogh gave closing remarks, and thanked the Board and the Department. Sheriff

280 Lippa moved that the meeting of the Board be adjourned, which was seconded by Ms. Howard

281 and passed by unanimous vote.

282

283 The meeting adjourned at 12:10 p.m.

284