

1 **MINUTES (draft)**
2 **Forensic Science Board Meeting**
3 **August 9, 2006 at 10:00 a.m.**
4 **DFS Central Laboratory, Classroom 1**

5
6 Board Members Present:
7

8 Mr. Steven Benjamin
9 Mr. Joseph Bono
10 Ms. Linda Carne (Designee for Ms. Linda Fairstein)
11 Mr. John Colligan (Designee for Mr. Leonard Cooke)
12 Dr. Marcella Fierro
13 Colonel Steven Flaherty
14 Mr. Karl Hade
15 Mr. Dick Hickman (Designee for Senator Kenneth Stolle)
16 Sheriff F.W. Howard
17 Mr. Alan Katz (Designee for Ms. Marla Decker)
18 Ms. Demris Lee
19 Ms. Elizabeth Russell
20 Mr. Randolph Sengel, Chair
21

22 Department Staff Members Present:
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24 Ms. Wanda Adkins, Office Manager
25 Mr. Jeff Ban, DNA Section Chief
26 Dr. Dave Barron, Central Laboratory Director
27 Ms. Eileen Davis, Trace Evidence Section Chief
28 Mr. Doug DeGaetano, Forensic Scientist, Trace Evidence Section
29 Dr. Paul Ferrara, Director
30 Ms. Katya Herndon, Department Counsel
31 Ms. Linda Jackson, Forensic Scientist Supervisor, Controlled Substances Section
32 Ms. Meghan Kish, Board Secretary
33 Mr. Josh Kruger, Forensic Scientist Supervisor, Trace Evidence Section
34 Mr. Ron Layne, Director of Administration and Finance
35 Mr. Pete Marone, Director of Technical Services
36 Mr. Michael Moore, Questioned Documents Section Chief
37 Mr. James Pickelman, Firearms and Toolmarks Section Chief
38 Mr. Steve Sigel, Deputy Director
39

40 Call to Order
41

42 The meeting was called to order by Mr. Sengel.
43

44 Adoption of Agenda
45

46 Mr. Sengel asked if there were any objections to the agenda. None were offered, and the
47 agenda was adopted unanimously.

48

49 Adoption of Minutes

50

51 Mr. Sengel stated that there was a change to be made to the draft minutes for the May 10,
52 2006 Board Meeting. Where the draft minutes stated unanimous approval of Colonel
53 Flaherty's motion that the Board decline Ms. DesPortes' request to have the Committee
54 review the Leon Winston case, it should be amended to reflect that there were three
55 dissenting votes: Mr. Petoe (designee for Senator Stolle), Ms. Russell, and Dr. Fierro. Mr.
56 Bono made a motion to adopt the minutes as amended. The motion was seconded, and
57 the motion passed unanimously.

58

59 Chairman's Report

60

61 Mr. Sengel directed the Board's attention to two grant application summaries that had
62 been distributed with the meeting materials. He advised the Board that he had approved
63 the grant applications with the concurrence of the Vice-Chair, Sheriff Howard, in
64 accordance with the policy the Board adopted at the May meeting. He asked if there
65 were any questions. There were none.

66

67 Mr. Sengel explained that the Board had also received a packet containing the responses
68 received from the second public comment period on the proposed changes to the DNA
69 and Drug submission guidelines. He explained that no objections were noted among the
70 comments. He asked that Department staff prepare changes to the protocols consistent
71 with the suggestions made by the subcommittee, and have the draft available for formal
72 consideration and discussion at the November meeting of the Board.

73

74 Mr. Sengel took this opportunity to inform the Board that Ms. Herndon, who has served
75 as Department Counsel for the last four and a half years, has accepted a position as the
76 Director of Legislative and Public Relations at the Supreme Court of Virginia. On behalf
77 of the Board, he thanked her for her hard work. Mr. Sengel also announced that Mr.
78 Bono had accepted the position as Director of the Secret Service Laboratory. He
79 congratulated them both on their new positions.

80

81 Director's Report

82

83 Dr. Ferrara informed the Board that the Department is now fully staffed in its
84 administration, finance, and human resources sections. Dr. Ferrara reported that the
85 transition from the Department of Criminal Justice Services was a smooth one, and that
86 the Department of Forensic Science is now operating completely independently.

87

88 Dr. Ferrara explained that the General Assembly had provided \$65.5 million in general
89 funds to build a 106,000 square foot laboratory facility to replace the current Northern
90 Laboratory, to be completed in November of 2008. Additionally, Dr. Ferrara told the
91 Board that the Department had received funding to lease the third floor of the Biotech 8

92 building, scheduled for completion in the summer-fall of next year. He stated that the
93 new building, which will be located across the street from the Central Lab facility, will
94 house the administration and breath alcohol and training sections, and will provide more
95 space for laboratory expansion in the current building.

96
97 Dr. Ferrara reported that the Eastern laboratory expansion is also currently underway,
98 adding 6,000 square feet to the current facility. He explained that the Department is also
99 now looking into the possibility of purchasing land adjacent to the Western Laboratory,
100 and that an appraisal of that land is pending.

101
102 Dr. Ferrara also discussed the new law, § 19.2-188.1(B), which became effective July 1,
103 2006, that enables law enforcement officers to testify to the results of field tests in any
104 trial for a violation of § 18.2-250.1 regarding whether or not any plant material, the
105 identity of which is at issue, is marijuana. The Department tested, selected, and began
106 distributing marijuana field tests to law enforcement agencies across the state using an
107 online ordering system. He explained that roughly 30% of the Department's drug
108 caseload is composed of marijuana possession cases, and the implementation of use of
109 the marijuana field tests should reduce the number of submissions. He added that any
110 samples whose field test results are contested will be submitted to the Department for
111 analysis and given priority.

112
113 Dr. Ferrara next reported that the Department had only been granted \$225,000 of the
114 requested \$1.4 million for equipment replacement, and had only received half of what
115 had been sought to replace breath alcohol instrumentation.

116
117 Mr. Benjamin asked if this would present a serious problem to the Department, to which
118 Mr. Sigel replied that all significant budget requirements were met, and that the
119 Department was in the process of seeking grant funding for additional equipment.

120
121 Mr. Benjamin inquired about the expiration dates of the grants on the summaries that had
122 been distributed. Mr. Marone explained that the grants, which have already been
123 allocated, would all be expended before the end of the grant periods.

124 125 Scientific Advisory Committee Report

126
127 Mr. Bono, Chair of the Committee, reported to the Board on the issues addressed by the
128 Committee at its August 8, 2006 meeting.

129
130 The Committee heard a report from Dr. Arthur Eisenberg summarizing the re-review of
131 the Leon Winston case that he and Demris Lee conducted at the request of Judge
132 Humphreys. They determined that the case file had been complete when the team
133 conducted its original review, and that all protocols had been followed. Mr. Bono
134 informed the Board that a written report from Dr. Eisenberg and Ms. Lee will be
135 forwarded to Judge Humphreys.

136

137 The Committee heard proposed wording changes to gunshot residue (GSR) reports. The
138 Committee made one amendment to the proposed report wording and recommended the
139 adoption of the proposed report wording with the one amendment.
140

141 The Committee discussed Senate Bill 286, which was carried over to the 2007 Session by
142 the Senate Courts of Justice Committee. In carrying the bill over, the Senate Committee
143 expressed an interest in getting feedback from the Department's policy and advisory
144 Board's on the bill which addresses the certification of DNA laboratories. In lieu of
145 requiring laboratory "certification", the Committee recommended the following change:
146 "All DNA analyses offered as evidence shall have been performed by laboratories
147 *accredited by a recognized accrediting body* to perform such analyses."
148

149 Mr. Marone presented the proposed qualification standards for the Department Director
150 position to the Committee. After discussion, the Committee recommended adoption of
151 the qualification standards for the director's position set forth in Dr. Ferrara's Employee
152 Work Profile.
153

154 Following a discussion regarding familial searches, the Committee voted to form a
155 subcommittee to develop objective criteria for such searches. The Committee also voted
156 to recommend the following interim policy addressing when a familial link is discovered
157 in direct comparison cases only (not databank searches):

158 In cases when a suspect known is submitted to DFS and the suspect is excluded; however
159 the examiner recognizes there is a familial relationship to the suspect, the likelihood ratio
160 should be utilized and the statistical information may be provided to the submitting
161 agency as an investigative lead.
162

163 Mr. Bono also reported that the Committee had selected February 6, 2007 at 9:00 am for
164 its next meeting.
165

166 Election of Vice-Chair 167

168 Mr. Sengel reminded the Committee that they needed to elect a vice-chair, an issue that
169 was tabled at the last meeting.
170

171 Mr. Bono nominated Colonel Flaherty, and Mr. Benjamin seconded the nomination. All
172 were in favor. Colonel Flaherty was elected to serve as vice-chair until June 30, 2007.
173

174 GSR Report Language 175

176 Mr. Doug DeGaetano, Forensic Scientist in the Trace Evidence section of the
177 Department's Central Laboratory, discussed the current DFS GSR report wording and
178 compared and contrasted it to the report wording recommendations discussed at the June
179 2005 FBI GSR symposium and the wording used in the ASTM (American Society for
180 Testing and Materials) Standard Guide for GSR analysis by SEM/EDS (scanning electron
181 microscope and energy dispersive x-ray).
182

183 Proposed report wording changes to the current DFS report language included: changing
184 the terminology for three component particles from “Identified as primer residue” to
185 “Highly specific to primer residue”; continuing to use “primer residue” rather than
186 “gunshot residue” to describe these particles; continuing to use “indicative of primer
187 residue” to describe two component particles; adding qualifiers to the reports instead of
188 listing only results and adopting an eight hour time limit for the analysis of primer
189 residue collected from the hands of a living individual. If more than eight hours have
190 elapsed from the shooting event and the collection of the sample the GSR kit will not be
191 analyzed. A table of proposed qualifiers was presented, which incorporated the
192 Committee’s recommended amendment.

193
194 Mr. DeGaetano mentioned that these qualifiers are what examiners routinely testify to in
195 court. Including them in the report allows for clearer interpretation of the results and
196 hopefully less need for court testimony by examiners.

197
198 There was discussion whether the qualifiers which arguably contain language tantamount
199 to an opinion regarding results would be admissible in court. Mr. Sengel noted that the
200 qualifying language in the reports could be redacted should there be such issues.

201
202 Mr. Bono explained to the Board that the scientific community was seeing an ongoing
203 effort to include more language to clarify reports. He felt that the language should be
204 inserted to make it possible for the prosecution, the defense, and juries to better
205 understand results without having to put the examiner on the stand.

206
207 Mr. Benjamin made a motion that the following changes be implemented: adding
208 “circumstances such as” before the qualifier statement that lists ways primer residue can
209 be deposited on the hands, and inserting “the examination itself cannot determine the
210 relative likelihood of listed sources” after such list. The motion was seconded. Mr. Bono
211 suggested that the language should go back to the Committee for consideration. Sheriff
212 Howard concurred. A roll call vote was taken. The motion passed 8-3, with one
213 abstention. The “Ayes” were Mr. Benjamin, Ms. Carne, Mr. Colligan, Mr. Hade, Mr.
214 Katz, Colonel Flaherty, Sheriff Howard, and Ms. Russell. The “Nos” were Mr. Bono, Dr.
215 Fierro, and Ms. Lee. Mr. Hickman abstained.

216
217 Following discussion of the qualifier for indicative particles, which provides that such
218 particles “are less specific to, but commonly found in, primer residue”, Mr. Benjamin
219 made a motion to replace “less specific to” with “are not highly specific to”. The motion
220 was seconded but failed, 8-1 with 3 abstentions.

221
222 Discussion continued, and further amendments to the qualifier addressing how primer
223 residue can be deposited on the hands were discussed. There was general consensus that
224 the word “dirty” should be removed from the circumstance “handling a dirty weapon”.

225
226 Colonel Flaherty made a motion that the previously approved changes, with the
227 additional amendment eliminating the word “dirty” be approved. The motion was
228 seconded and passed unanimously.

229

230 Qualification Standards for Director Position

231

232 Mr. Sengel informed the Board that, in accordance with the statute, the Board needed to
233 recommend qualification standards for the Director's position. The proposed standards
234 were included in Dr. Ferrara's Employee Work Profile (EWP). Mr. Sengel explained that
235 the Committee had voted to recommend the EWP to the Board without any amendments.

236

237 Mr. Benjamin noted that the organizational objective section did not reflect services
238 provided to either the defense bar or the courts. Mr. Sengel stated that the organizational
239 objectives were taken from the Department's mission statement, and did not refer to
240 qualification standards. Mr. Benjamin indicated that he still felt that the change was
241 necessary.

242

243 Colonel Flaherty suggested amending the organizational objective section by adding "and
244 other services as prescribed by law." General discussion followed. Colonel Flaherty
245 made a motion that the qualification standards be approved, with the one amendment to
246 the organizational objective section of the EWP. The motion was seconded, and passed
247 unanimously.

248

249 Familial Searches

250

251 Dr. Ferrara explained that on occasion there are cases in which a search of the DNA
252 profile from an evidence sample against the DNA databank results in a moderate
253 stringency match to a very similar (but not exact) profile, suggesting a familial relation.
254 He asserted that current Department policy does not allow the reporting of these
255 moderate stringency hits.

256

257 Mr. Jeffrey Ban, Forensic Biology Section Chief, reported that there are also situations
258 when a suspect sample is submitted for direct comparison with the evidence, and analysis
259 reveals a similar profile that suggests a familial relationship, but not a match. The reports
260 issued in these cases do not currently reflect any of this information.

261

262 The Committee voted unanimously to recommend reporting these familial relationships
263 when a direct comparison is made, and has formed a subcommittee to develop objective
264 criteria for how to address databank searches. There was general discussion regarding
265 familial searches.

266

267 Colonel Flaherty made a motion to adopt a policy, allowing examiners to provide
268 information to police when a familial relationship is discovered in direct comparison
269 cases. The motion was seconded. All were in favor. Mr. Hade and Mr. Hickman
270 abstained.

271

272 Juvenile Arrestees

273

274 Ms. Herndon gave a presentation on the Arrestee Law, which went into effect on January
275 1, 2003. She informed the Board that the Department's position is that this law, as
276 written, does not generally apply to juveniles. After stating the reasons that support this
277 position, she noted that the Department's liaison in the Attorney General's Office
278 concurred. She concluded the presentation by asking the Board for their input on the
279 issue.

280

281 Colonel Flaherty stated that the agencies need to know Department policy, to avoid
282 unnecessary sampling. Mr. Sengel stated that he believed it would be appropriate for the
283 Board to approve the Department proceeding with notifying agencies in accordance with
284 this interpretation of the statute.

285

286 Colonel Flaherty so moved. The motion was seconded, and passed unanimously. Mr.
287 Hickman and Mr. Hade abstained.

288

289 Registered Sex Offenders

290

291 Mr. Sengel reported that, during this past General Assembly, the code section
292 addressing registration procedures for sex offenders was amended to require all
293 persons who register as sex offenders to submit a sample for DNA analysis. He
294 pointed out that although the convicted felon and arrestee data bank statutes specify
295 that the samples shall be stored in the data bank, the registered sex offender provision
296 does not. Nonetheless, the majority of sex offenders are also convicted felons and can
297 be maintained in the databank for that reason. Mr. Sengel suggested that the Board
298 authorize him to send a letter to Senator Stolle, the Chairman of the Crime
299 Commission, to point out this anomaly to address as he sees fit during the next
300 legislative session.

301

302 Ms. Russell made a motion that, until such guidance is provided by the General
303 Assembly, the Department should maintain all registered sex offender samples in the
304 data bank. The motion was seconded and passed unanimously.

305

306

307 November 1 Report

308

309 Mr. Sengel explained that, pursuant to statute, the Board is required to submit a report to
310 the Chairmen of the House Committee on Appropriations, the Senate Committee on
311 Finance, and the Crime Commission by November 1 of each year. Because the Board
312 does not meet until after the report is due, he asked for authorization to prepare and
313 submit a report consistent with the draft provided.

314

315 Mr. Benjamin suggested that an addition be made under section 6 of the draft. He asked
316 that the section describing the recommendations of the Scientific Advisory Committee
317 include the Board's request that the Committee review, study, and report back on
318 alternative DNA platforms comparing the advantages/disadvantages of the different
319 platforms.

320

321 Mr. Bono made a motion that the draft with the one addition be accepted. The motion
322 was seconded, and passed unanimously.

323

324 Selection of Meeting Dates

325

326 Mr. Sengel informed the Board that the Committee designated February 6, 2007 as their
327 first meeting of 2007. The following meeting dates were selected for the Board: February
328 7, 2007, May 9, 2007, August 8, 2007, and October 17, 2007, all meetings beginning at
329 10:00 a.m.

330

331 The next meeting of the Board is scheduled for November 8, 2006 at 10:00 a.m.

332

333 Public Comment

334

335 Mr. Sengel asked if any members of the public had any comments. There were none.

336

337 Adjourn

338

339 The meeting adjourned at 12:30 p.m.