

**Minutes for the State of North Carolina
Forensic Science Advisory Board Meeting**

February 21, 2017

North Carolina State Crime Laboratory
Raleigh, NC

Board members present: State Crime Laboratory (SCL) Director John Byrd, Kermit Channell (Chair), Adam Becnel, Michael Coble, Tracey Dawson Cruz, Demi Garvin, David Hinks, Michael Jiroutek, Tim Kupferschmid, Alka Lohmann, Christopher Palenik, Bethany Pridgen, Deborah Radisch, Ronald Singer (all via telephone except Director Byrd)

Not present: Peter Marone

Others in attendance: Dean Amatuli, Anna Baxter (via telephone), Erin Biggio, Jennifer Councilman, Jonathan Dilday, Aaron Joncich, Zach Kallenbach, Chris Parker, Elizabeth Patel (via telephone), Jennifer Remy, Kathy Schell (for Anne Hamlin), Amanda Thompson, Pete Ware, Jody West (SCL); Stormie Forte (SCL Ombudsman); Sarah Rackley Olson, NC Indigent Defense Services (via telephone); John Bason, AGO Chief of Staff Seth Dearmin (via telephone), FSAB Counsel Lauren Earnhardt (via telephone), SCL Counsel William Hart (NC DOJ)

Meeting was called to order at 1:04 pm. Michael Coble, Tracey Dawson Cruz and Alka Lohmann were sworn into new terms on the board by Jennifer Councilman. Chairman Kermit Channell thanked Attorney General Josh Stein for re-appointing them. Alka Lohmann moved to approve minutes from the board's August 4th 2016 meeting as amended. Seconded by John Byrd and approved unanimously by the board. Tim Kupferschmid moved to approve minutes from the board's November 3rd 2016 meeting as written. Seconded by John Byrd and approved unanimously by the board.

Update on Quality Document Review

Chairman Channel: Board had hoped to have 50% of all documents reviewed by the last meeting, with the goal of having 100% reviewed by the board's face-to-face meeting in May. However, due to various factors the board has not yet reached the 50% goal.

Chairman asked for updates, beginning with Drug Chemistry. Bethany Pridgen noted that she had received some information from Demi Garvin and she is working on compiling that, but recent events had kept her from accomplishing as much as she had hoped. She will reach out to her team (Garvin, John Byrd and Alka Lohmann) about scheduling a time to talk.

Adam Becnel reported on Latent Evidence, which he is working on with Pete Marone and Tim Kupferschmid. They are just shy of 50% at this point. He created a different template to collect the reviews from the three of them, and he will load those into the official template when they've been finalized.

Chairman Channell reported on Evidence Control. He is working with Tracey Dawson Cruz, Michael Coble, and Deborah Radisch. They are about 1/4th of the way through, still working. This is preparation for the next discipline these board members will be working on, which is probably DNA casework. Christopher Palenik reported on Trace Evidence noting that he and David Hinks still have work to do, having so far completed about five of the forty documents they will be reviewing.

Ron Singer reported on Firearms. He and Mike Jiroutek are finished. He noted that the small number of members in his group was an advantage because communication was easier. They used periodic email and phone conversations, had a division of labor, and had less material to cover. He also benefited from knowing the origin of most of the procedures. He has not put their comments into the template form yet because he was unclear on how to proceed. Chairman Channel thanked Singer for the expeditious work and noted that his reward will be assignment to another working group.

With regard to the procedure, Chairman Channel said members of each group should send their comments to the group's chair, who should then consolidate them into one document. All of those consolidated comments are to be viewed by that working group, with a good discussion to make sure the intent has been captured by the comments. Then the board will use that documentation to discuss those recommendations with the individual sections, to make sure that there's understanding and support from the sections.

Chairman Channell next discussed a draft document that will serve as a public record of the board's recently completed protocol reviews for DNA Database and Toxicology, and give notice of the official closure of the review for those disciplines. Director Byrd made a motion to adopt it as an official document of the board for review. Singer seconded the motion. After discussion regarding edits to the content, adjustments to the format, and the need to address a couple of typos in the document's letterhead, the board voted unanimously to approve the document as amended.

Director's Report

Director Byrd presented a draft letter from the board to the General Assembly regarding House Bill 130. The bill, co-sponsored by former SCL Director Judge Joe John who is now serving the legislature, would provide for an appropriation of \$4.7 million dollars in recurring funds to SCL. It addresses unfunded mandates, the \$13.5 million dollar scientific equipment inventory over a five year schedule, and receipt funding shortfalls. In addition to urging passage of HB 130, the draft letter also supports the establishment of a Special Reserve Fund (which would let the SCL keep unspent appropriations each year instead of having them revert to the state's General Fund), and changing 11 positions that are currently receipt-funded into positions funded by the state's General Fund.

Byrd asked the board to finalize and approve the letter, with any edits it may desire, in time for him to distribute the letter to the chairs of the appropriation committees and ultimately all legislators at his presentation to the appropriations committee in a few weeks. Chairman Channell made a motion to approve the letter as an action item for the board and Garvin seconded the motion, which then passed the board in a unanimous vote. Director Byrd thanked the board for its commitment to the letter.

The Director noted that he recently took his leadership team off-site for a retreat. Strategic planning, team-leader development, coaching, and mentoring were on the agenda. He felt it was very successful. He plans to roll out a restructured organizational strategy for SCL at the next board meeting.

Director Byrd explained that the PowerPoint for his Director's Report will track the SCL's 2015-2016 annual report which he recently presented to the North Carolina Courts Commission. After that presentation, the Commission voted unanimously to support the SCL's request as included in HB 130.

While presenting his PowerPoint Byrd noted that in 2015/2016 case inventory dropped, staff vacancy and attrition rates were low, and construction at the Western Lab was on time and under budget. Mock

court testing of the video testimony system has been completed. Director Byrd said that when presenting to non-scientists he has to explain the difference between periodic SCL accreditation and the ongoing need for training and certification of individual forensic scientists in the SCL, and the costs associated with both.

More highlights: Evidence submissions to SCL decreased for three years in a row but as expected they began to increase again as capacity grew, a phenomenon noted by West Virginia professor Dr. Paul Speaker; Case Records Completed data show the SCL is getting more cases out; RE: case inventory, started January 1, 2014 with 52,595 cases and as of February 3, 2017 it was just over 10,500 and still dropping... a 79% decrease largely attributable to Lean Six Sigma efficiencies and market-based salary adjustments that reduced staff attrition. The number of cases completed by quarter has increased dramatically.

Garvin: With regard to the increase in submissions, do you have information about the specific disciplines that are seeing the uptick? Assistant Director Pete Ware: We've seen an increase in submissions in Latent Evidence, Firearms, Drug Chemistry, and Forensic Biology.

Byrd continues: We are in the process of realigning our terminology. We have been using the term "Turnaround Time" in a way that is not consistent with Dr. Speaker's definitions. Going forward, "Lead Time" will measure the length of time from when the evidence is entered into the queue until the case results are published. And "Turnaround Time" will be used to measure the amount of time it takes for the actual analysis of the evidence.

The Director presented slides showing increases in the number of cases worked even as the total number of jobs pending has been decreasing. In the past the SCL's turnaround time had been 500 days, but in December of 2016 it dropped below 180 days. District Attorneys and judges have said a reasonable turnaround time is 90 days. Byrd said that is the goal and SCL is headed in the right direction. He reiterated that there is a "Rush" status available to law enforcement and prosecutors, by request, to expedite the SCL's work on certain cases but he also noted that not all stakeholders make use of it.

With regard to the Melendez-Diaz v. Massachusetts ruling requiring analysts to testify in person, Byrd noted that court testimony hours increased somewhat in 2015-2016, highlighting the fact that judges, prosecutors and defense attorneys need to be reminded of the MOA and the need to structure court time so as to minimize analysts' time in court.

Regarding outsourcing, the Director noted that about \$1.8 million had been spent and it is estimated that approximately \$800,000 will be left when outsourcing is completed. Attorney General Stein has approved an RFP for using that remaining money to outsource the testing of sexual assault kits. The focus will be on kits that were never submitted to SCL. A rough survey indicated there are between 1500 and 2000 kits. Forensic Biology staff will screen the kits and determine which will be outsourced.

Garvin: Do you have a feel for what the average expense has been for a court appearance by NMS personnel for toxicology? Byrd: Difficult to determine because they schedule testimony in multiple counties. DOJ allotted a specific amount for every single case. SCL Ombudsman Stormie Forte: Only about 3% of cases are going to testimony.

Channel: Currently no statutory requirement that law enforcement submit sexual assault kits? Byrd: Correct. Some local agencies are already working with vendors to outsource their kits. Channell: We

screened prior to outsourcing, and didn't anticipate increased costs for supplies, etc. Make sure you have some buffer dollars in your budget.

Byrd displayed photos of the mock court pilot for video testimony but noted that the Administrative Office of the Courts which must take the lead on the project has more pressing priorities with regard to technology. Any forward movement on video testimony will probably take place at a later date.

Byrd: At the last board meeting we reported to you that we were in discussions with DOJ about developing a career progression program for our scientists. That has come to fruition through a lot of hard work by Amanda Thompson and others. Managers had to rewrite job descriptions. Toxicology got seven promotions, and DNA is currently posted with seven promotional opportunities. Other disciplines will follow. SCL vacancy rate is currently 9%, which is well below the state average.

RE: Training, still moving forward. Promotions, resignations make training numbers go up. Analysts will be ready to start DNA cases at the Western Lab late this summer or early fall. At the Western Lab, finishing work (painting, hanging doors, installing locks, installing faucets, hanging lights) is being done now. In June it is expected that the building will be "commissioned" by the state. Western Lab will hold off on getting a Beneficiary Occupancy Certificate (and thus begin paying rent) until they are ready to occupy the building, probably in mid-June or July. Ribbon-cutting will follow, and FSAB will visit the site for a future meeting.

Byrd: In my presentation to the Courts Commission and eventually to lawmakers, I end with our fiscal challenges including unfunded mandates that date back to 2011, and certification and training. I explain that training involves conferences and travel. We have limited funds available via lapsed salaries. When an instrument breaks and we have to make a choice between fixing the instrument and continuing new cases, or sending someone to a conference, we have to fix instrument.

I point out that our supply costs have risen 45% in the last five years; we were allocated \$482,000 for 2015/2016 and we spent \$600,000. With the new analysts working cases (and bringing our turnaround time down drastically) we're burning through our supplies, and our equipment, much faster. The steep drop in receipts, currently down 36% from FY 2011/2012, underscores them as an unstable source of revenue for SCL. Three of the 11 receipt-funded positions are currently vacant due to insufficient receipt funds. Need a permanent, stable funding source to move SCL into the future and keep it state-of-the-art. Among other needs, the SCL needs Time of Flight instruments for Toxicology and Drug Chemistry, new photographic equipment, and new Gas chromatography-mass spectrometers to replace the ones that are 10 and 16 years old.

Grant funding is being pursued for the Time of Flight equipment and other items, but grants are also unstable funding sources. Because FBI requirements force all DNA sections to keep current with equipment, training, etc. or they can't continue to do cases, SCL's DNA section has moved forward. But other disciplines have challenges. It's very expensive to bring in a team to validate a new process, new systems, etc.

In its budget request, the SCL sought \$1.3 million in recurring funds, and \$500,000 in non-recurring funds for equipment. Separately, House Bill 130 includes \$4.7 million in recurring funds to make up the receipt shortfall, \$1.75 million for the unfunded mandates, and \$2.6 million for scientific equipment over a five year period. The bill would provide SCL's needs for at least the next five to seven years. There are no guarantees, but having both the budget request and HB 130 creates two paths to better funding.

A separate bill like HB 130 carries a little more weight, as does the fact that it comes endorsed by a standing commission like the Courts Commission. Channell: This underscores the importance of the draft letter we discussed earlier, giving Director Byrd more support for passage of HB 130.

Byrd: The presentation also includes information about SCL's transparency. All SCL protocols are accessible on the public website and we do a public survey every year to get feedback. FSAB also provides a level of transparency through its work and its public meetings.

There is still some lingering misunderstanding about SCL, exemplified by Byrd being introduced recently as the "SBI Lab Director." Education to stakeholders about SCL's independence is ongoing, and media reports occasionally contain erroneous references to a "terrible backlog" at SCL. Stakeholders sometimes allow SCL to be blamed for a delay when in fact the case analysis has already been completed.

A few DAs and law enforcement agencies are pushing for their own labs. Byrd reminds lawmakers that the current trend and recommendation is to move labs away from, not to, law enforcement because labs are supposed to be independent. Also, any dollar that is appropriated for a local lab is a dollar that can't help SCL remain state-of-the-art.

Chairman Channell: Last face-to-face meeting, which included time for board members to meet with individual staffers and sections, was very beneficial. Expect the upcoming May meeting, using the same format, will be as well. Unfortunately I have a conflict on the 18th but my co-chair Michael Coble will preside.

Again, the original idea was to have all the comments consolidated prior to the face-to-face meeting, so each individual working group would have an opportunity to sit down in a face-to-face manner and discuss those comments that the board has put together, prior to the working group continuing on with the individual sections. We strayed from that at the last meeting but I think it would be beneficial to stick with that concept as possible. Next section to tackle (regarding document review) will be DNA Casework, a huge section with a lot of changes.

I have served as Chairman since April of 2014, and the board needs to have a secret ballot election for a chair and a co-chair at the May meeting. I am willing to remain chairman if that is the will of the board but I'm also ready to pass the job to a new chairperson, and it is good for different people to have the opportunity to serve in leadership positions.

The next FSAB meeting is scheduled for the 17th and 18th of May. The 16th will be a travel day. Board members will meet with SCL staff on the 17th and the morning of the 18th. The public meeting of the FSAB will begin at 12:00 PM on the 18th.

The meeting adjourned at 2:31 PM.