

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

May 18, 2017

North Carolina State Crime Laboratory
Raleigh, NC

Board members present: State Crime Laboratory (SCL) Director John Byrd, Adam Becnel, Michael Coble, Tracey Dawson Cruz, Demi Garvin, Michael Jiroutek, Tim Kupferschmid, Peter Marone, Christopher Palenik, Bethany Pridgen, Deborah Radisch, Ronald Singer

Not present: Kermit Channell, David Hinks, Alka Lohmann

Others in attendance: Ana Baxter, Jennifer Councilman, Jonathan Dilday, Josh Hickman, Aaron Joncich, Zach Kallenbach, Karen Morrow, Chris Parker, Elizabeth Patel, Jennifer Remy, Timothy Suggs, Kathy Schell, Amanda Thompson, Pete Ware, Jody West (SCL); Stormie Forte (SCL Ombudsman); Chris Mumma (NC Center on Actual Innocence); John Bason, FSAB Counsel Lauren Earnhardt, SCL Counsel William Hart (NC DOJ)

Meeting convened at 12:06 PM by Vice Chairman Michael Coble, presiding in the absence of Chair Kermit Channell. Motion to approve the minutes from the previous meeting was made by Peter Marone, seconded by Tim Kupferschmid, and passed unanimously. John Byrd began his **Director's Report** by recognizing Josh Hickman, the new Manager for Digital Evidence.

Byrd pointed out DOJ's new logo which has been integrated into all SCL materials/signage, and noted the associated costs. Changes were completed prior to the upcoming Legislative Open House event.

Byrd reminded the Board that SCL has adopted definitions promulgated by West Virginia University Professor Dr. Paul Singer; "Lead Time" now refers to the time a case waits to be worked, plus the time it takes to work the case. "Turnaround time" now refers strictly to the amount of time it takes to work the case. SCL is on track to drop its inventory of cases below 8,000 by July and is working to bring Lead Time down to an average of 120 days.

SCL personnel have conducted audits of other labs, and Potomac Group is scheduled to audit SCL in June. SCL is making use of relevant training opportunities. RE: Research Topics, SCL is working on a textile-related project with NCSU for Trace Evidence, and meeting with Campbell University's School of Pharmacy soon to explore possible joint research in both Drug Chemistry and Toxicology.

Byrd reported that he met with Indigent Defense Services' forensic advisory group to talk about SCL's progress, and had a productive dialogue. Also meeting with NC Center on Actual Innocence.

Phase II of ongoing project to scan old case files has been approved, with \$25,000 in funding. (Old case files in archives are being scanned and uploaded into Forensic Advantage. Currently SCL can search the files in their system, and one generation back; older files can't be searched automatically.) John Dilday is leading project, working with NCDOJ IT. May take 5 years to complete, depends on funding.

Waiting for approval from state IT office to begin RFID (Radio-frequency identification) project to track evidence in SCL; funding is already approved.

Working to make sure SCL is in alignment with national efforts to address bias in forensic decision-making. National Academy of Sciences report in 2009 called for more research and training, and 10 SCL staff (including Quality Assurance Manager Timothy Suggs and SCL Counsel William Hart) are currently taking an online course. They will share what they learn with the rest of the lab. This effort is especially important for cognitive decision-making in the areas of Latent Prints, Firearms, and Trace Evidence.

AD Pete Ware presented slides showing continued increase in SCL's output. Currently 9,029 cases pending, down from 52,000 in 2014. Current goal of reaching 8,000 by July 1 will be a challenge due to summer vacations and other scheduled leaves but might be achievable. After reaching that goal, future goals will be focused on turnaround times within specific disciplines. Lead time went up recently due to emphasis on getting some old cases done, but it should decline again.

AD Amanda Thompson reported on administrative operations. A total of 30 previously unavailable promotional opportunities are now open for SCL staff. They're going section by section, and will finish Drug Chemistry next week. Digital, Firearms, Latent, and Trace remain. SCL vacancy rate remains at about 10%. Of 22 currently vacant positions, 17 are scientists and 5 are support staff.

Equipment purchases for the new **Western Lab**, including about \$900,000 for DNA, have been completed. July 1 is the tentative date for moving from Asheville to Edneyville. Biggest concern: logistics of moving equipment. New lab will have a state-of-the-art server that will house various databases; looking forward to doing the same thing at SCL eventually. SCL is working with the company installing the security system at the new lab in order to extend the system to SCL and Triad Labs, so all three can be linked and monitored.

Director Byrd: One particular piece of equipment, by itself, will cost \$11,000 to move to Edneyville. RE: the new promotional opportunities for SCL staff, credit goes to the Board for emphasizing to DOJ the need for additional opportunities (in addition to the salary adjustment) in order to help retain SCL employees. Also thanked Ware and Thompson for their work while he was out of the country.

Michael Jiroutek: Is grant-writing done in-house? Byrd: Yes. We hired retired agent Mike Budzynski and instructed him to apply for every conceivable grant, even long shots. He's been very successful. Secured a grant from NC DOT/Governor's Highway Safety Program to lease 3 QTOFs (Quadrupole time-of-flight mass spectrometers) that would have cost SCL \$1.7 million.

Byrd continues: Proposed bill in the General Assembly would require law enforcement agencies to conduct an inventory of their untested sexual assault kits. SCL is waiting to see if this requirement is included in final version of the state budget; ready to award notification letters to potential vendors. Won't know how many untested kits are out there until a comprehensive inventory is done. (Earlier voluntary survey found between 1,800 and 2,000, but less than 2/3rds of agencies responded; another voluntary survey is currently underway.)

PowerPoint slide shows continued decline in receipts to SCL from court fees. SCL has asked the General Assembly to examine the problem caused by this unstable funding source.

Chris Mumma, NC Center on Actual Innocence, regarding court fees: Fees are being charges to indigent defendants (who can't be relied on to deliver them) though Indigent Defense Services which doesn't have money to provide it. Is the need for a firmer source of funding being addressed? Byrd: Yes, the Attorney General's is having those discussions on our behalf. FYI, there is a bill that adds two more fees, and it also requires that all of the parties meet, in court, before a judge can waive the fees.

RE: the state budget, the Senate's version converts 8 of SCL's receipt-supported positions into General Fund positions; it also funds all of the unfunded mandates from 2011. However it does not include equipment money, or the Special Reserve Fund that is needed to facilitate leasing of equipment. AG is meeting with legislators to get these addressed in subsequent versions of the budget.

Current grants total \$3.9 million; requested grants total \$4.4 million. Governor's Highway Safety Program (GHSP) grant for 3 QTOFs (for Toxicology at each lab) will include money for training and getting the equipment online. AD Thompson noted that they will have to reapply for this grant for 2 more years; 3-year total is \$1.7 million. Re-acceptance of the grant is assured by GHSF officials.

Tim Kupferschmid: Grants looks good, although some are reliant on possibly shaky federal funding. Which are competitive? AD Thompson: Coverdell, and DNA Lab Efficiency grants. We also have a verbal "yes" on the Firearms IBIS (Integrated Ballistics Identification System) extension for the Western Lab. Byrd noted that that was crucial, as it was not funded in the original expansion budget for the Western Lab. Peter Marone: What is the source of that grant? Thompson: Governor's Crime Commission.

Director Byrd: House Bill 130 had \$1.47 million dollars in funding for SCL. It isn't moving forward but it appears most of those requests are going to be dealt with in the budget. The bill helped raise awareness of the funding needs for a state-of-the-art crime lab. House Bill 731, the sexual assault inventory bill, is also expected to be rolled into the budget.

SCL's Ann Hamlin provided technical assistance in the drafting of House Bill 464, the Controlled Substances Act. It's a general update and related to the AG's anti-opioid abuse bill, the STOP Act. Last year's Controlled Substances Act died due to opposition to regulating Kratom. This year's bill includes a number of chemical analogues, and items on the DEA's controlled substances list. Among other things, the bill took all synthetic cannabinoids and moved them from Schedule 6 to Schedule 1.

Demi Garvin: Is there a mechanism so that federal changes automatically become NC law? SCL Counsel William Hart: There's an administrative body that is supposed to look at federal changes and make recommendations, so it's an ongoing thing here rather than automatic.

Byrd: I've distributed a memorandum seeking the Board's advice on a DNA interpretation question that's been raised recently by stakeholders. The question concerns reinterpretation of older, "legacy" data. Hoping that the Board's DNA subcommittee, which will be assigned to review the current Forensic Biology DNA protocols, can provide substantive guidance on this question at a future meeting.

Chris Mumma: Thank you for addressing this issue. The Defense Bar and the especially the Center on Actual Innocence are concerned that new guidelines from SWGDAM (Scientific Working Group on DNA Analysis Methods) regarding DNA mixture interpretations were not adopted by SCL for some time, because of transitions that were then occurring in SCL and the focus on reviewing the lab's work areas at that time. For a period, reports were being issued in cases interpreting mixtures that didn't follow the most up-to-date recommendations. Asking that the subcommittee take that into consideration and provide guidance on how those prior cases should be addressed.

Ron Singer and Michael Jiroutek reviewed current protocols for the **Firearms** Section. Singer: Very few items that needed to be addressed, mostly just the wording of some procedures (like "must" or "should" as opposed to "shall" or "may.") RE: questions of whether adequate records are being kept, we were satisfied that they usually are; in one case the section said they would address the issue. Overall

we found their procedures up-to-date, and similar to those issued by AFTE (Association of Firearm and Tool Mark Examiners) and used in many other laboratories.

Chris Palenik and David Hinks are reviewing **Trace Evidence**. Palenik: Been through many documents, still reviewing some. Suggesting a few minor changes to some technical items, similar to what Ron Singer reported. Encouraged the section, in the course of their ordinary reviews, to improve the order and structure their reviews in a way that someone without the analysts' historical background would better understand them. Also encouraging them to take advantage of advances in digital photography, and to utilize more photo documentation.

Michael Coble, Tracey Dawson-Cruz and Kermit Channell reviewed **Evidence** protocols. Dawson-Cruz: Went over some recommendations today, mostly relatively minor things they were probably already aware of. Cleared up requirements for pre-logging that were unclear. A few clarifications in language were requested, particularly with reference to how we reference biological evidence and how we define it as something which is not necessarily contaminated. They're going to address that. They're also going to crosscheck the protocols in Evidence Control against the new Evidence Guide that was issued lab-wide in January, to make sure that they are consistent with what's there. They will reference the Evidence Guide instead of duplicating its language in their separate SOP's. We applaud the efforts that have been made to bring a more scientific perspective to the process of evidence handling and storage. We didn't have many major issues with the protocols.

Adam Becnel, Tim Kupferschmid and Pete Marone reviewed **Digital Evidence** and **Latent** units. Becnel: Only minor things and no technical issues, just taking things that were produced at various times over the years and making them all consistent. A couple of issues did arise in each area:

Digital Evidence's procedures frequently referred to ensuring "legal authorization" but there was no threshold table that could tell the analyst if they had legal authorization. Need a policy that says "This is what you look for, this is what's required for legal authorizations", because this is typically very important in digital evidence.

RE: Latent, discussions revealed that SCL is in the early stages of a national trend of local law enforcement agencies shutting down their Latent Print units. Some of them (that historically have not been accredited and have not had a quality system) need to be shut down, but the trend significantly changes what's coming into SCL. It can easily double or triple lab submissions from some locales. Efforts are being made to deal with the issue and all the "usual suspect" ideas are being employed but ultimately it will require money, resources, and personnel, and the demand will keep increasing.

And a final item, a management note RE: crime scene response. Analysts are required to be on call, take calls after work and possibly travel on weekends. Most states are doing On-Call pay, or Overtime with crime scene-issued cell phone. There should be some compensation or recognition that this is a sanctioned activity, and some support for it. (Becnel stressed that staff did not ask him to raise this issue.)

Vice-Chair Coble: Thank you for those reports. After completing reviews of protocols for Toxicology and DNA database, the Board issued a "For the Record" written statement of findings and what was done. Need to do that for the other sections that have now been completed. Co-Chairs, get everyone in your committee to read and sign off on your work. I'll send the template that was used previously, (a

letterhead from the Board), so you can put it in that same format. Need this done before the next meeting.

Chris Mumma: Regarding the review of the Latent Print section, there's been some question about the use of the term "practical impossibility" in reports. PCAST (President's Council of Advisors on Science and Technology) says it isn't scientifically defensible and shouldn't be used but apparently it's (still) in the protocol for Latent Evidence.

Adam Becnel: We found some old terminology regarding shoe prints ("to the exclusion of all others") that is being updated to reflect current guidance from OSAC (Organization of Scientific Area Committees). PCAST is relatively recent, and as far as I know no groups have determined whether they're going to adopt PCAST recommendations. We can look into it further. AD Thompson: We had to revamp our result statements after an accreditation, and the climate is changing regarding what we are now able to say or not say. Because there are no statistical formulas or analysis, the discipline is using "practical impossibility." We're defining the actual terminology in the SWGFAST (Scientific Working Group on Friction Ridge Analysis, Study and Technology) documents, until the OSACs come out with new guidelines for the Latent Evidence discipline.

Vice-Chair Coble: With respect to upcoming review topics, Michael Jiroutek will join Demi Garvin and Bethany Pridgen on the Drug Chemistry review, which has been moved to the second phase of reviews. The DNA Casework protocols group will be me, Tracey Dawson-Cruz, Kermit Channell, and Tim Kupferschmid.

The Board's next meeting, a call-in meeting, was set for Tuesday, August 15 at 1:00 PM Eastern Time.

Director Byrd: Board members will be invited to the ribbon-cutting ceremony at the Western Lab in July or August, although SCL can't pay for travel or accommodations because it won't be an official Board meeting. However, if funding is available, the following board meeting will be held at the Western Lab. Tentative schedule: October 24th – Travel day (fly into Charlotte, SCL will supply transportation to Edneyville); October 25th - Tour facility and meet with staff; October 26th - Hold the Board's public meeting in the morning.

Board nominated and then voted on new officers by secret ballot, and recessed briefly at 1:20 PM for a break and to count ballots. When the board reconvened at 1:28 PM, Vice-Chair Coble congratulated new FSAB Chair Tim Kupferschmid and Vice-Chair Tracey Dawson-Cruz on their election.

Adam Becnel, returning to Chris Mumma's question regarding "practical impossibility": Not sure if accreditation groups will adopt PCAST recommendations. OSAC could have new standards in the works. When they come out, the expectation is to comply with those best practices.

Dawson-Cruz: What is the follow-up on the memo from Director Byrd regarding review of "legacy" DNA cases? Coble: The previously-announced DNA Casework protocols group will meet or talk by phone to discuss the memo, and report back at the next meeting.

Director Byrd asked Board members to submit, via email, any comments they might have regarding how to improve Board meetings; what to change, or do differently.

Ron Singer moved adjournment at 1:36, seconded by Peter Marone.