

1 **Final - Minutes**
2 **Microscopic Hair Comparison Case Review Subcommittee of the**
3 **Forensic Science Board**
4 **October 13, 2016**
5 **Department of Forensic Science, Central Laboratory, Classroom 1**
6

7 **Subcommittee Members Present**

8 Vince S. Donoghue, Essex Commonwealth's Attorney (Designee of Senator Mark D. Obenshain,
9 Chair of the Senate Courts of Justice Committee) – Subcommittee Chair

10 David A. C. Long, Esq.

11 Lieutenant Colonel Tracy Russillo, Deputy Superintendent, Virginia State Police (Designee of
12 Colonel W. Steven Flaherty, Superintendent, Virginia State Police)

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14 **Legal Counsel for the Forensic Science Board**

15 Michelle Welch, Esq., Assistant Attorney General
16

17 **Staff Members Present**

18 Amy M. Curtis, Department Counsel

19 Katya N. Herndon, Chief Deputy Director

20 Alka B. Lohmann, Director of Technical Services

21 Robert W. Scanlon, Principal Forensic Scientist

22 Carisa M. Studer, Legal Assistant
23

24 **Call to Order by Subcommittee Chair Vince Donoghue**

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26 Mr. Donoghue called the meeting of the Microscopic Hair Comparison Case Review
27 Subcommittee ("Subcommittee") to order at 9:10 a.m.
28

29 **Adoption of Agenda**

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31 The Chair asked if there were any additions or changes to the draft agenda for the meeting.
32 Being none, Mr. Long made a motion to adopt the agenda, which was seconded by Lt. Colonel
33 Russillo and adopted by unanimous vote of the Subcommittee.
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35 **Approval of Draft Minutes of the July 18, 2016 Meeting**

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37 The Chair asked if there were any changes or corrections to the draft minutes from the July 18,
38 2016 meeting. Being none, Mr. Long made a motion to adopt the minutes, which was seconded
39 by Lt. Col. Russillo and approved by unanimous vote of the Subcommittee.
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41 **Discussion**

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43 Katya Herndon, Chief Deputy Director, updated the Subcommittee on various aspects of the
44 Microscopic Hair Comparison Case Review project. Ms. Herndon reminded the Subcommittee
45 that it had agreed that the Review Team would include two attorneys and one DFS scientist with
46 experience conducting microscopic hair examinations. Linda Czyzyk from the Staunton Public

47 Defender's Office and Earl Wheeler from the Newport News Public Defender's Office will serve
48 as the two attorneys on the Review Team, and Bob Scanlon will be the DFS scientist. The initial
49 Review Team meeting will be held on October 27, 2016, at the DFS Offices in Richmond. Amy
50 Curtis, Department Counsel, will be speaking at the Indigent Defense Commission conference
51 next week and will meet with Ms. Czyzyk and Mr. Wheeler while at the conference to provide
52 them with background materials and the transcripts for review. They will be asked to sign a
53 confidentiality agreement.

54
55 Ms. Herndon also updated the Subcommittee on the process for the ongoing identification cases
56 for review. There are now five part-time employees working on the archived case file project,
57 scanning Certificates of Analysis and entering information about the archived cases into a
58 database. To date, over 28,000 of approximately 1,000,000 case files have been scanned and
59 entered into the database. Of the 28,000 cases reviewed thus far and entered into the database,
60 651 involved hair examinations. One of the part-time employees working on the project has
61 been trained to review and screen the cases involving hair examinations into three categories: no
62 comparison, comparison (not probative), and positive (probative) association. Quality assurance
63 reviews of the screened cases are being conducted. Of the 651 cases involving hair
64 examinations, there were 98 identified as having positive, probative associations. Those 98 cases
65 are ready for the next step in the process.

66
67 The next step will be to confirm conviction information for the 98 cases and to locate transcripts
68 or transcript substitutes, where appropriate. DFS does not have the staff or resources for this.
69 DFS reached out to Mary Tate, who runs the Actual Innocence Clinic at the University of
70 Richmond, T.C. Williams School of Law, to request assistance in identifying students who may
71 be interested in working on the project. Ms. Tate offered the assistance of her students from the
72 Actual Innocence Clinic that starts in January 2017. Ms. Curtis and Ms. Herndon plan to meet
73 with Ms. Tate to provide her with background materials and have a more detailed discussion
74 about how Ms. Tate's Clinic students may be of assistance.

75
76 Ms. Herndon reminded the Subcommittee that they had discussed at a previous meeting having
77 the review team meet on a monthly basis. At this point, DFS needs the assistance of Ms. Tate
78 and her students to identify additional eligible cases for review. DFS had anticipated more cases
79 being identified and recommended for review as a result of the request for assistance letters that
80 were sent out to Commonwealth's Attorneys, the defense bar, judges and law enforcement. Ms.
81 Herndon proposed that the Review Team schedule its next meeting for March 2017 to provide
82 Ms. Tate and her students with sufficient time to identify additional eligible cases.

83
84 Amy Curtis, Department Counsel, presented for the Subcommittee's consideration draft
85 language that would permit the Review Team to consider context in conducting its transcript
86 reviews. The language had been presented to the Forensic Science Board at its August 10, 2016,
87 meeting, but the Board did not act on the language at that time because two of the Subcommittee
88 members were not present at the Board meeting. After the Subcommittee discussed the draft
89 language, Mr. Long made a motion to recommend to the Forensic Science Board that the
90 language permitting consideration of context be added to the transcript review guidance
91 document. The Subcommittee added as a caveat that it will consider whether the Review Team

92 is appropriately considering context as it reviews its recommendations for notification. The
93 motion was seconded by Mr. Donoghue, and approved by unanimous vote of the Subcommittee.
94

95 Ms. Herndon reviewed with the Subcommittee the draft forms that the Review Team will use to
96 document their review of the transcripts. Separate forms will be completed for each defendant in
97 each case. Each member of the review team will make a recommendation as to whether
98 notification to the parties should be made in each case reviewed, and the recommendations will
99 be noted on the forms. If at least one Review Team member makes a recommendation for
100 notification, the case will be sent to the Subcommittee. If the review team unanimously agrees
101 that notification is not necessary in a case, the case will not be sent to the Subcommittee. The
102 Subcommittee directed DFS staff to make minor edits to the forms and to report to the Board that
103 the forms were adopted by the Subcommittee.
104

105 Ms. Curtis led a discussion about the notification letters that will be sent to parties in cases
106 recommended for notification by the Review Team. The Subcommittee considered the
107 approaches taken by Texas and the FBI in their microscopic hair comparison case reviews. The
108 Subcommittee also discussed resources to assist with locating defendants who require
109 notification. The Subcommittee directed Ms. Curtis to draft two notification letters for
110 consideration at the next meeting; one for the Commonwealth's Attorney and the law
111 enforcement agency, and a second for the defendant and defense attorney.
112

113 **Public Comment**

114 There was no public comment.
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116 **Next Meeting**

117 The next meeting of the Microscopic Hair Comparison Case Review Subcommittee is set for
118 November 15, 2016, at 1:30 p.m.
119

120 **Adjournment**

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122 Mr. Long moved that the meeting of the Subcommittee be adjourned, which was seconded by
123 Mr. Donoghue and passed by unanimous vote.
124

125 The meeting adjourned at 9:54 a.m.