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Final - Minutes
Hair Microscopy Subcommittee of the
Forensic Science Board
April 19, 2016

Department of Forensic Science, Biotech 8 Building, Central Laboratory, Classroom 1

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Subcommittee Members Present

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Vince S. Donoghue, Essex Commonwealth's Attorney (Designee of Senator Mark D. Obenshain,
Chair of the Senate Courts of Justice Committee) - Subcommittee Chair
David A. C. Long, Esq.
Lieutenant Colonel Robert B. Northern, Deputy Superintendent, Virginia State Police,
(Designee of Colonel W. Steven Flaherty, Superintendent, Virginia State Police)

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Staff Members Present

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David A. Barron, Ph.D., Deputy Director
Amy M. Curtis, Department Counsel
Katya N. Herndon, Chief Deputy Director
Linda C. Jackson, Department Director
Alka B. Lohmann, Director of Technical Services
Robert W. Scanlon, Principal Forensic Scientist
Carisa M. Studer, Legal Assistant

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Invited Guests Present

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Matthew Dullaghan, Senior Assistant Attorney General
Brandon Garrett, the Justice Thurgood Marshall Distinguished Professor of Law at the
University of Virginia, School of Law
David Johnson, Virginia Indigent Defense Commission (IDC)
Amelia Maxfield, National Association of Criminal Defense Lawyers

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Call to Order by Subcommittee Chair Vince Donoghue

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Mr. Donoghue called the meeting of the Hair Microscopy Subcommittee ("Subcommittee") to
order at 1:30 p.m. He welcomed the Subcommittee members, the invited guests and Department
of Forensic Science ("DFS or the Department") Staff.

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Adoption of Agenda

The Chair asked if there were any additions or changes to the draft agenda for the meeting.
Being none, Mr. Long made a motion to adopt the agenda, which was seconded by Lt. Col.
Northern and adopted by unanimous vote of the Subcommittee.

47 **Approval of Draft Minutes of the March 17, 2016 Meeting**

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49 The Chair asked if there were any changes or corrections to the draft minutes from the March 17,
50 2016 meeting. Being none, Lt. Col. Northern made a motion to adopt the minutes, which was
51 seconded by Mr. Long and approved by unanimous vote of the Subcommittee.

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53 **Discussion**

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55 The Subcommittee discussed the draft of the letter requesting assistance identifying cases as the
56 first step of the microscopic hair comparison case review process. Cases completed by DFS
57 from 1995 to the present could be identified by the Department using its Laboratory Information
58 Management System (LIMS). Cases prior to 1995, however, would require more research
59 because LIMS did not exist until 1995. The Subcommittee discussed the various groups that
60 needed to be included as addressees of the request letter.

61
62 Brandon Garrett suggested that the request letter be more specific about the circumstances that
63 precipitated the need for the review of cases with microscopic hair comparison, and specifically
64 make reference to the FBI review. Mr. Garrett also commented that it would be useful to request
65 transcripts of trial testimony in this initial letter. The Subcommittee agreed to add Mr. Garrett's
66 suggestions to the draft letter that will be presented to the Forensic Science Board (FSB) for
67 approval.

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69 Next, the Subcommittee discussed the draft of the initial screening form. The Subcommittee
70 discussed the second step of the review process, which will involve an initial screening of any
71 microscopic hair comparison cases that are identified. The initial screening phase will include a
72 determination as to whether a positive, probative association was made and whether any listed
73 suspect was convicted. Volunteers would conduct research to locate any conviction orders, as
74 well as any available transcripts or factual summaries of trial proceedings.

75
76 There was discussion about how volunteers would go about locating transcripts and court
77 records. Suggestions included searching archived court records, seeking out court reporters, and
78 researching Supreme Court of Virginia case records at the UVA Law School Library. It was
79 established at the previous subcommittee meeting that cases identified as having an incarcerated
80 suspect would be prioritized. The Department will require all volunteers to sign a confidentiality
81 agreement prior to reviewing DFS records.

82
83 The Subcommittee discussed the draft initial screening flow chart to be used by the review team
84 in the second phase of the review process. At the previous Subcommittee meeting, it was
85 proposed that the review team would be composed of two prosecutors and two defense attorneys;
86 however, the Subcommittee revisited the issue of the composition of the review team.

87
88 There was discussion of the composition of the FBI's review team and the Texas Forensic
89 Science Commission (TFSC) review team. The Subcommittee also discussed whether a forensic
90 scientist should be added to the review team for technical review and accountability, as well as
91 whether the review team needed to include two prosecutors and two defense attorneys. After the
92 discussion, Mr. Long moved that the Subcommittee recommend to the FSB that the review team

93 be composed of one DFS scientist and two attorneys, which was seconded by Lt. Col. Northern,
94 and passed by unanimous vote.

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96 Discussion ensued on criteria that should be used by the review team when evaluating each case.
97 After reviewing the criteria used by both the FBI and the TFSC, it was determined that a merger
98 of the criteria for both should be adopted. The Subcommittee decided to recommend to the FSB
99 that the review criteria should be as follows: (1) Did the examiner state that an evidentiary hair
100 could be associated with a specific individual to the exclusion of all others? (2) Did the examiner
101 assign a statistical weight or probability or provide a likelihood that the questioned hair
102 originated from a particular source? and (3) Does the testimony contain any other potentially
103 misleading statements or inferences?

104
105 The Subcommittee discussed conducting a review of 12 transcripts from hair comparison cases
106 to determine more specific criteria for the review team to use when reading transcripts. The FBI
107 conducted a similar review of transcripts from 12 cases to develop its criteria. Lt. Col. Northern
108 moved that the Subcommittee recommend to the FSB that a review of 12 transcripts be
109 conducted to establish specific criteria for the review team, which was seconded by Mr. Long,
110 and approved by unanimous vote of the subcommittee.

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112 The Subcommittee briefly discussed the process of notification to parties of the hair microscopy
113 comparison cases after the review of the cases are complete. Lt. Col. Northern made a motion
114 that the Subcommittee defer the development of a notification process to the FSB, which has
115 experience with the issues surrounding such notifications from the Post-Conviction Testing
116 Project. The motion was seconded by Mr. Long, and approved by unanimous vote of the
117 Subcommittee.

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119 **Public Comment**
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121 Mr. Garrett raised the issue of what the response from DFS would be if there are any cases which
122 identify an error. Amelia Maxfield commented on the FBI and Department of Justice practices
123 in cases where errors were identified. Amy Curtis, Department Counsel, pointed out that there is
124 a Virginia statute that allows for Post-Conviction DNA testing if a case meets the criteria.

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126 **Next Meeting**
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128 The Hair Microscopy Subcommittee will meet next on June 16, 2016 at 1:30 p.m.

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130 **Adjournment**
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132 Mr. Donoghue moved that the meeting of the Subcommittee be adjourned, which was seconded
133 by Lt. Col. Northern and passed by unanimous vote.

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135 The meeting adjourned at 3:05 p.m.