



MARY JANE BURTON CASE REVIEW: NEXT STEPS

JACOB LUBETKIN, ATTORNEY

OCTOBER 22, 2024



Overview

- ▶ The budget language directs staff to identify the number of individuals who were convicted in cases where MJB was the forensic examiner.
- ▶ An individualized review of MJB's cases has not been conducted to determine whether she engaged in a pattern of misconduct.
- ▶ A detailed review may help determine whether MJB engaged in a pattern of misconduct, and, if so, what the role and response of the Commonwealth should be.



Case Review

- ▶ A detailed review of MJB's work would include information from multiple sources:
 - Courts (transcripts, exhibits, evidence);
 - Law enforcement agencies (reports and evidence);
 - Commonwealth's Attorneys (case files);
 - Attorney General (appellate case files); and,
 - Other proceedings (appeals, habeas corpus, etc.).

- ▶ An independent serologist would be needed to review and assess MJB's work.



Case Review

- ▶ A detailed review of MJB's work could inform discussions and decisions on whether:
 - MJB engaged in a pattern of misconduct;
 - A new statutory writ is needed to address cases that may not fall under one of Virginia's current writs;
 - To provide counsel to convicted individuals;
 - To notify next of kin for convicted individuals who are deceased; and,
 - To examine the work of any other DFS serologists who MJB trained.



Other States

- ▶ Other states have responded to allegations of forensic misconduct by conducting individualized case reviews.
 - Fred Zain, Serologist (West Virginia)
 - Employed: 1979-1989
 - Investigated: 1993
 - Joyce Gilchrist, Forensic Chemist (Oklahoma)
 - Employed: 1980-2001
 - Investigated: 2001
 - Yvonne Woods, Forensic Scientist (Colorado)
 - Employed: 1994-2023
 - Investigated: Ongoing



Staff Recommendation

- ▶ Create a panel to conduct an initial detailed review of the following cases (~250) where MJB was the forensic examiner:
 - Incarcerated individuals;
 - Exonerated individuals;
 - Executed individuals; and,
 - Any case where she testified.
- ▶ The purpose of the panel would be to determine whether MJB engaged in a pattern of misconduct.



Staff Recommendation

- ▶ Possible panel members: Commonwealth's Attorneys, Public Defenders, Retired Judges, Private Defense Counsel, Innocence Project, and an Independent Serologist.
- ▶ Resources may be needed to compensate panel members, to conduct meetings, and for DFS to perform DNA testing.
- ▶ Crime Commission staff could assist in the collection of information and facilitate panel review meetings.



Staff Recommendation

- ▶ The findings of this panel would not be binding in any court proceedings challenging MJB's cases.
- ▶ Individuals could proceed with innocence or other claims regardless of the actions taken by the panel.
- ▶ The findings of the panel could be reported to the Crime Commission, which would help inform the role and response of the Commonwealth.



DISCUSSION