

May \_\_\_\_, 2024

Commonwealth's Attorney for \_\_\_\_  
Virginia

Chief or Sheriff  
Virginia

Dear Mr. or Ms. \_\_\_\_ and Chief or Sheriff \_\_\_\_\_:

In October 2023, a Subcommittee of the Scientific Advisory Committee (SAC) began a review of cases involving Mary Jane Burton, a serologist who previously worked at the Bureau, then Division, of Forensic Science from 1973 through 1988. The Subcommittee was established by the SAC Chair, Kathleen Corrado, Ph.D., upon a request received from the Department of Forensic Science's Director, Linda C. Jackson. Pursuant to Virginia Code § 9.1-1113(C), the SAC is required to review analytical work, reports, and conclusions of a scientist employed by DFS when there has been an allegation of testing errors made by a scientist during their examination of evidence. Having received allegations that Ms. Burton made such testing errors, Director Jackson made a request to the SAC.

The Subcommittee reviewed information received from outside sources and the Department's staff regarding various concerns with Ms. Burton's case work. In particular, the following concerns and/or deficiencies were noted in three cases:

- In a sexual assault case, serology results appeared to have been changed without any additional testing;
- In another sexual assault case, serology results were changed, resulting in the implication of the defendant without adequate explanation in the case notes; and
- In a homicide case,
  - the Certificate of Analysis reported that sperm were identified on swabs from the victim when subsequent analyses failed to identify sperm, and
  - that hairs collected from the defendant's possessions were consistent with the victim when subsequent analyses contradicted those conclusions.

Due to the age of these cases, the frequent lack of substantive case file documentation in her cases, and their inability to question Ms. Burton regarding her work, the Subcommittee is not able to determine the reason(s) for these irregularities and/or errors. But having identified them, the Subcommittee determined that the DFS should notify all affected parties from Ms. Burton's prior cases. Accordingly,

the Department is issuing this notification to you with a list of cases that it has identified from your jurisdiction where this examiner conducted any examination. Based on information received from the Virginia State Crime Commission to date, DFS has highlighted cases on the list where the defendant(s) may still be incarcerated.

The Department is not able to determine which cases were charged and/or resulted in convictions from this list. The Department would ask that each Commonwealth's Attorney and law enforcement agency please review the case list to identify whether any of these cases resulted in convictions and notify DFS of the results of that review. DFS will seek to notify as soon as possible all affected defendants that it can locate. To facilitate that process, any assistance that you can provide with conviction information would be deeply appreciated.

While the Department has no ability to assess the probative value of this evidence or how the results may have impacted the overall outcome of a particular case, it has a duty to notify its customers of these identified errors. DFS staff will assist with the development of testing plans for any cases with resulting convictions and will conduct DNA testing on any available probative evidence still in existence upon request of the parties or order by the Court. While some of these cases may have already been part of the Department's DNA Post-Conviction Testing Project, DFS would encourage agencies to look for other evidence, either in law enforcement custody or entered as evidence in the Circuit Court, that could be subjected to additional testing.

Thank you for your assistance. Please feel free to contact me at (804) 786-6848 should you have any questions or concerns.

Sincerely,

Amy C. Jenkins  
Department Counsel

Enclosures

[DATE]

[Defendant]

[Address]

Re: *Virginia Department of Forensic Science Case Review*  
*[Case Name]*

Dear [NAME]:

The Virginia Department of Forensic Science (DFS) has been conducting a review of cases from the 1970s and 1980s. Your case, *Commonwealth v. [Defendant's name]*, has been included in this Review. The forensic case work of a former DFS employee involved in your case, Mary Jane Burton, has been questioned, and DFS is notifying every defendant that is affected.

We do not know what role the forensic analysis provided by this former employee played in the overall outcome in your case. Neither DFS nor the Forensic Science Board can provide you with any legal advice. You may wish to talk to a lawyer of your choice about this notice and discuss your options.

The Innocence Project at UVA School of Law (UVAIP), working in conjunction with a coalition of volunteer attorneys, can provide free and confidential legal assistance regarding your options. They may be reached at:

Jennifer Givens  
Juliet Hatchett  
Innocence Project at UVA School of Law  
580 Massie Road  
Charlottesville, Virginia 22903  
434-924-3732

If you decide to contact UVAIP, they will be able to discuss your case with you and relief that may be available.

If it is determined that evidence from the case is still available and that DNA testing may be agreed to or ordered by the Court, DFS is willing to discuss testing options available and resubmission of the evidence.

Please note that the prosecutor and the law enforcement agency have been notified of this development in your case as well by separate letter.

Sincerely,

DFS??

The Board Chair??

DRAFT