COMMONWEALTH of VIRGINIA

DEPARTMENT OF CRIMINAL JUSTICE SERVICES

OFFICE OF THE DIRECTOR
DIVISION OF FORENSIC SCIENCE
A Nationally Accredited Laboratory

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RICHMOND – Governor Mark R. Warner has accepted the response of the Virginia Division of Forensic Science (DFS) on the April 9, 2005 audit report of the American Society of Crime Laboratory Directors Laboratory Accreditation Board (ASCLD/LAB) in the case of the rape and fatal stabbing of Rebecca Williams in 1982.

DFS Director Paul Ferrara issued the following statement on the audit report:

"The audit report criticizes the work performed on one sub-sample five years ago based upon current technologies and standards. It also belies the major body of other work performed by this examiner in this case wherein he successfully eliminated Earl Washington and identified a new suspect, Kenneth Tinsley, on evidence found at the crime scene. Nonetheless, we accept the basic finding of the audit; i.e., that the examiner should have declared this sample as indeterminate or inconclusive instead of eliminating Earl Washington, Rebecca Williams, and Kenneth Tinsley.

"The Division of Forensic Science has already begun to implement all of the ASCLD/LAB recommendations and will report the results of these studies and reviews to the new Scientific Advisory Committee, to the Policy Board of the Department of Forensic Science, and to ASCLD/LAB upon their conclusion.

"The Division of Forensic Science is gratified that the audit report does not suggest any evidence of a systemic deficiency and that ASCLD/LAB has seen fit to simultaneously grant re-accreditation to DFS, a status DFS has maintained continuously since 1989."

Responses to Audit Recommendations *(DFS responses in italics)*

1. Conduct validation studies on the extraction procedures of DNA from mounted slides.

A three phase study to determine the best method to isolate DNA from mounted microscope slides of varying ages will be conducted by DNA examiners throughout the Division of Forensic Science. Samples of this type represent a small fraction of the total types of DNA samples routinely analyzed by the Division of Forensic Science. This study will include fabricated samples (phase 1), actual non-probative samples (phase 2) and will include testing by multiple examiners and laboratories within the Division of Forensic Science (phase 3).

2. Define a process to insulate the examiners from pressures that may be applied from inside and outside of the laboratory in situations similar to this case.

Legislation passed in 2001 established formal procedures for post-conviction testing to be ordered through the courts. Therefore the likelihood of such a unique request for DNA testing through a Governor's office as in this case will be rare. In the unlikely event such a situation arises again, a panel of senior scientists shall review any deviations from normal protocols and provide assistance in language and/or formatting of the results of the analysis and conclusions. Such an issue may also be referred to the Department of Forensic Science's Scientific Advisory Committee for consideration.

3. Refine the technical review process to ensure that policies and protocols are followed and that conclusions are scientifically supported by the data in the case.

This recommendation has already been implemented. Since 2002, revised again in 2005, the Division of Forensic Science Quality Manual includes a "Guide for Review of DNA Data" including a revised review form to be used when reviewing case files. The Division of Forensic Science will also survey other forensic laboratory systems to determine if other revisions are appropriate.

4. Institute a policy by which deviations from standard operating procedures are approved in advance and documented in the case file.

The Division of Forensic Science has already implemented this recommendation. In 2002, the Division's Quality Manual was revised to require that whenever a deviation from standard protocol is deemed necessary, the issue shall be discussed with the examiner's supervisor and Section Chief with Section Chief approval to be documented in the case file.

5. Formulate a process to be used to develop an analytical approach when working with DNA samples having a low level of genetic material and for evaluating allelic dropout.

Often in forensic DNA testing, a less than full (incomplete) DNA profile is obtained due to very low levels of DNA present in a sample or sample mixture. This phenomenon is referred to as "allelic drop-out." Low level DNA refers to samples/items of evidence that contain an amount of DNA at or below the normal detection limits of the methodology. When an incomplete profile is obtained, examiners must evaluate the factors that may be contributing to this phenomenon when making any conclusions. Although the Division of Forensic Science has a protocol in place to evaluate such samples, a survey will be conducted of a number of different forensic DNA laboratories to review their policies and procedures for handling these situations.

6. Ensure that the laboratory's Quality Manager determines whether the deficiencies revealed in this report are endemic to the DNA operations throughout the laboratory system in Virginia. This should be accomplished in part by a thorough examination of a minimum of 50 cases in the Virginia system dealing with low level DNA and or slides prepared in a manner similar to Item 121A to determine whether process errors occurred and whether conclusions are scientifically supported.

The Quality Manager should convene a suitable number of qualified DNA analysts, supervisors or technical leaders, internal and external to the laboratory or laboratory system, to determine whether the selected cases have deficiencies that substantially affect the integrity of the results in those cases. For purposes of this review, low level DNA casework is defined as recovering amounts of DNA near the detection limitations of the analysis system in use. ASCLD-LAB further recommends that the DFS prepare a report at the conclusion of this review to be provided to ASCLD/LAB for further recommendations as appropriate.

Cases dealing with low level DNA and/or slides prepared in a manner similar to Item 121A are being identified and three (3) from each examiner will be collected for review by a group of technical leaders who will review the files indicated above as well as all case files from 1999 until present of the analyst involved in this specific case, in accordance with corrective action 7b. Approximately 150 cases of this type will be reviewed. It is anticipated that this review can be completed in the next two months. This review and report will be provided to the new Scientific Advisory Committee of the Department of Forensic Science for review and comment before transmitting to ASCLD/LAB.

7. Implement appropriate corrective actions with respect to the analyst in this case. Among the corrective actions the laboratory should consider are the following:

a. Discontinue the analyst's casework involving low level DNA samples and/or mounted slides until the corrective actions are completed. *See attached letter from Dr. Ferrara.*
b. Conduct a review of the analyst's casework, using internal and external reviewers, from cases in and around 2000 and forward, particularly in cases in which there were low level DNA and/or mounted slides, to determine if the conclusions are scientifically supported by the data. *See Item 6 above.*
c. Discontinue the analyst's responsibilities as a Technical Leader until the corrective actions are completed. *See attached letter from Dr. Ferrara.*

8. Encourage participation by the analyst in this case in the corrective actions described in paragraphs one through five, above. *See attached letter from Dr. Ferrara.*

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May 6, 2005

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Jeffrey D. Ban
Division of Forensic Science
700 North 5th Street
Richmond VA 23219

Dear Mr. Ban:

Pursuant to the recommendations for corrective actions in the ASCLD-LAB Audit Report of April 9, 2005, I am hereby discontinuing your responsibility as Technical Leader and for low-level DNA case work examinations pending completion and acceptance of the recommended corrective actions. Effective this date, Dr. Susan Greenspoon will assume the role of Acting Technical Leader.

During this interim period, you will be expected to assist Dr. Greenspoon in the completion of the recommended review of your casework involving low level DNA samples and/or mounted slides.

This action will not effect your compensation or classification. Upon satisfactory completion of a review of specified cases and acceptance of that review by ASCLD-LAB, you will be re-instated in your role as Technical Leader.

We trust you understand the basis for this action and appreciate your contributions to this effort.

Sincerely,

Paul B. Ferrara, Ph.D.
Director

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c: Honorable John Marshall
Honorable Robert Crouch
Leonard Cooke
Steven Sigel
Peter Marone