



U.S. Department of Justice

Federal Bureau of Investigation

Washington, DC 20535-0001

April 27, 2015

The Honorable Charles E. Grassley
The Honorable Patrick J. Leahy
United States Senate
Committee on the Judiciary
Washington, DC 20510-6275

Dear Chairman Grassley and Senator Leahy:

This letter is in response to your letter to Director Comey dated March 27, 2015, regarding the progress of the Federal Bureau of Investigation (FBI) review of federal and state criminal cases in which the results of microscopic hair comparison analyses were used.

The FBI has identified over 21,600 cases assigned to examiners qualified in the microscopic hair comparison discipline prior to 2000. This number may include cases not involving microscopic hair comparison analysis because these same examiners may have been qualified to conduct forensic analyses in other disciplines (i.e. fiber comparisons, serology, mitochondrial DNA, etc.) over the course of their careers. As a first step, the FBI initially conducts a file review to determine if the case involved microscopic hair comparison analysis that resulted in a probative association between evidentiary hair and known samples.¹ Additionally, cases involving a probative association must also meet the following criteria to be reviewed by the FBI:

- a) The defendant was convicted;
- b) DNA analysis was **not** conducted on the evidentiary hair at the time of trial;
- c) The case was submitted to the FBI Laboratory and the analysis occurred prior to December 31, 1999; and
- d) The FBI provided the contributing law enforcement agency a Laboratory report regarding the results of the microscopic hair comparison.

As a result, about 3,000 (14%) of the 21,600 cases have probative associations and are being reviewed.

1. In how many cases has the review and all notifications been completed?

¹ For example, a probative association can occur when there is a transfer of hair from a victim directly to a suspect or from a victim to the weapon used during the commission of a crime. Recovery of hair found inside a victim's house that is microscopically similar to the victim's hair is an example of a non-probative association because the victim's hair is expected to be found in their home.

Over 89% of the 21,600 cases (with and without probative associations) have been marked as complete. Of the approximately 3,000 cases with probative associations, nearly 60% of those cases have been reviewed or closed according to agreed upon protocols. Probative cases are marked as complete when:

- a) The FBI has been advised that there was no conviction in the case (e.g., case not prosecuted, resulted in a dismissal or an acquittal);²
- b) The FBI has been advised that the microscopic hair comparison evidence was not used in the conviction (e.g., no plea, no stipulation to the laboratory report, no testimony about probative hair findings);³
- c) There are incomplete materials in the FBI's files to move forward with the review (e.g., all records destroyed due to age of the case);⁴
- d) The FBI did not receive an adequate response from the law enforcement agency who submitted the case for analysis or from the prosecutors after numerous attempts to obtain the materials needed for the review;⁵ or
- e) All reviews of relevant laboratory reports and/or testimony transcripts have been completed and DOJ has been notified of the findings.⁶

2. How many cases remain entirely un-reviewed?

160 new case files were located and received in early April that are currently under review to determine if a probative association was made in the case and if the cases meet the criteria listed earlier. Further, there are 263 case files that have yet to be received from FBI Records Management Division. Many of these case files received water damage in two separate floods (Alexandria, VA and Hurricane Sandy). These files are currently in a frozen state to preserve them and require special handling to properly thaw them without further damage. The rest of the case files (approximately 21,200) have been reviewed to determine whether a microscopic hair analysis was conducted and whether a probative association was identified.

3. In how many cases is the review and notification process still pending?

Of the 3,000 cases with probative associations, there are approximately 1,183 requiring additional action as of April 22, 2015:

- a) 117 require letters to be sent to contributors or prosecutors
- b) 59 are awaiting responses from contributors or prosecutors
- c) 4 transcripts are awaiting review
- d) 629 laboratory reports are awaiting review
- e) 205 cases are awaiting distribution to IP/NACDL for review
- f) 127 cases are awaiting review results from IP/NACDL
- g) 42 cases are awaiting distribution to DOJ for notifications

² As of April 22, 2015 there are 552 cases that were closed due to no conviction.

³ 171 cases that were closed due to the microscopic hair comparison evidence not being used in the conviction.

⁴ 28 cases have been closed due to an inability to find critical information to proceed because files are incomplete.

⁵ 704 cases have been closed due to lack of adequate responses from case contributors or prosecutors.

⁶ 398 cases have been closed due to completion of all reviews by FBI and IP/NACDL and packets sent to DOJ.

Note that the above figures are very dynamic and change on a daily basis. For instance, the large number of cases awaiting distribution to IP/NACDL is a result of a recent surge in laboratory report reviews that has caused a back-up in distribution of packets to IP/NACDL. It is anticipated that all of these will be distributed to IP/NACDL in the coming weeks.

4. In how many cases has an independent authority determined that the testimony is not material to a conviction?

A materiality evaluation by an independent authority is not an element of this review. There is no material assessment being made prior to the FBI's review. At the conclusion of the FBI's review, the DOJ is providing both prosecutors and defense counsel notice of the results of the review so that they may assess the materiality of the identified statements based on their knowledge of the case and all of the evidence presented at trial. The FBI does not have information on whether or not a prosecutor or defense counsel has determined the hair evidence was material to the outcome of the trial.

5. In how many cases has an independent scientific review been completed?

Independent scientific reviews are not an element of this review.

6. How many staff are devoted (please indicate full-time and part-time and contract employees) to this effort?

There are five FBI employees assigned to this effort on a full-time basis, over eighteen FBI employees assigned on a part-time basis, and three contractors assigned on a full-time basis.

7. What are the job titles of these staff members?

Full-Time: Senior Forensic Scientist; Unit Chief; Management and Program Analyst (3)

Part-Time: Special Assistant (2); Forensic Examiner (10+)⁷; Management and Program Analyst (3); Attorney (3)

Contractors: Administrative Senior Associate (3)

8. What is the target completion date for the last of these reviews?

The FBI will complete its review of all of the identified cases by the end of the calendar year which means we will have reviewed all of the case files and taken all the steps identified to attempt to determine whether the cases involved testimony and, if so, secure transcripts. Whether the cases are completely reviewed will be highly dependent on the responses the FBI receives. If the FBI receives a delayed response after having closed a case for lack of information, the FBI will reopen that case for review.

⁷ When there is a need for extra assistance in reviewing case files, as many as 10 additional Forensic Examiners have been added to this project.

9. Please provide the complete results of the root cause analysis addressing how the laboratory began to offer scientifically invalid testimony as well as how and why the problem persisted for so long. Specifically, please provide:
- a) a copy of the root cause analysis procedure and the laboratory policy that defines what events trigger a root cause analysis;
 - b) specific details regarding the makeup of the investigative team conducting the root cause analysis in this case, including, at a minimum, the number and job titles of the staff involved and the scope of their work; and
 - c) evidence that recommendations resulting from the analysis are themselves systemic in nature and designed to prevent recurrence of the error or nonconformity to standard hair analysis and other forensic disciplines.

Given the enormity of this issue, the FBI is in the process of hiring an independent firm to conduct a thorough root cause analysis of the problems. A copy of the laboratory policy that defines what events trigger a root cause analysis under the FBI Laboratory's current Quality Assurance System is included.

If you have any questions, please contact the Office of Congressional Affairs at 202-324-4510.

Sincerely,

A handwritten signature in black ink that reads "Christopher Todd Doss". The signature is written in a cursive style with a large initial "C".

SSA Christopher "Todd" Doss
Director
FBI Laboratory

Enclosure