

**Public Safety****FBI admits flaws in hair analysis over decades****By Spencer S. Hsu** April 18

The Justice Department and FBI have formally acknowledged that nearly every examiner in an elite FBI forensic unit gave flawed testimony in almost all trials in which they offered evidence against criminal defendants over more than a two-decade period before 2000.

Of 28 examiners with the FBI Laboratory's microscopic hair comparison unit, 26 overstated forensic matches in ways that favored prosecutors in more than 95 percent of the 268 trials reviewed so far, according to the National Association of Criminal Defense Lawyers (NACDL) and the Innocence Project, which are assisting the government with the country's [largest post-conviction review of questioned forensic evidence](#).

The cases include those of 32 defendants sentenced to death. Of those, 14 have been executed or died in prison, the groups said under an agreement with the government to release results after the review of the first 200 convictions.

The FBI errors alone do not mean there was not other evidence of a convict's guilt. Defendants and federal and state prosecutors in 46 states and the District are being notified to determine whether there are grounds for appeals. Four defendants were previously exonerated.

The admissions mark a watershed in one of the country's largest forensic scandals, highlighting the failure of the nation's courts for decades to keep bogus scientific information from juries, legal analysts said. The question now, they said, is how state authorities and the courts will respond to findings that confirm [long-suspected problems](#) with subjective, pattern-based forensic techniques — like hair and bite-mark comparisons — that have contributed to wrongful convictions in more than one-quarter of 329 DNA-exoneration cases since 1989.

In a statement, the FBI and Justice Department vowed to continue to devote resources to address all cases and said they “are committed to ensuring that affected defendants are notified of past errors and that justice is done in every instance. The Department and the FBI are also committed to ensuring the accuracy of future hair analysis testimony, as well as the application of all disciplines of forensic science.”

Peter Neufeld, co-founder of the Innocence Project, commended the FBI and department for the collaboration but said, “The FBI's three-decade use of microscopic hair analysis to incriminate defendants was a complete disaster.”

“We need an exhaustive investigation that looks at how the FBI, state governments that relied on examiners trained by the FBI and the courts allowed this to happen and why it wasn't stopped much sooner,” Neufeld said.

Norman L. Reimer, the NACDL's executive director, said, "Hopefully, this project establishes a precedent so that in future situations it will not take years to remediate the injustice."

While unnamed federal officials [previously acknowledged widespread](#) problems, the FBI until now has withheld comment because findings might not be representative.

Sen. Richard Blumenthal (D-Conn.), a former prosecutor, called on the FBI and Justice Department to notify defendants in all 2,500 targeted cases involving an FBI hair match about the problem even if their case has not been completed, and to redouble efforts in the three-year-old review to retrieve information on each case.

"These findings are appalling and chilling in their indictment of our criminal justice system, not only for potentially innocent defendants who have been wrongly imprisoned and even executed, but for prosecutors who have relied on fabricated and false evidence despite their intentions to faithfully enforce the law," Blumenthal said.

Senate Judiciary Committee Chairman Charles E. Grassley (R-Iowa) and the panel's ranking Democrat, Patrick J. Leahy (Vt.), urged the bureau to conduct "a root-cause analysis" to prevent future breakdowns.

"It is critical that the Bureau identify and address the systemic factors that allowed this far-reaching problem to occur and continue for more than a decade," the lawmakers wrote FBI Director James B. Comey on March 27, as findings were being finalized.

The FBI is waiting to complete all reviews to assess causes but has acknowledged that hair examiners until 2012 lacked written standards defining scientifically appropriate and erroneous ways to explain results in court. The bureau expects this year to complete similar standards for testimony and lab reports for 19 forensic disciplines.

Federal authorities [launched the investigation in 2012](#) after The Washington Post [reported that flawed forensic hair matches](#) might have led to the convictions of hundreds of potentially [innocent](#) people [since](#) at least the 1970s, typically for murder, rape and other violent crimes nationwide.

The review confirmed that FBI experts systematically testified to the near-certainty of "matches" of crime-scene hairs to defendants, backing their claims by citing incomplete or misleading statistics drawn from their case work.

In reality, there is no accepted research on how often hair from different people may appear the same. Since 2000, the lab has used visual hair comparison to rule out someone as a possible source of hair or in combination with more accurate DNA testing.

Warnings about the problem have been mounting. In 2002, the FBI reported that its own DNA testing found that examiners reported false hair matches more than 11 percent of the time. In the District, the only jurisdiction where defenders and prosecutors have re-investigated all FBI hair convictions, [three](#) of seven [defendants](#) whose trials included flawed FBI testimony have been exonerated through DNA testing since 2009, and courts have [exonerated](#) two [more](#) men.

All five served 20 to 30 years in prison for rape or murder.

University of Virginia law professor Brandon L. Garrett said the results reveal a “mass disaster” inside the criminal justice system, one that it has been unable to self-correct because courts rely on outdated precedents admitting scientifically invalid testimony at trial and, under the legal doctrine of finality, make it difficult for convicts to challenge old evidence.

“The tools don’t exist to handle systematic errors in our criminal justice system,” Garrett said. “The FBI deserves every recognition for doing something really remarkable here. The problem is there may be few judges, prosecutors or defense lawyers who are able or willing to do anything about it.”

Federal authorities are offering new DNA testing in cases with errors, if sought by a judge or prosecutor, and agreeing to drop procedural objections to appeals in federal cases.

However, biological evidence in the cases often is lost or unavailable. Among states, only California and Texas specifically allow appeals when experts recant or scientific advances undermine forensic evidence at trial.

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Defense attorneys say scientifically invalid forensic testimony should be considered as violations of due process, as courts have held with false or misleading testimony.

The FBI searched more than 21,000 federal and state requests to its hair comparison unit from 1972 through 1999, identifying for review roughly 2,500 cases where examiners declared hair matches.

Reviews of 342 defendants’ convictions were completed as of early March, the NACDL and Innocence Project reported. In addition to the 268 trials in which FBI hair evidence was used against defendants, the review found cases in which defendants pleaded guilty, FBI examiners did not testify, did not assert a match or gave exculpatory testimony.

When such cases are included, by the FBI’s count examiners made statements exceeding the limits of science in about 90 percent of testimonies, including 34 death-penalty cases.

The findings likely scratch the surface. The FBI said as of mid-April that reviews of about 350 trial testimonies and 900 lab reports are nearly complete, with about 1,200 cases remaining.

The bureau said it is difficult to check cases before 1985, when files were computerized. It has been unable to review 700 cases because police or prosecutors did not respond to requests for information.

Also, the same FBI examiners whose work is under review taught 500 to 1,000 state and local crime lab analysts to testify in the same ways.

Texas, New York and North Carolina authorities are reviewing their hair examiner cases, with ad hoc efforts underway in

about 15 other states.

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