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July 16, 2012

The Honorable Eric H. Holder
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Holder:

I welcome last week's announcement that the Department of Justice and Federal Bureau of Investigation (FBI) will be undertaking a broad review of criminal cases where defendants may have been wrongly convicted because of flawed forensic work in the FBI crime lab.¹ Earlier reports from the *Washington Post* indicated that "sloppy" and "unreliable" work may have led to the incarceration of hundreds of innocent people.²

On May 21, 2012, Chairman Leahy and I wrote the FBI regarding the earlier Justice Department task force that worked from 1996 to 2004 to conduct a more narrow examination of such potentially flawed forensic work in the FBI crime lab. For 56 days, the FBI has failed to respond to Chairman Leahy's and my request. The task force is reported to have only focused on one scientist at the facility.³ According to press reports, the task force identified more than 250 convictions in which the lab's flawed forensic work was determined to be critical to the conviction.⁴ Yet when that task force wrapped up in 2004, rather than releasing the findings of the Department task force to the public, or providing the information to the defendants affected by the faulty forensic work, Department officials only provided them to prosecutors involved in the cases. It appears that the discretion was left to prosecutors on whether to provide this potentially

¹ Spencer S. Hsu, *Justice Dept., FBI to review use of forensic evidence in thousands of cases*, WASH. POST (Jul. 10, 2012), available at http://www.washingtonpost.com/local/crime/justice-dept-fbi-to-review-use-of-forensic-evidence-in-thousands-of-cases/2012/07/10/gJQADFwIcW_story.html.

² Spencer S. Hsu, *Convicted defendants left uninformed of forensic flaws found by Justice Dept.*, WASH. POST (Apr. 16, 2012), available at http://www.washingtonpost.com/local/crime/convicted-defendants-left-uninformed-of-forensic-flaws-found-by-justice-dept/2012/04/16/gIQAWTcgMT_story.html.

³ *Id.*

⁴ *Id.*

exculpatory evidence to the defendants. I am still seeking answers about a number of aspects of this earlier task force.

I am glad the Department has decided to conduct a more expansive review, as several former senior FBI lab officials and FBI forensic experts endorsed calls for such a broader review after the *Washington Post* reports. However, I want to ensure that this wider review avoids the mistakes made by the earlier task force.

Therefore, please provide the following information:

1. Did the prior task force only review the forensic work of one scientist, as was reported?
2. Why did the task force notify only prosecutors regarding faulty forensic testing, and not defendants who could have benefited from this information?
3. What were the procedures for notification in cases where a problem with the forensic work was found by the task force?
4. In how many cases did the task force find a problem with the forensic work? In how many of those cases is the defendant still incarcerated? In how many was the defendant executed?
5. Please list each convicted individual in which the task force found the lab's flawed forensic work was determined to be critical to the conviction.
6. Please name each prosecutor who was notified by the task force, as well as which conviction the notification was relevant to.
7. For each prosecutor who was notified, please indicate, according to the Department's best knowledge, whether or not the defendant was in turn notified.
8. For each case in which the Department notified the prosecutor but the defendant was never notified by the prosecutor, please provide the Department's understanding as to why the defendant was not notified.
9. How will the broader review announced last week be conducted?
10. Who will be conducting the broader review and why is it being conducted?
11. What will be the differences, if any, between this review and the task force that conducted the earlier review?
12. What are the parameters of the broader review? Will the review focus only on exaggerated testimony by FBI examiners or also on scientifically unfounded statements made by others trained by the FBI or made by prosecutors?
13. What criteria will determine whether or not individual cases will be examined in the broader review?

14. What criteria will determine whether or not further action is taken as a result of the review?
15. What will the notification procedures of the broader review be?
16. In situations in which flawed crime lab work was critical to a conviction, will the defendants be notified? If so, at what stage of the review? If not, why not?
17. Will the Department commit to publicly releasing the results of this new review in detail? If not, why not?

Thank you for your prompt attention and response to the questions raised in this inquiry. Please provide responses to the questions no later than August 6, 2012. Should you have any questions regarding this request, please contact Tristan Leavitt of my staff at 202-224-5225.

Sincerely,



Charles E. Grassley
Ranking Member

cc: The Honorable Patrick J. Leahy
Chairman

The Honorable Robert S. Mueller, III
Director
Federal Bureau of Investigation