

June 30, 2017

The Honorable Charles E. Grassley
Chairman
Committee on the Judiciary
United State Senate
Washington, D.C. 20510

The Honorable Patrick J. Leahy
Committee on the Judiciary
United State Senate
Washington, D.C. 20510

Dear Chairman Grassley and Senator Leahy:

This responds to your letter dated April 24, 2017, regarding the Federal Bureau of Investigation's (FBI) ongoing review of criminal cases in which microscopic hair comparison analyses were used, as well as recently surfaced personnel memos.

As you are aware, both the Department of Justice (DOJ) and the FBI are conducting a review of historical cases involving microscopic hair comparison analysis. The FBI is actively identifying statements made by FBI hair examiners in reports or testimony that could have been interpreted or understood in a manner that did not meet accepted scientific standards for the discipline of microscopic hair comparisons.

Recently, memos regarding Supervisory Special Agent (SSA) Michael Malone have been publically circulated following their release through a Freedom of Information Act (FOIA) request. FBI's Records Management Division provided the memos in response to a FOIA request in the mid 2000's from an attorney representing an individual requesting FBI records concerning himself. The memos were contained in both investigative files concerning this individual (Letner) and his co-defendant (Tobin), as well as the personnel file for SSA Malone. A copy was provided by the National Association of Criminal Defense Lawyers (NACDL) to the Office of General Counsel in December 2016. None of the examiners who were part of the Hair and Fiber Unit at the time the memos were created (1991) are currently employed by the FBI. Further, two individuals who joined the Unit in 1995, but are currently employed in other areas within the FBI Laboratory, have indicated no previous knowledge of the content of the memos or the events that may have prompted them.

A review of the SSA's personnel file does not shed any light on the underlying events described in the memos. The 11/15/1991 memo indicates that transcript review and counseling resulted from a "complaint." The Records Management Division has reviewed the SSA's personnel file and has been unable to locate any document associated with a complaint or events which may have triggered it. Additionally, the Chief of the Trace Evidence Unit has conducted a

review of documents contemporaneous with the timeframe of the 1991 memos and has not located any information that sheds light on what may have prompted former Laboratory Director Hicks to request the transcript review and additional events described in the memos.

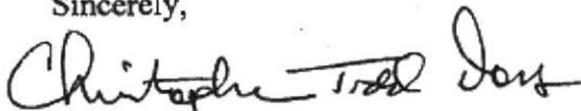
When the FBI receives a FOIA or other request for documents, FBI personnel determine if responsive documents exist and can be produced. At times, FOIA requests are vague or do not provide sufficient information to fully understand the exact documents that the requester is seeking. In these instances, FBI personnel do their best to identify the documents they believe are responsive.

The FBI Microscopic Hair Comparison Analysis Review Team relied on other FBI personnel and contractors to review case files in search of contributor letters, laboratory reports, and testimony transcripts. These individuals did not search for other content. Consequently, the review of the Letner or Tobin case files for transcript or laboratory report information would not have resulted in the memos being read or brought to the attention of either the FBI Microscopic Hair Comparison Analysis Review Team or the Office of the General Counsel.

While the Microscopic Hair Comparison Review is on-going, the FBI and partners Innocence Project (IP) and NACDL have identified statements that meet one or more of the error definitions in 439 testimony transcripts and 750 laboratory reports. The FBI has made multiple phone calls to evidence contributors and prosecutors' offices requesting case outcomes, as well as sent multiple letters to prosecutors, Attorney Generals, US Attorneys and State Governors, requesting transcripts and case outcomes. Further, the FBI enlisted the assistance of the National District Attorneys Association, the IP and NACDL to locate information regarding cases and transcripts.

Thank you for your inquiry. We would be happy to brief you further if you have additional questions. If you have any additional questions, then please feel free to contact the FBI's Office of Congressional Affairs at 202-324-5051.

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

CC: The Honorable Diane Feinstein
Ranking Member
Committee on the Judiciary