



State of South Carolina Office of the Governor

NIKKI R. HALEY
GOVERNOR

1205 PENDLETON STREET
COLUMBIA 29201

October 11, 2016

Mr. John O'Connor
Via email: joconnor@ap.org

Dear Mr. O'Connor,

Our office received your Freedom of Information Act request for the following:

- (1) Copies of correspondence between the governor's office and the FBI including, but not limited to, letters from the FBI dated Feb. 26, 2016, and June 26, 2016 regarding the FBI's review of cases involving testimony about microscopic hair comparison prior to December 31, 1999.
- (2) Supplements which list local prosecutors or law enforcement jurisdictions from which the FBI is seeking assistance, and correspondence among them and the governor's office.

Enclosed are the records responsive to your request. Due to the low volume of records, our office will not charge for the costs associated with producing the request as is allowed pursuant to Section 30-4-30(b) of the South Carolina Code of Laws.

Sincerely,

A handwritten signature in black ink that reads "Richele K. Taylor". The signature is fluid and cursive, with the first name "Richele" being the most prominent part.

Richele K. Taylor
Chief Legal Counsel

Enclosures



U.S. Department of Justice

Federal Bureau of Investigation

Office of the Director

Washington, D.C. 20535-0001

February 26, 2016

The Honorable Nikki R. Haley
Governor of South Carolina
1205 Pendleton Street
Columbia, SC 29201

Dear Governor Haley:

I need your help on an important criminal justice issue.

As you may know, the FBI and the Department of Justice have been reviewing reports and testimony about microscopic hair comparison in cases before December 31, 1999. After that date, our lab started using mitochondrial DNA in hair comparisons. But for cases from the 1990s and earlier, we have discovered problems with the way our examiners talked about the nature of hair comparisons.

In many cases, we have discovered that the examiners made statements that went beyond the limits of science in ways that put more weight on a hair comparison than scientifically appropriate. Hair is not like fingerprints, because there aren't studies that show how many people have identical-looking hair fibers. Especially before we started using mitochondrial DNA, appropriate testimony should have made the limits of hair comparison clear. Unfortunately, in a large number of cases, our examiners made statements that went too far in explaining the significance of a hair comparison and could have misled a jury or judge. In fact, in several cases in which microscopic hair comparison evidence was introduced, defendants were later exonerated by DNA after being convicted. We want to make sure there aren't other innocent people in jail based on our work.

To ensure justice is done, we have been working to get transcripts from prosecutors in cases where an FBI hair examiner testified. We have gotten good cooperation, because prosecutors care about getting it right. But in some cases in your state, folks just aren't getting back to us and we need your help to obtain the relevant transcripts. A list of the offices and cases where we need assistance is attached. I have also attached a sample letter you might use to reach out to the prosecutors.

In addition, we want to make sure our approach in the 1990s and before didn't introduce error into your state and local lab work. Over the last 40 years, the FBI offered introductory training on hair comparison to state and local labs. The FBI has notified the labs which sent employees to this training. I encourage you to ask your state and local labs to ensure their examiners were staying within the bounds of science and, if they weren't, to take appropriate corrective action.

Like you, we care deeply about justice, which is both about obtaining convictions and making sure that mistakes are fixed. I am very sorry the FBI put you in this position and am grateful for your help.

Sincerely yours,


James B. Comey
Director

Enclosures

Date

State or Local Prosecutor
Address
Address

Dear :

The United States Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) are engaged in a review of microscopic hair comparison analysis testimony and reports provided by the FBI Laboratory before December 31, 1999, by which time the Laboratory had adopted the practice of mitochondrial DNA testing, where appropriate, in hair comparison analysis. It has been determined that in numerous cases being reviewed, FBI Laboratory examiners exceeded the limits of science by overstating the conclusions that may appropriately be drawn from a positive association between evidentiary hair and a known hair sample. The purpose of this review is to ensure that FBI Laboratory reports and examiner testimony regarding microscopic hair comparison analysis met accepted scientific standards and to identify any case in which they may not have met this standard.

In order to evaluate the appropriateness of examiner testimony, the FBI previously reached out to your office requesting information regarding the below identified case(s) and whether a transcript was available.

Defendant's name
Victim's name
Local Case No.
FBI Case No.

The FBI has not heard back from you or has received an inadequate response regarding this case(s) and has requested our assistance in determining certain information regarding the disposition of the case(s). In the FBI request letter they included a Fax Response Sheet (additional copy attached hereto). I request that you please complete the form for the identified case(s) and return it to:

Cherise Dreyfus
Unit Chief, Trace Evidence Unit
Fax: 703-632-7714

If you have the hair examiner's testimony transcript, please contact Ms. Dreyfus and she will provide instructions regarding forwarding a copy of the transcript to the FBI Laboratory in Quantico, Virginia. If you do not have a copy of this transcript or a copy was not made, please provide the name of the relevant court reporter's office so that the FBI may contact it directly.

If you have any questions regarding this request or the general issue of microscopic hair analysis, please do not hesitate to contact either Cherise Dreyfus, Unit Chief, Trace Evidence Unit, FBI Laboratory, at FBICaseReview@ic.fbi.gov or Paula Wulff, Assistant General Counsel, Office of the General Counsel, FBI, at Paula.Wulff@ic.fbi.gov.

Sincerely,

[State Governor]

Attachment

Fax Response Sheet

Please send completed form within 30 calendar days to:

Cherise Dreyfus

Unit Chief

Trace Evidence Unit

FBI Laboratory

2501 Investigation Parkway

Quantico, VA 22135

Fax: 703-632-7714

Email: fbicasereview@ic.fbi.gov

From: _____ Email: _____

Organization: _____ Phone/Fax: _____

Address: _____

Referenced FBI Case Number: _____

Name of Court where Prosecution Occurred: _____

Court Docket Number: _____

Subject(s)/ Defendant(s): _____

Victim(s): _____

Name, Address and Phone Number of Prosecutor:

Name, Address and Phone Number of Defense Attorney of record: _____

1. Did an FBI examiner provide testimony concerning microscopic hair analysis at trial or any other hearing? ☐ Yes ☐ No

2. What type of hearing was this? _____

3. What was the lead charge in this case? _____

4. Did the case result in a conviction after trial? ☐ Yes ☐ No (If "No", please indicate whether the defendant was acquitted, pled guilty, if there was a stipulation regarding the hair evidence testimony at a plea or trial, or if your office did not proceed to trial for other

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reasons: _____

5. Was this a capital case where a death sentence was imposed? ☐ Yes ☐ No

6. Is the defendant still incarcerated based on a conviction (whether by trial or guilty plea) in this case? ☐ Yes ☐ No

7. If yes, where is the defendant currently incarcerated? _____

8. If no, what is the last known address, contact information and status of the defendant?

9. Can you provide a transcript of the microscopic hair analysis testimony provided by the FBI Laboratory Examiner? ☐ Yes ☐ No

10. If provision of a transcript will delay your response, please provide all other information to the FBI with the anticipated date of when a transcript will be provided. _____

11. If no, provide the name, address, email address, and telephone number of the office and person from whom these transcripts may be obtained. _____

Remarks: _____

Questions regarding this matter may be addressed to Cherise Dreyfus, Unit Chief, Trace Evidence Unit, at fbicasereview@ic.fbi.gov or Paula Wulff, Office of the General Counsel, at Paula.Wulff@ic.fbi.gov.

Urgent Delivery Requested

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Contributor Name	Contributor City	Contributor State	Prosecutor name	Prosecutor City	Prosecutor State
Charleston Police Department	Charleston	SC	9th Judicial Circuit Solicitor's Office	Charleston	SC
Charleston Police Department	Charleston	SC	9th Judicial Circuit Solicitor's Office	Charleston	SC

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