

US admits FBI falsified evidence to obtain convictions

By Kate Randall
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The US Justice Department and FBI have formally acknowledged that over a more than two-decade period before 2000, nearly every FBI examiner gave flawed forensic hair testimony in almost all trials of criminal defendants reviewed so far, according to a report in the *Washington Post*.

The cases examined include those of 32 defendants sentenced to death, 14 of whom have been either executed or died in prison. The scandal raises the very real probability that innocent people have been sent to their deaths, and that many more wrongfully convicted are languishing on death rows across the US due to FBI analysts' fraudulent testimony.

Testimony involving pattern-based forensic techniques—such as hair, bite-mark, and tire track comparisons—has contributed to wrongful convictions in more than a quarter of the 329 defendants' cases that have been exonerated in the US since 1989. In their pursuit of convictions prosecutors across the country have often relied on FBI analysts' overstated testimony on hair samples, incorrectly citing them as definitive proof of a defendant's guilt.

The National Association of Criminal Defense Lawyers (NACDL) and the Innocence Project are assisting the government in the nation's largest post-conviction review of the FBI's questioned forensic evidence. The groups determined that 26 of 28 examiners in the elite FBI Laboratory's microscopic hair comparison unit overstated forensic matches in ways that favored prosecutors in more than 95 percent of the 268 trials reviewed so far.

The nation's courts have allowed the bogus testimony, masquerading as definitive scientific evidence of defendants' guilt, to railroad innocent people and consign them to decades in prison, life in prison, or death row and the execution chamber.

Federal authorities launched an investigation in 2012 after a *Post* examination found that flawed forensic hair matches might have led to the convictions of hundreds of potentially innocent people nationwide since at least the 1970s. Defendants in these cases were typically charged with murder, rape and other violent crimes.

The scandal involves about 2,500 cases in which FBI examiners gave testimony involving hair matches. Hair examination is a pattern-based forensic technique. It involves subjective examination of characteristics such as color, thickness and length and compares them to a known source.

There is no accepted scientific research on how often hair from different people may appear the same, and any hair "matches" must be confirmed by DNA analysis. However, the *Post*'s 2012 review found that FBI experts systematically testified to the near-certainty of matches of hair found at crime scenes to the hair samples of defendants. The FBI gave flawed forensic testimony in 257 of the 268 trials examined so far.

In 2002, a decade before the *Post* review, the FBI reported that its own DNA testing revealed that examiners reported false hair matches more than 11 percent of the time.

In Washington, DC, the only jurisdiction where defenders and prosecutors have carried out an investigation into all convictions based on FBI hair testimony, five of seven defendants whose trials included flawed hair evidence have been exonerated since 2009 based on either DNA testing or court appeals. All of them served 20 to 30 years in prison for rape or murder.

In an interview with the *Post*, University of Virginia law professor Brandon L. Garrett said the results of the DC investigation reveal a "mass disaster" inside the

criminal justice system. “The tools don’t exist to handle systematic errors in our criminal justice system,” he said.

Those exonerated since 2009 in DC include:

* Donald Eugene Gates was incarcerated for 28 years for the rape and murder of a Georgetown University student. He was ordered released in December 2009 by a DC Superior Court Judge after DNA evidence revealed that another man committed the crime. The prosecution relied heavily on the testimony of an FBI analyst, who falsely linked two hairs from an African-American mail to Gates.

* Kirk L. Odom was wrongfully imprisoned for more than 22 years for a 1981 rape and murder. He completed his prison term in 2003, but it was not until July 2012 that DNA evidence exonerated him of the crimes. A DC Superior Court order freed him from remaining on parole until 2047 and registering as a sex offender.

* Santae A. Tribble was convicted in the 1978 killing of a DC taxi driver. An FBI examiner testifying at Tribble’s trial said he had microscopically matched the defendant’s hair to one found in a stocking near the crime scene. In 2012, DNA tests on the same hair excluded him as the perpetrator, clearing the way for his exoneration.

Federal authorities are offering new DNA testing in those cases where FBI analysts gave flawed forensic testimony. However, in some 700 of the 2,500 cases identified by the FBI for review, police or prosecutors have not responded to requests for trial transcripts or other information. Biological evidence is also not always available, having been lost or destroyed in the years since trial.

Although defense attorneys argue that scientifically invalid testimony should be considered a violation of due process, only the states of California and Texas specifically allow appeals when experts recant their testimony or scientific advances undermine forensic evidence given at trial.

In a statement responding to the new scandal’s eruption, the FBI and Justice Department vowed that they are “committed to ensuring that affected defendants are notified of past errors and that justice is done in every instance” and that are “also committed to ensuring the accuracy of future hair analysis, as well as the application of all disciplines of forensic science.”

The scandal over fraudulent testimony, however, only reveals the corrupt and anti-democratic character of the US prison system as a whole. The United States locks behind bars a greater proportion of its population than any other country, topped off by the barbaric death penalty that is supported by the entire political establishment.

Whatever the hypocritical posturing of the Obama White House, it cannot bring back the years spent in prison by the wrongfully convicted or the lives of those likely executed for crimes they did not commit.

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