Defendants left unaware of flaws found in cases

Problems with Forensic Evidence

After review, Justice Dept. told only prosecutors

BY SPENCER S. HSU

Justice Department officials have known for years that flawed forensic work might have led to the convictions of potentially innocent people, but prosecutors failed to notify defendants or their attorneys even in many cases they knew were troubled.

Officials started reviewing the cases in the 1990s after reports that sloppy work by examiners at the FBI lab was producing unreliable forensic evidence in court trials. Instead of releasing those findings, they made them available only to the prosecutors in the affected cases, according to documents and interviews with dozens of officials.

In addition, the Justice Department reviewed only a limited number of cases and focused on the work of one scientist at the FBI lab, despite warnings that problems were far more widespread and could affect potentially thousands of cases in federal, state and local courts.

As a result, hundreds of defendants nationwide remain in prison or on parole for crimes that might merit exoneriation, a retraction or a resetting of evidence using DNA because FBI hair and fiber experts may have misidentified them as suspects.

In one Texas case, Benjamin Herbert Boyle was executed in 1997, more than a year after the Justice Department began its re-review. Boyle would not have been eligible for the death penalty without the FBI’s flawed work, according to a prosecutor’s memo.

The case of a Maryland man serving a life sentence for a 1981 double killing is another in which federal and local law enforcement officials knew of forensic problems but never told the defendant. Lawyers for the man, John Norman Huffington, say they learned of potentially exculpatory Justice Department findings from The Washington Post. They are seeking a new trial.

Justice Department officials said that they met their legal and constitutional obligations when they learned of specific errors, that they alerted prosecutors and were not required to inform defendants directly.

The review was performed by a task force created during an inspector general’s investigation of misconduct at the FBI crime lab in the 1990s. The inquiry took nine years, ending in 2006, records show, but the findings were never made public.

In the discipline of hair and fiber analysis, only the work of FBI Special Agent Michael P. Malone was questioned. Even though Justice Department and FBI officials knew that the discipline had weaknesses and that the lab lacked protocols — shorn examining that examiners’ “matches” were often wrong — they kept their reviews limited to Malone.

But two cases in D.C., Superior Court show the inadequacy of the government’s response. Santae A. Tribble, now 51, was convicted of killing a taxi driver in 1978, and Kirk L. Odom, now 49, was convicted of a sexual assault in 1981.

Key evidence in each of their trials came from separate FBI experts — not Malone — who swore that their scientific analysis proved with near certainty that Tribble’s and Odom’s hair was at the respective crime scenes.

But DNA testing this year on the hair and on other old evidence virtually eliminates Tribble as a suspect and completely clears Odom. Both men have completed their sentences and are on parole now. They are now seeking exculpatory evidence in the courts in the hopes of getting on with their lives.

Neither case was part of the Justice Department task force’s review.

A third D.C. case shows how the lack of Justice Department notification has forced people to stay in prison longer than they should have.

Donald E. Gates, 60, served 28 years for the rape and murder of a Georgetown University student based on Malone’s testimony that his hair was found on the victim’s body. He was exonerated by DNA testing in 2009. But for 12 years before that, prosecutors never told him about the inspector general’s report about Malone, that Malone’s work was key to his conviction or that Malone’s findings were flawed, leaving him in prison the entire time.

After The Post contacted him about the forensic issues, U.S. Attorney Ronald C. Machen Jr. of the District said his office would try to review all convictions that used hair analysis.

Seeking to learn whether others shared Gates’s fate, The Post worked with the nonprofit National Whistleblowers Center, which had obtained dozens of boxes of task force documents through a years-long Freedom of Information Act fight.

Task force documents identifying the scientific reviews of problem cases generally did not contain the names of the defendants. Piecing together case numbers and other bits of information from more than 10,000 pages of documents, The Post found more than 250 cases in which a scientific review was completed. Available records did not allow the identification of defendants in roughly 100 of those cases.

Records of an unknown number of other questioned cases handled by federal prosecutors have yet to be released by the government.

The Post found that while many prosecutors made some effort to inform defendants, many did so incompletely, years late or not at all. The effort was stymied at times by lack of cooperation from some prosecutors and declining interest and resources as time went on.

Overall, calls to defense lawyers indicate that more defense lawyers were notified of the initial review, “that doesn’t absolve the task force from ensuring that every single defense lawyer in one of these cases was notified.”

He added: “It is deeply troubling that after going so much time and trouble to identify problematic conduct by FBI forensic analysts, the DOJ Task Force apparently failed to follow through and ensure that defense counsel were notified in every single case.”

Justice Department spokeswoman Laura Sweeney said the federal review was an “exhaustive effort” and met legal requirements, and she referred questions about hair analysis to the FBI. The FBI said it would evaluate whether a nationwide review is needed.

“In cases where microscopic hair exams conducted by the FBI resulted in a conviction, the FBI is evaluating whether additional review is warranted,” spokeswoman Ann Todd said in a statement. “The FBI has undertaken comprehensive reviews in the past and will not hesitate to do so again if necessary.”

Santae Tribble and Kirk Odom

John McCormick had just finished the night shift driving a taxi for Diamond Cab on July 26, 1978. McCormick, 63, reached the doorstep of his home in Southeast Washington about 3 a.m., when he was robbed and fatally shot by a man in a stocking mask, according to his widow who caught a glimpse of the attack from inside the house.

Police soon focused on Santae Tribble as a suspect. A police informant said Tribble told her he was with his childhood friend, Cleveland Wright, when Wright shot McCormick.

After a three-day trial, jurors deliberated two hours before asking about a stocking found a block away at the end of an alley on 28th Street SE. It had been recovered by a police dog, and it contained a single hair that the FBI traced to Tribble. Forty minutes later, the jury found
if more defense lawyers were notified of the initial review, “that doesn’t absolve the task force from ensuring that every single defense lawyer in one of these cases was notified.”

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Police soon focused on Santae Tribble as a suspect. A police informant said Tribble told him he was with his childhood friend, Cleveland Wright. Wright had been shot and killed in an alley before McCormick was attacked.

A day after Tribble was arrested, he was convicted of first-degree murder in McCormick’s death. He served 28 years in prison, said that whether the court grants his pending litigation for the D.C. Public Defender Service

Levick wrote: “He has waited thirty-eight years for the opportunity to tell his story and to defend himself against these decades-old criminal charges.”

Odom’s cases share similarities with Tribble’s. Odom was convicted of raping, sodomizing and murdering a 27-year-old woman before dawn in her Capitol Hill apartment in 1991.

The victim said she spoke with her assailant and observed him for up to two minutes in the “dim light” of street lamps through her windows before she was gagged, bound and blindfolded in an hour-long assault.

Police put together a composite sketch of the attacker, based on the victim’s description. About five weeks after the attack, a police officer was talking to Odom about an unrelated matter. He thought Odom looked like the sketch. So he retrieved a two-year-old photograph of Odom, from when he was 16, and put it in a photo array for the victim. The victim picked the image out of the array that April and identified Odom at a lineup in May. She identified Odom again at his trial, telling jurors her assailant “had left her with an image of his face etched in her mind.”

At trial, FBI Special Agent Myron T. Scholberg testified that a hair found on the victim’s arm was “microscopically like” Odom’s, meaning the samples were indistinguishable.

Prosecutors explained that Scholberg had not been able to distinguish between hairs samples only “eight or 10 times in the past 10 years, while performing thousands of analyses.”

But on Jan. 18 of this year, Melton, of the same lab used in the Tribble case, MITotyping Technologies of State College, Pa., reported its court-ordered DNA test results: The hair in the case could not have come from Odom.

On Feb. 27, a second laboratory selected by prosecutors, Bode Technology of Lorton, Va., reported its comparison “was the best method we had at the time.”

FBI scientist who originally testified at Tribble’s trial, Special Agent James A. Hilverda, said all the hairs he retrieved from the stocking were human head hairs, including the one suitable for comparison that he declared in court matched Tribble’s “in all macroscopic characteristics.”

In August, Harold Deadman, a senior hair analyst with the D.C. police who spent 15 years with the FBI lab, forwarded the evidence to the private lab and reported that the 13 hairs he found included head and limb hairs. One exhibited Caucasian characteristics, Deadman added. Tribble is black.

But the private lab’s DNA tests irrefutably showed that the 13 hairs came from three human sources, each of African origin, except for one — which came from a dog.

“Such is the true state of hair microscopy,” Levick wrote. “Two FBI-trained analysts, James Hilverda and Harold Deadman, could not even distinguish human hairs from canine hairs.”

Hilverda declined to comment. Deadman said his role was limited to describing characteristics of hairs he found.

Kirk Odom’s case shares similarities with Tribble’s. Odom was convicted of raping, sodomizing and murdering a 27-year-old woman before dawn in her Capitol Hill apartment in 1991.

The victim “was tragically mistaken in her identification of Mr. Odom as her assailant,” Levick wrote in a motion filed March 14 seeking his exoneration. “One man committed these heinous crimes; that man was not Kirk L. Odom.”

Scholberg, who retired in 1985 as head of hair and fiber analysis after 38 years at the FBI lab, said side-by-side hair comparison was the best method he had at the time.

Odom, who was imprisoned for 30 years, had to register as a sex offender and remains on lifelong parole. He says court-ordered therapists still berate him for saying he is not guilty. Over the years, his conviction has kept him from possible jobs, he said.

“There was always the thought in the back of my mind . . . One day will my name be cleared?” Odom said at his home in Southeast Washington, where he lives with his wife, Harriet, a medical counselor.

Federal prosecutors declined to comment on Tribble’s and Odom’s specific claims, citing pending litigation.

One government official noted that Odom served an additional 16 months after his release for an unrelated simple assault that violated his parole.

However, in a statement released after being contacted by The Post, Machen, the U.S. attorney in the District, acknowledged that DNA results “raise serious questions in my mind.
SECRET ERRORS: SUSPICION SCIENCE

How accurate is forensic analysis?

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<th>Scientifically validated</th>
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<td>DNA</td>
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<td>DNA segments from with DNA profiles collected from convicted felons, crime scene investigations and unknown sources. Scientists calculate the probability that two DNA profiles are from different people.</td>
<td>A crime scene print is compared with a suspect's print or with those in a database. Analysts compare factors such as ridge count, shape, thickness, creases and scars, and determine matching feature &quot;points.&quot;</td>
<td>Handwritten word and letter combinations in a document are compared with those of a known source.</td>
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<td>Polygon</td>
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<td>Polygon equipment measures the variability of a person's heart rate, blood pressure and respiratory rate when the person is asked a series of questions,</td>
<td>Bullets and shell casings are measured to determine caliper and examined for striation marks transferred from a gun barrel or for other impressions. Marks are compared with data collected from crime scenes or test firings.</td>
<td>Hair sample characteristics such as color, shaft thickness, and length are compared with hairs from a known source. Fibers from clothing, carpets, ropes, etc., are analyzed to determine type of material and environmental exposure.</td>
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<td>Bullet lead composition</td>
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<td>A bullet is analyzed to determine the amount of lead or other chemicals it contains. Information is traced to a manufacturer, point of production, distribution, or sale.</td>
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Weak points in reliability

- Errors can occur if DNA samples are damaged or contaminated from improper handling. Limitations numbers or mixtures of DNA profiles can increase misinterpretation of results.
- Damaged DNA sample

Source: National Research Council, National Academy of Sciences

Visualizing the Washington Post
Santae Tribble was watching Willman Jack on TV that Friday night in August 1975 when police surrounded his mother's house in Southeast Washington.

Tribble, downstream to the basement with his girlfriend, thought the fuss was over unpaid traffic tickets.

Instead, officers took the surprised 17-year-old to headquarters. Years later, Tribble, now 51, struggled to find the words to accept what ensued: a murder conviction and his imprisonment for nearly three decades.

"I never believed — I never believed that — I never believed that they could prove a person guilty that was innocent," he said quietly in his lawyer's office. "I never thought I would be found guilty until I was actually found guilty." He added, "I didn't see the day of light again for 25 years."

Tribble agreed to discuss his case while on parole and in the presence of his D.C. Public Defender Service lawyer, Sandra K. Levick, fell, lean and possessing the watchful bearing of a man who has spent his entire adult life in prison or on parole. Tribble said he hoped that describing his 28 years of life on parole would help prevent wrongful convictions, although his own fate remains pending before a judge.

Released from prison in 2003 after serving 25 years for a slaying for which he has always maintained his innocence, he spent an additional three years in jail for failing to meet his parole conditions. He left a halfway house this fall and spent the winter staying with a friend and searching for work to pay rent.

At an age when others ponder retirement, he said his prospects of building a life without a high school diploma, work history or skills are "kind of bleak."

"It's hard to find jobs, and I'm not as qualified as many," Tribble said. "...The fact I'm on parole for robberies, that doesn't help."

Still, Tribble is more upbeat than he was in prison. "I even have people who were concerned about my adjustment back to society. I think the hardest thing to adjust to was leaving society," Tribble said. "To be snatched away from everything that you've ever known, your family," he said, his voice drifting off.

The following account is drawn from interviews, Tribble's trial transcript and other court records. The passage of time has dimmed memories, and several witnesses have died.

In Washington in the summer of '78 when the police came.

In Washington in the summer of '78 when the police came out of Tribble's mother's home. Both victims were shot to death with a .32-caliber handgun in the early morning hours as they returned to their home. William Horn, 59, was a floral-shop worker coming back from a night out. John McCormick, 63, was a Diamond Cab driver who was finishing the night shift.

No one could identify a shooter in either crime. But the commotion outside her house that a single hair inside it matched Tribble's "in all microscopic characteristics." Besides the hair, prosecutors' case was shaky, relying on two informants and a missing gun. Bobby Jean "L.J." Phillips told police nine days after McCormick's death that Tribble and Wright sold a .32-caliber revolver for $60 to her roommate, who also was Wright's girlfriend. Phillips turned over shell casings she said were fired from the gun, which she later said had disappeared.

Meanwhile, a friend of Tribble and Wright's, Ronald Willis, also 17, implicated Wright in Horn's slaying. He told police that Tribble had nothing to do with it.

That November, Willis changed his story, testifying to a grand jury that Tribble told him he was Wright's lookout. On Jan. 17, 1980, the day Tribble's first-degree-murder trial began, Willis, who was facing charges for robbery and a probation violation, was sentenced in a plea bargain to reduced charges. He received two years' probation as a youth offender and was released.

Phillips's story also evolved. At first, she claimed that Tribble admitted to being "around" when Wright shot a man in circumstances matching Horn's death. Later still, Phillips said Tribble told her he was with Wright when he shot McCormick, although her story conflicted in several ways with what police knew about the crime. Police determined that .32-caliber slugs recovered from both victims were fired by the same gun. But they could not link the slugs to the missing weapon sold by Wright and Tribble.

Police found a box of bullets in Tribble's closet but could not link them to the shell casings turned over by Phillips.

Tribble was acquitted in Horn's killing after a jury, with no corroborating evidence, weighed the unreliability of an informant seeking reduced prison time. Willis spent most of the two decades after Tribble's trial in prison for burglaries, thefts, robberies and an assault on a police officer.

In his own defense, Tribble was adamant on the stand, in a lie-detector test and in statements over the years about whether he had
I never believed that they could prove a person . . . guilty that was innocent.”

Santia Tribble

anything to do with the stacking, the robberies or the shootings: “No, sir.”

Tribble had his brother, girlfriend and a house-guest all testified that Tribble had spent that night in Seat Pleasant at his mother’s apartment while she was out of town. His record was clean, besides two $10 fines he paid for playing dice in public.

Federal prosecutor David Stanley focused on the hair in his closing arguments.

“There is one chance, perhaps for all we know, in 10 million that it could be someone else’s hair,” Stanley said.

After a three-day trial, jurors deliberated about two hours before asking a question: “Which stacking was found at end of alley on 28th St” a block away? After it was confirmed it was the one containing a single hair that the FBI traced to Tribble, the jury’s verdict came 40 minutes later: not guilty in Horn’s death but guilty of murdering McCormick. Tribble was sentenced to prison for 20 years to life.

Wright had the opposite result: He was acquitted in McCormick’s death but convicted of killing Horn.

Tribble was denied parole when he first became eligible after 20 years. Despite his clean prison disciplinary record, the parole board cited the severity of his offense and his age at the time of the crime. He ended up serving 25 years.

Finally, Tribble recalculated, he heard an official on the parole board say, “From everything I’m looking at, we don’t have any choice but to give this man a date.” In April 2003, he stepped off a bus at the Greyhound station in downtown Washington, embracing his son and brother.

His father, who visited him “practically every Saturday” while he was imprisoned locally, died in 1992. Tribble’s brother died in 1994, five years after she sent a snapshot inscribed, “To my baby son, with all my love, Mom.” Sister Jewell, who had been like a surrogate mother, died of AIDS in 1996. Tribble missed their funerals.

Everybody believed he was innocent

To meet the Tribble brothers is to imagine a life that might have been. James Jr. is a civilian Army worker and sings in the church men’s choir in his Woodbridge neighborhood. His family tries to take a cruise every two years. Santae can’t join them; under terms of his parole, he cannot hold a passport.

“Everybody believed he was innocent,” James Tribble said. “Two detectives pulled me aside and told me that they knew Santae didn’t do anything. They wanted Cleveland.”

Both brothers called the Public Defender Service’s pursuit of Tribble’s case and the preservation of testable evidence a godsend.

In December 2009, Tribble was reading The Washington Post and shouted out loud, “This is me!” A District man named Donald Gates who was convicted of murder based on an FBI hair match had been exonerated by DNA. He called Gates’s lawyer. In February 2011, Levick filed court papers seeking to have evidence in Tribble’s case restested.

Nearly one year later, on Jan. 5, Mitotyping Technologies of State College, Pa., returned results. None of the 13 hairs recovered from the stacking — including the one that the FBI said matched Tribble’s — matched Tribble’s or Wright’s genetic profile, conclusively ruling them out as sources, according to analyst Terry Melton.

It will be up to a judge to decide if Tribble deserves a retrial or a declaration of innocence.

Wright, a Safeway clerk, is also seeking to overturn his conviction after nearly 20 years in prison, saying neither he nor Tribble had “anything to do with either murder.”

Stanley, the prosecutor, declined to comment.

In interviews, McCormick’s children said that as terrible as their father’s slaying was, their late mother would have wanted to get the real killer.

“That’s how she was brought up, and that’s how I was brought up,” said John McCormick, 63, a retired roofer in Live Oak, Fla.

Phillips, who now goes by the name Bobby Bess, acknowledged that she remembered Tribble’s case but declined to comment in an interview. Asked what he would say to Phillips or Willis, Tribble said: “I think they have their own demons to deal with. . . . I think they’re all suffering in their own personal ways.”

As for the police and prosecutors who put him behind bars, Tribble passed.

“Coming into this, I believed in the American justice system,” Tribble said. “In my particular case, I felt over the years that they just wanted a conviction more than they wanted to actually capture the person who was responsible for the crime.”

Tribble expressed no regret, even though refusing to accept a plea deal and maintaining his innocence cost him years more in prison.

“As stubborn as I was then, I think I’d still be just as stubborn now,” he said.

Tribble now dreams of a “normal life”—a job and “a place where my [son and two grandchil-
dren] could come to. . . and just be a family.”

“I’m going to use this as the final chapter of this story, whether it turns out all the way in my favor or not,” he said. “It’s my chance to tell everyone for the last, final time that I was convicted of a crime I didn’t commit.”

It was “Tribble tried to tell police that night in August 1979.”

hsus@washpost.com

Staff researcher Jennifer Jenkins contributed to this report.
SECRET ERRORS: KEPT IN THE DARK

Reviewed lab work held close to vest

Justice Dept., FBI kept tight reins on process, findings of task force

BY SPENCER S. Hsu, JENNIFER JENNINGS AND TED MELLNIK

The bombshell came at the most inopportune time. An FBI special agent was testifying in the government’s high-profile terrorism trial against Omar Abdel Rahman, the “blind sheik” suspected of planting the 1993 attack on the World Trade Center.

Frederic Whitehurst, a chemist and lawyer who worked in the FBI’s crime lab, testified that he was told by his superiors to ignore findings that did not support the prosecution’s theory of the bombing.

“The was a great deal of pressure put upon me to bias my interpretation,” Whitehurst said in U.S. District Court in New York in 1995. Even before the Internet, Whitehurst’s extraordinary claim went viral. It turned out he had written or passed along scores of memos over the years warning of a lack of impartiality and scientific standards at the famed lab that did the forensic work after the World Trade Center attack and in other cases.

With the FBI under fire for its handling of the 1993 trade center attack, the Oklahoma City bombing and the O.J. Simpson murder case, officials had to act.

After the Justice Department’s inspector general began a review of Whitehurst’s claims, Attorney General Janet Reno and FBI Director Louis J. Freeh decided to launch a task force to dig through thousands of cases involving discredited agents, to ensure that “no defendant’s right to a fair trial was jeopardized,” as one FBI official promised at a congressional hearing.

The task force took nine years to complete its work and never publicly released its findings. Not the results of its case reviews of suspect lab work. Not the names of the defendants who were convicted as a result. And not the nature or scope of the forensic problems it found.

Those decisions more than a decade ago remain relevant today for hundreds of people still in the U.S. court system, because officials never notified many defendants to the forensic flaws in their cases and never expanded their review to catch similar mistakes.

A review of more than 10,000 pages of task force documents and dozens of interviews demonstrate that the panel operated in secret and with close oversight by FBI and Justice Department brass — including Reno and Freeh’s top deputy — who took steps to control the information uncovered by the group.

“It was not open,” said a person who worked closely with the task force and who spoke on the condition of anonymity because the bureau and Justice Department maintain a strong influence in forensic science. “Maybe [a coverup] wasn’t the intent, but it did seem to look that way. . . . It was too controlled by the FBI.”

The documents and interviews tell a story of how the Justice Department’s promise to protect the rights of defendants became in large part an exercise in damage control that left some prisoners locked away or in the dark for longer years than necessary. The Justice Department continues to decline to release the names of defendants in the affected cases.

A Washington Post review of the department’s actions shows an agency struggling to balance its goal of defending convictions in court with its responsibility to protect the innocent. The Justice Department’s decision to allow deputies to decide whether to disclose to defendants was criticized at the time and allowed most of the process to remain secret. But by cloaking cases in anonymity, failing to ensure that defendants were notified of troubles with their cases and neglecting to publicly report problems or recommend solutions, the task force obscured problems from further study.

Justice Department spokeswoman Laura Sweeney said the federal review met constitutional requirements by allowing prosecutors in the affected cases to make the final decision whether to disclose potentially exculpatory information to the defendants.

“In January 1996 the Department established a Task Force to advise prosecutors of the Office of Inspector General investigation of the FBI lab,” Sweeney said in a statement. The task force worked with prosecutors and the FBI “to notify the relevant prosecutors [local, state and federal] so that they could determine what information needed to be disclosed to defense counsel.”

Scathing report

If the Justice Department was secretive, the agency’s independent inspector general was not. Michael R. Bromwich’s probe culminated in a devastating 517-page report in April 1997 on misconduct at the FBI lab.

His findings stopped short of accusing agents of perjury or of fabricating results, but he concluded that FBI managers failed — in some cases for years — to respond to warnings about the scientific integrity and competence of agents.

The chief of the lab’s explosives unit, for example, “repeatedly reached conclusions that incriminated the defendants without a scientific basis” in the 1995 Oklahoma City bombing, Bromwich wrote. The head of toxicology lacked judgment and credibility and overstated results in the 1994 Simpson investigation.

Under the 1993 World Trade Center attack, the key FBI witness “worked backward,” tailoring his testimony to reach the result he wanted. Other agents “spruced up” notes for trial, altered reports without the author’s permission or failed to document or confirm their findings.

The investigation led to wide-ranging changes, including higher laboratory standards and requirements for examiners.

Meanwhile, the Justice Department set out to evaluate discredited agents’ work in thousands of cases that had gone to trial.

Jim Maddock, the FBI’s assistant general counsel, told reporters that the goal of the new task force was to identify any potentially exculpatory information that had arisen in any criminal case involving agents criticized in the report.

“We are undertaking that review,” Maddock said at an April 15, 1997, news conference. “And when it is done, we will give a full accounting of our findings.”

Interviews and documents show that key decisions about the task force’s work were made at the highest levels, including the decisions to exclude defense lawyers from the review and not publicly release the findings. Task force participants said Reno signed off on the decision allowing prosecutors to decide what to disclose, because normal legal and constitutional requirements give prosecutors discretion.

Justice Department officials also believed that the public release of the 1997 inspector general report generated enough publicity to give defense attorneys and their clients opportunities to appeal, task force participants said.

“Our job was to do the scientific reviews and then to send the results to the prosecutors, and they were responsible for determining whether they were going to disclose or not,” Lucy L. Thomas, the head of the task force, said in an interview. “That was just the way Janet Reno decided to do it.”

Reno is physically ailing and was unable to comment for this article.

The criminal division, said Reno’s deputy attorney general until April 1997, Jamie Gorelick, said Reno “was very, very interested in assuring that we weren’t keeping in prison people who deserved to have their convictions reviewed.”

“I am sure she tried as hard as she could to keep the pressure on the bureau and on the criminal division,” Gorelick said.

FORENSICS FROM A1

Meanwhile, the Justice Department set out to evaluate discredited agents’ work in thousands of cases that had gone to trial.
Delays, omissions

Documents show that the FBI and Justice Department set strict rules about what information would be disclosed as they prepared to battle defendants who challenged convictions.

The department planned to "monitor all decisions" by federal prosecutors over whether to disclose information, the head of the criminal division, John C. Keeney, wrote in a memo to all U.S. attorneys on Jan. 4, 1996. The division stood ready, if necessary, to "evaluate the allegations and, if appropriate rebut them," he wrote.

In addition, the Justice Department and the FBI negotiated over the limit and scope of the task force review, the documents show.

For example, in a June 1997 memo, Keeney told federal prosecutors that the criminal division and the FBI would "arrange for an independent, complete review of the Laboratory's findings and any related testimony" in all convictions in which they found there was a "reasonable probability" that work by discredited agents had affected the conviction or sentence.

But two months later, the senior attorney in charge of the task force told Keeney's deputy that the FBI indicated that it planned to require "a cursory paper review" only and generally did not plan to reexamine evidence.

That attorney in charge, Thomson, told Deputy Assistant Attorney General Kevin V. DiGregory in an Aug. 19, 1997, memo that the FBI also wanted to keep the focus off the most vulnerable cases by not conducting reviews if a case was still in litigation or on appeal — even though the panel's work would have been most relevant to a judge at those times.

There were other hitches. One year later, in August 1998, Thomson complained to DiGregory that "no scientists have been retained to date" by the FBI to conduct reviews of cases in which defendants may have been wrongfully convicted.

Reviews were "needed as soon as possible in order to avoid possibly undercutting prosecutors' arguments . . . and to ensure
that defendants will not exhaust opportuni-
ties to file post-conviction relief motions,” Thomson said.

As it turned out, reviews would continue
for six years, leaving defendants in jail after
having been convicted in cases with faulty forensics.

Keeney died last year after retiring in 2010
as the longest-serving federal prosecutor in
U.S. history. DiGregory did not return mes-
sages left at his home and passed through an
associate.

Thomson, now a privacy expert, said that
the reviews were not cursory and that she did
not know whether any defendants had lost
opportunities to appeal their convictions.

Reduced paper trail
As the cases became known to state and
local prosecutors, many moved swiftly and
made full disclosures. Others stymied the
effort, whether intentionally or not.

Because of the sheer passage of time,
files, trial transcripts or other records often
were lost or destroyed. Personnel turnover
in prosecutors' offices often left behind no
living memory of cases. Many state and
local prosecutors worked in small offices
with enormous active caseloads and had
little stake in the Justice Department
process.

As a result, reviewers dropped plans to
require that state and local prosecutors sign
statements when they determined a discred-
ted agent's work was pivotal to a case, or to
explain in writing if they determined it was
not, records show.

That reduced the paper trail. As long as the
task force got the information, a participant
said, it did not matter whether it was written
down.

The task force did order reviews for
multiple cases in which prosecutors refused
to cooperate. For example, Tampa prosecutor
Harry Lee Cee III, now deceased, told the
department that his lawyers were too over-
worked to review questioned death penalty
cases, documents show.

In South Carolina, the task force com-
pleted a scientific review in late 2002 in the
case of Roy David Brooks, who had been
convicted of murder. But the review came
after the state had destroyed records. And
the destruction of records came days after
the task force wrote to prosecutors for the
third time in four years seeking such
records.

Even when cases were disclosed to defense
counsel, it was not clear what was disclosed.
In some cases, one-sentence notifications
were sent to defendants, many of whom
were indigent, still in prison or without
attorneys.

"Please find enclosed a copy of the Attach-
ment to Independent Case Review Report for
CDRU#646 Case File #95-25357, which we
received, from the U.S. Department of Jus-
tice," stated the entirety of a letter from
prosecutors in Tampa to one defendant in
April 2001. That letter came 18 years after the
offense.

The attached three-page report did not
contain the defendant's name — only strings
of four- and eight-digit FBI and Justice
Department code numbers. It had nothing to
indicate that it involved the particular defen-
don's case or the meaning of bland state-
ments of scientific results.

In other cases, records indicate that pro-
secutors told defendants or their attorneys
early on about the inspector general's report
but never mentioned that the task force
found more-specific problems.

The task force gradually wound down
when Thomson and DiGregory departed. A
new administration arrived months before
the Sept. 11, 2001, terrorist attacks, which
transformed priorities. In 2002, Michael
Chertoff, then assistant attorney general for
the criminal division, narrowed the review to
speed its completion, dropping unspecified
"small cases."

Through a spokesman, Chertoff declined
to comment.

In addition, the criminal division stopped
asking prosecutors to notify it if they turned
over review results to defense attorneys.
Forensic science not as reliable as you may think

Techniques such as hair, handwriting and fingerprint comparisons are subject to human bias and lack standards, a panel found

BY SPENCER S. HSU

I n Hollywood, the moment the good guys trace a hair, a bullet fragment or a fingerprint, it's game over. The bad guys are locked up. But the glamorous portrayal is not so simple in real life.

Far from infallible, expert comparisons of hair, handwriting, marks made by firearms on bullets, and patterns such as bite marks and shoe and tire prints are in some ways unscientific and subject to human bias, a National Academy of Sciences panel chartered by Congress found. Other techniques, such as in bullet lead analysis and arson investigation, survived for decades despite poorly regulated practices and a lack of scientific method.

Even fingerprint identification is partly a subjective exercise that lacks research into the role of unconscious bias or even its error rate, the panel's 328-page report said.

"The forensic science system, encompassing both research and practice, has serious problems that can only be addressed by a national commitment to overhaul the current structure," the panel concluded in 2009.

Now, Congress and government administrations are trying to regulate forensic science to help establish standards. Senate Judiciary Committee Chairman Patrick J. Leahy (D-Vt.), Labor and Commerce, Science and Transportation Committee Chairman John D. Rockefeller IV (D-W.Va.) are weighing legislation that could help establish a more robust national oversight system.

A Leahy bill would create a new office of forensic science in the Justice Department. Rockefeller is preparing legislation to expand the role of the National Science Foundation and the National Institute of Standards and Technology to the country to improve in setting scientific standards and research goals.

The administration is also looking to "strengthen the link between cutting-edge science... and the forensic tests used by law enforcement," said Rick Weiss, spokesman for the White House Office of Science and Technology Policy.

Police and law enforcement agencies have rebuffed recommendations to remove crime labs from their control. Since 2002, failures have been reported at about 30 federal, state and local crime labs serving the FBI, the Army and eight of the nation's 20 largest cities.

Advances in DNA testing are exposing errors at unexpected rates. In November, researchers with the Urban Institute reported that new DNA testing appeared to clear convicted defendants in 16 percent of cases as recently as last year. Pennsylvania State University researcher Cedric Neumann was given biasing statements, such as that a suspect had confessed or that a suspect was locked up at the time of the offense. In 16.6 percent of cases, examiners reversed earlier judgments.

Crime lab directors and prosecutors welcome calls for more money for research and to improve examiners and facilities. But with budgets tight at all levels, Washington has few other tools to prompt 350 state and local labs across the country to improve.

Because techniques have not been scientifically proved does not mean they do not work, and mistakes can be handled traditionally through case-by-case appeals. In the real life of the criminal justice system, we need more resources for those who are on the front lines," said Scott D. Burns, executive director of the National District Attorneys Association. Noting that prosecutors handle 20 million non-traffic cases a year, Burns said, "The sky isn't falling, and we usually get it right."

Pete M. Marone, director of the Virginia Department of Forensic Science Northern Lab in Manassas, said, "How reliable is forensic evidence? For video examining that question, go to washingtonpost.com.

WEDNESDAY, APRIL 18, 2012
Interactive Graphic
Officials file
to overturn
conviction in
1978 murder

by Spencer S. Hsu

Federal prosecutors on Friday acknowledged errors in the scientific evidence that helped send a District man to prison for 28 years for murder and took the extraordinary step of agreeing to have his conviction overturned.

U.S. Attorney Ronald C. Machen Jr. cited DNA evidence in also agreeing to drop the murder charge against Santae A. Tribble and never try him again. But even as the prosecutor said the evidence that convicted Tribble was flawed, Machen stopped short of declaring him innocent.

Tribble, 51, was found guilty of murdering a District taxi driver in an early-morning robbery on July 26, 1978. His case was featured in articles last week in which The Washington Post reported that Justice Department officials have known for years that flawed forensic work might have led to convictions of potentially innocent people.

In Tribble's case, prosecutors and the FBI laboratory were incorrect in linking a hair found near the murder scene to Tribble, according to recent DNA test
Tribble from A1

results.

As the U.S. attorney's office filed court papers late Friday, three former senior FBI lab experts and a national civil liberties group joined calls for the bureau and the Justice Department to review testimony in all convictions nationwide that depended on FBI hair evidence before 1996. Such a review would determine whether the evidence should be retested using DNA.

The Post reported last week that the Justice Department never reviewed thousands of cases that relied on potentially flawed hair comparisons, resulting in men like Tribble staying in prison. In many of the cases that the agency did review and found to have problems, prosecutors never notified defendants or their lawyers of the issues uncovered.

Machen has agreed to review all District convictions obtained with hair evidence and will ask the Mid-Atlantic Innocence Project to assess whether any old evidence should be retested with modern DNA techniques. Justice Department and FBI officials said they still were considering a similar review nationwide.

Rep. Frank R. Wolf (R-Va.) this week urged the Justice Department to review its handling of about 250 questionable convictions identified by The Post, most of which relied on hair comparisons.

"It is hard to quantify the hardship that those who have been wrongfully convicted have suffered," Wolf wrote to Justice Department Inspector General Michael E. Horowitz on Thursday.

"A justice system that fully protects the constitutional rights of criminal defendants is essential to the integrity of our republic. I urge you to move quickly on this review," said Wolf, who chairs the House appropriations subcommittee that funds the Justice Department.

Tribble wants exoneration

Even with Friday's moves by prosecutors, Tribble's fight to clear his name is not over. He has asked a court for full exoneration. Tribble would become the 290th person cleared by post-conviction DNA testing in the United States...
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Flawed forensics spur case reviews

Justice Dept. FBI to revisit thousands of criminal investigations

**BY SPENCER S. HSU**

The Justice Department and the FBI have launched a review of thousands of criminal cases to determine whether any defendants were wrongly convicted or deserve a new trial because of flawed forensic evidence, officials said Tuesday.

The undertaking is the largest post-conviction review ever done by the FBI. It will include cases conducted by all FBI Laboratory hair and fiber examiners since at least 1985 and may reach earlier if records are available, people familiar with the process said. Such FBI examinations have taken place in federal and local cases across the country, often in violent crimes, such as rape, murder and robbery.

The review comes after The Washington Post reported in April that Justice Department officials had known for years that flawed forensic work might have led to the convictions of potentially innocent people but had not performed a thorough review of the cases. In addition, prosecutors did not notify defendants or their attorneys even in many cases they knew were troubled.

On Tuesday, the Justice Department announced that it will conduct the more expansive review.

"The Department and the FBI are in the process of identifying historical cases for review where a microscopic hair examination conducted by the FBI was among the evidence in a case that resulted in a conviction," spokeswoman Nanda Chitre said in a statement. "We have dedicated considerable time and resources to addressing these issues, with the goal of reaching final determinations in the coming months."

FBI spokeswoman Ann Todd deferred comment to the Justice Department.

In its April report, The Post identified two District men convicted largely on the testimony of FBI hair analysts who wrongly placed them at crime scenes. Santae A. Tribble, now 51, was convicted of a sexual assault in 1981. Since the Post report, Tribble's conviction was vacated, and on Tuesday, prosecutors moved to overturn Odom's conviction and declare him innocent. The Justice Department had not previously reviewed their cases.

Chitre said the new review would include help from the Innocence Project, a New York-based advocacy group for people seeking exoneration through DNA testing. It also would include the National Association of Criminal Defense Lawyers.

Steve D. Benjamin, a Richmond lawyer who is incoming president of the association, called the review "an important collaboration" and a departure from one-sided government reviews that left defendants in the dark.

"Mistakes were made. What is important now is our working together to correct those mistakes," Benjamin said, adding that his organization will "fully assist in finding and notifying all those who may have been affected."

The review comes as the National Academy of Sciences is urging the White House and Congress to remove crime labs under scrutiny. It also is unclear whether the FBI will review only scientifically unfounded testimony by FBI examiners or also on scientifically unfounded statements made by others trained by the FBI, or made by prosecutors. Also unclear is what point government officials will notify defense attorneys or when they investigated the FBI Laboratory in the mid-1990s as inspectorgeneral and, more recently, the city of Houston's crime lab, said the review is important as the nation's crime labs come under scrutiny.

"These recent developments remind us of the profound questions about the validity of many forensic techniques that have been used over the course of many decades and underscore the need for continuing attention at every level to ensuring the scientific validity and accuracy of the forensic science that is used every day in our criminal justice system," Bromwich said.

The Post reported in April that hair and fiber analysis was subjective and lacked grounding in solid research and that the FBI lab lacked protocols to ensure that agent testimony was scientifically accurate. But bureau managers kept their reviews limited to one agent, even as they learned that many examiners’ “matches” were often wrong and that numerous examiners overstated the significance of matches, using bogus statistics or exaggerated claims.

Details of how the new FBI review will be conducted remain unclear. The exact number of cases that will be reviewed is unknown. The FBI is starting with more than 10,000 cases referred to all hair and fiber examiners. From those, the focus will be on a smaller number of hair examinations that resulted in positive findings and a conviction.

It also is unclear whether the review will focus only on examiner testimony by FBI examiners or also on scientifically unfounded statements made by others trained by the FBI, or made by prosecutors. Also unclear is what point government officials will notify defense attorneys or when they investigated the FBI Laboratory.

In past reviews, the department kept results secret and gave findings only to prosecutors, who then determined whether to turn them over to the defense.

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**FORENSICS FROM A1**

A man is innocent in rape

Prosecutors agree that Kiva Odom, jailed in a 1981 D.C. rape, is innocent. DNA proves he didn’t do it. A44

Read The Post’s series on flawed forensics work at wapo.st/secret_errors.
Prosecutors: D.C. man is innocent

Kirk Odom, convicted of 1981 rape, served 20 years in prison

BY SPENCER S. HSU

Federal prosecutors agreed Tuesday that a Washington man imprisoned for 20 years for rape is innocent and they acknowledged scientific errors in his case after DNA evidence proved that another man committed the crime.

Kirk L. Odom will become the second District man in two months and the third in three years to have his conviction for rape or murder overturned because of erroneous hair matches claimed in court by FBI forensic experts.

Odom's case was featured in a series of articles in April in which The Washington Post reported that Justice Department officials have known for years that flawed forensic work might have led to the convictions of potentially innocent people.

Odom, 49, served his sentence and was released from prison in 2003. He was convicted of raping, sodomizing and robbing a 27-year-old woman before dawn on Dec. 31, 1978, in a Southeast Washington Parkway crime.

In May, a Superior Court judge dismissed the murder conviction against Santae A. Tribble, 51, after DNA tests disproved testimony by an FBI hair expert linking him to the 1978 killing of a District taxi driver.

In December 2009, Donald E. Gates was exonerated of a 1981 rape and murder in Rock Creek Park — again after DNA tests ruled out a hair match claimed by the FBI.

The Post generally does not name victims of sexual assaults without their permission. The man whose DNA matched the stains is a convicted sex offender. He will not be charged, because the statute of limitations has expired on the crime, Machen wrote.

In a written statement, Machen endorsed eliminating the statute of limitations on sex crimes.

"Though we can never give Mr. Odom back the years that he lost, we can give Mr. Odom back his unfairly tarnished reputation," Machen wrote. "Three decades late to secure justice — even if we can never give him back the years that he lost, we can give Mr. Odom back his unfairly tarnished reputation, and we salute Mr. Odom for having the courage and fortitude to withstand more than 31 years convicted of terrible crimes for which he was absolutely innocent," Levick said. "We salute the Department of Justice and the FBI for agreeing to a review of all cases involving hair evidence of the kind used to convict Mr. Odom, Mr. Tribble and Mr. Gates."

hsus@washpost.com
FBI lab’s woes cast growing shadow

DOUBTS ABOUT STATE, LOCAL HAIR MATCHES

Federal training linked to suspect court testimony

BY SPENCER S. HSU

Thousands of criminal cases at the state and local level may have relied on exaggerated testimony or false forensic evidence to convict defendants of murder, rape and other felonies.

The forensic experts in these cases were trained by the same elite FBI team whose members gave misleading court testimony about hair matches and later taught the local examiners how to follow the same suspect practices, according to interviews and documents.

In July, the Justice Department announced a nationwide review of all cases handled by the FBI Laboratory's hair and fibers unit before 2000 — at least 21,000 cases — to determine whether improper lab reports or testimony might have contributed to wrongful convictions.

But about three dozen FBI agents trained 600 to 1,000 state and local examiners to apply the same standards that have proven problematic.

None of the local cases is included in the federal review. As a result, legal experts say, although the federal inquiry is laudable, the number of flawed cases at the state and local levels could be even higher, and those are going uncorrected.

The FBI review was prompted by a series of articles in The Washington Post about the bureau’s renowned crime lab involving microscopic hair comparisons. The articles highlighted the cases of two District men who each spent more than 20 years in prison based on false hair matches by FBI experts. Since The Post's articles, the men have been released.

With the FBI was aware of problems with hair analysis:

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At an FBI symposium, defense experts and British and German police criticized FBI testimony practices as misleading and unprofessional.

Two high-profile local-level cases illustrate how far the FBI training problems spread.

In 2004, former Montana crime lab director Arnold Melnikoff was fired and more than 700 cases questioned because of what reviewers called egregious scientific errors involving the accuracy of hair matches dating to the 1970s.

His defense was that he was taught by the FBI and that many FBI-trained colleagues testified in similar ways, according to previously undisclosed court records.

In 2001, Oklahoma City police crime lab supervisor Joyce Gilchrist lost her job and more than 1,400 of her cases were questioned after an FBI reviewer found that she made claims about her matches that were “beyond the acceptable limits of science.”

Court filings show that Gilchrist received her only in-depth instruction in hair comparison from the FBI in 1991 and that she, like many practitioners, went largely unsupervised.

Federal officials, asked about state and local problems, said the FBI has committed significant resources to speed the federal review but that state and local police and prosecutors would have to decide whether to undertake comparable efforts.

FBI spokeswoman Ann Todd defended the training of local examiners as “continuing education” intended to supplement formal training provided by other labs. The FBI did not qualify examiners, a responsibility shared by individual labs and certification bodies, she said.

Michael Wright, president of the National District Attorneys Association, said local prosecutors cannot simply order labs to audit all or even a sample of cases handled by FBI-trained examiners.

Improve forensic testimony

Since at least the early 1970s, the FBI Laboratory’s hair and fiber unit trained hundreds of state and local examiners to testify about the rareness of coincidental hair matches, citing their case experience. However, there was no accepted scientific research behind the claim. The FBI stopped declaring matches without DNA confirmation in 1996, but it took until this year for authorities to announce a review, limited to cases involving FBI examiners.

Federal training linked to hair examinations

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Instead of simply acknowledging the uncertainty, attorneys at the FBI and prosecutors at times drew statistics from their cases without explaining why that was an incomplete or even misleading answer, Scholberg and Robillard said.

Harold A. "Hal" Deadman Jr., a top hair unit scientist who trained more than 600 examiners from 1972 to 1987, said he always explained to jurors why his case experience gave an incomplete picture of the accuracy of hair comparisons.

But Deadman said DNA testing should be done in all convictions that were based mainly on visual hair comparison, because of weaknesses in in-laboratory training and examiner results.

Interviews with the former unit chiefs, as well as more than 20 practitioners, scientists and legal experts, and a review of court records, training notes and transcripts of meetings indicate that some FBI lab examiners tried to skirt the limitations of their scientific findings in testimony and that they were encouraged to do so by their trainers.

As warnings about the problem mounted — through DNA examinations, whistleblower complaints, court rulings — bureau managers implemented stronger protocols, but they limited disclosure of the problems they found. More furthers reported a test could have jeopardized convictions.

“If the FBI is going to be a role model, we need to see this federal agency lead in terms of setting standards,” said Pamela Bordnik, director of the accrediting board of the American Society of Crime Laboratory Directors.

“Otherwise, the entire system will fall apart,” said Neufeld, whose group was formed in 2005 to bring forensic science into the 21st century.

As noted in 2009 by the chief of the FBI lab, the proper handling of hair evidence with a sample of hair from a suspect.

A visual analysis can tell animal hairs from human hairs; human hairs by race and body part; whether hairs were dyed or otherwise treated; and how hairs were removed from the body. Visual comparison, at its best, also can accurately narrow the pool of criminal suspects to a class or group or definitively rule out a person as a possible source.

But it was not possible to de- acre a conclusive absolute match. So the FBI had a problem. Hair compar- isons could yield good evidence. But agents struggled to explain to jurors their “personal experience” they had rarely seen hairs from different people that looked alike.

That evolved into jurors’ hear- ing numbers that had a huge impact even if they lacked scien- tific grounding. After a slaying in Tennessee in 1980, an FBI agent testified in a capital case that there was one chance in 4,000, or 5,000, that a hair came from some- one other than the suspect.

But as experts from around the world would later note, the FBI's approach was misleading. In reality, FBI examiners did not compare every hair to every other hair they had ever examined. They simply compared crime scene hairs and hairs samples from individuals relevant in each case.

Morris Samuel “Sam” Clark was head of the FBI’s hair unit from 1972 to 1985, and he testified in a capital case that examining 100 hairs in his database was his personal experience. He called the FBI's view of the hair evidence as "fly-by-night stuff, not credible."

"The FBI's training regimen, parameters and standards should be consistent standards for lab re- ports," said Neufeld. "When the stains involve life and liberty, those scientific parameters set by the lab, should be set by scientists, not by law enforce- ment," Neufeld said. "And whose organization advocates for people trying to prove their innocence and whose organization is providing the faulty testimony?"

"The people who organize and do the tests and theSpawn County.

"We do not know why they were there," Neufeld said. "In fact, there is no evidence that the hair where they were there is a valued credential for the FBI examiners. Because it was a valued credential for the FBI examiners, because we did our best.

"The challenge was called into question during an international confer- ence hosted by the FBI in 1985, but the training was not overhauled for at least a dozen more years. It was not promoted, put that way, to give jurors a more accurate picture of the limits of the technique, said Myron T. "Mike" Scholberg, who spent about five years in the hair unit in the 1970s and who directed the FBI lab from 1989 to 1994.

Robillard, the former hair unit chief, said that he always waited for a defense attorney to challenge the FBI’s hair examiners’ evidence. "People signed an ambiguous case to a single, powerful testimony that sent a terrible message that one chance, perhaps for all we know, might be wrong. The bureau left it up to the jury to decide who was telling the truth, that is possible. "If you believe the FBI and the jury, you might think that a person can generally keep only a handful of hairs in mind at one time, Neufeld said.

"The claim you could keep all these hairs is possible, but trying to make sense of them in your mind, that would be hard to do," said Mark R. Wilson, a 25-year FBI veteran who helped develop DNA testing for hair in 1994. "After all about three or four (hairs), it gets confusing."

The claim was called into question at a conference hosted by the FBI in 1985, but the FBI did not change its training regimen, which required agents to compare hairs side-by-side under high-powered microscopes for a year before working on live cases, gave the FBI lab veterans confidence that they could tell the difference between the hairs of different people just as an ordi- nary person could distinguish be- tween their faces.

They embraced a set of vague standards. In written lab reports, FBI agents would include the ca- rectors or inept defense lawyers.

"You would expect a defense attorney to say, 'Wait — are you, Robillard, saying you compared every person’s hair to every other one? That’s the screaming ques- tion for cross-examination," Ro- billard said. "I can’t conceive my head remember ever having a defense attorney say that." Like the other agents inter-viewed, Robillard, now a private expert who lives on Martha’s Vineyard, in Massachusetts, said FBI experts were not trying to mislead but to convey in layman’s terms why we were confident in their hair associations.

Not all former chiefs agreed that examiners should have testi- fied differently. Edward L. "Ed-" Burtwitz, who led the unit from 1985 to 1998, called Neufeld’s question a "fatigue question that I don’t feel confident to answer.” Like others, Burtwitz said he never got complaints about exam- iners’ testimony. "That’s due to the recent criticism of a matter of ‘Mon- ey morning question that I don’t feel confident to answer,” Clark also defended his work, including the FBI training.

"This was not the right stuff, not idle conclusions on our part. It think we made a very significant con- tribution to the criminal jus- tice system," Clark said. "If [exam- iners] made a mistake, it’s a per- sonal mistake, and it’s not a mat- ter of [our] training them . . . nor the FBI’s failure to test the hair exams, because we did our best."

Crash courses

The FBI lab began training state and local hair examiners in 1973, as the bureau worked to replace the nation’s crime lab directors to expand forensic methods.

Scholberg said he trained about
600 examiners from outside the FBI between 1973 and 1987, and others estimated that an addition-al 450 examiners were trained over the next dozen years.

No one knows how many cases local and state hair examiners handled. Estimates of their collective caseload vary from 20 percent to more than half of all hair exams during the period under review. Most of the rest were federal cases.

Yet, FBI agents and others say they doubt the quality of the training, even as they acknowledge that it was a valued credential for state and local labs.

Instead of working with hairs for an entire year before starting trial work, some local trainers spent a week at the FBI Academy at Quantico and then went back to labs where they were one of one or two designated "criminalists," analyzing everything from hair to paint chips to glass, Robillard said. They might handle a handful of hair cases a year, using substandard equipment while under constant pressure from investigations.

With 200-plus crime labs serving 18,000 police agencies in the early 1990s, Defore said, "There was no monitoring of people. . . . That whole thing for something this complex was ill-conceived, and maybe [the FBI] should have recognized that."

In 2004, Melnikoff lost his crime lab job in Washington because of errors whose discovery led to three overturned convictions in Montana. One of those cases was the child rape conviction of Jimmy Ray Bromgard, who served more than 15 years in prison before DNA tests showed he didn't commit the crime.

At Bromgard's 1987 trial, Melnikoff said he found head and pubic hairs "microscopically indistinguishable" from Bromgard's, and he told the jury that there was less than one chance in 10,000 of a coincidence. He based this assertion on his case experience, multiplying by 100 the 1 in 100 frequency with which he claimed to have seen head and pubic hairs he could not tell apart.

After Bromgard was exonerated in 2002, a five-member panel that included Deadman said Melnikoff made "egregious misstatements not only of the science of forensic hair examinations but also of genetics and statistics."

Melnikoff's defense in a civil suit brought by Bromgard was that he simply acted as he was trained.

Michael A. Howard, a 24-year Oregon State Police veteran who also took the Quantico course, noted that Melnikoff's examination and lab report followed FBI practices. "I took the [FBI] class in 1982 and was not advised to avoid the use of probabilities. . . . We were taught that our own experience was most important, and that is what Mr. Melnikoff was doing," Howard told a federal court in Montana in 2007.

In an interview, Howard elaborated. "They didn't say, 'Use it,' and they didn't say, 'Don't use it,' " he said. Instead, he said, the FBI's position was, "You're going to have to decide for yourself, based on your experience, how strong you can state it."

Gilchrist also was accused of misidentifications, misleading testimony and withholding or destroying evidence. In 2001, she was fired from the Oklahoma City Police Department, and authorities set out to reexamine more than 1,400 assigned cases, including a dozen death row cases.

In one case, David Johns Bryson spent 16 years in prison for a 1982 rape, but he was freed in 1999 after DNA results showed another man committed the crime.

Gilchrist testified that she found four hairs that were like Bryson's and that she never saw hairs from different people with the same characteristics. She said, "I would think it would be impossible not to be able to distinguish hairs from two different individuals."

But in April 2001, Douglas W. Deedrick, then head of the FBI unit, found that Gilchrist's matches were wrong and that by implying hairs were "unique," Gilchrist "misrepresented the science."

Again, Gilchrist took her cue from bureau training. In her files, she kept a certificate of completion from her January 1981 class, including a session on "Discussion of the significance of hair comparisons, testimony matters and pertinent literature."

In her notes, she copied the FBI caveat that one cannot conclusively determine the source or origin of a hair. But, the notes also showed that instructors were teaching their students how to sidestep the limits of the science — by pointing out their experience.

"Can conclude source — point out however in my experience, have rarely seen hairs from different people exhibiting the same microscopic characteristics," the notes say.

**Eventual change**

FBI veterans pointed out that the hair unit gave up members who helped the agency pioneer forensic nuclear and mitochondrial DNA testing. As DNA testing became more common, the limits of microscopic hair comparison became clearer.

Max Houck, who was the unit's first civilian, non-agent examiner, said he changed the way he testified in the late 1990s after consulting an old statistics textbook. Training of examiners also shifted away from citing numbers, probabilities or statistics by 2001, Houck said, as the lab gained outside accreditation and replaced agents with civilian scientists.

Asked why it took until now to correct errors, Houck, the head of the new D.C. Department of Forensic Science, cited a variety of reasons: The "conservatism" of forensic science, the legal system's dependence on precedence and, finally, government bureaucracy and the FBI's proud culture.

"Could it have happened sooner? Yes," he said. "Would it have cost more money? Yes. Would it have been more disruptive? Probably. Would we have gotten a better answer? I don't know."

"To do his list, Houck added one more question. "Does that mean justice was served? Not necessarily."

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The Washington Post

SUNDAY, DECEMBER 23, 2012 KLMNO