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## United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

- KOLAN L. DAVIS, *Chief Counsel and Staff Director*  
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March 27, 2015

### VIA ELECTRONIC TRANSMISSION

The Honorable James B. Comey  
Director  
Federal Bureau of Investigation  
J. Edgar Hoover Building  
935 Pennsylvania Ave. N.W.  
Washington, DC 20535

Dear Director Comey:

This letter follows multiple briefings of the Senate Judiciary Committee staff by the Department of Justice and Federal Bureau of Investigation (FBI) regarding the progress of the Department's review of federal and state criminal cases potentially impacted by flawed reporting and/or testimony of the FBI hair and fiber unit. The most recent briefing in August 2014 followed reports that the review had stalled. The FBI assured committee staff at that briefing that the investigation, although delayed, had fully resumed.<sup>1</sup>

We also expect that your office has undertaken a root cause analysis in order to prevent future such incidents.<sup>2</sup> Both justice and the time-consuming process of reviewing the affected cases underscore the importance of ensuring that such failures are not repeated. It is critical that the Bureau identify and address the systemic factors that allowed this far-reaching problem to occur and continue for more than a decade.

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<sup>1</sup> Among the topics covered at the briefings have been materials requested in several letters to your office or the Office of the Attorney General, including letter from Patrick J. Leahy, Chairman and Charles E. Grassley, Ranking Member, S. Comm. on the Judiciary (May 21, 2012), letter from Charles E. Grassley, Ranking Member, S. Comm. on the Judiciary (July 16, 2012), and letter from Patrick J. Leahy, Chairman and Charles E. Grassley, Ranking Member, S. Comm. on the Judiciary (May 20, 2013).

<sup>2</sup> ISO/IEC 17025:2005, General Requirements for the Competence of Testing and Calibration Laboratories, 4.11 Corrective action. "4.11.1 General. The laboratory shall establish a policy and a procedure and shall designate appropriate authorities for implementing corrective action when nonconforming work or departures from the policies and procedures in the management system or technical operations have been identified."

We request a follow-up briefing for our staff to learn the status of the review and progress in developing its root cause analysis. Prior to the briefing, please provide written responses to the following questions.

**Progress in Review of More than 20,000 Hair and Fiber Cases from 1999 and Before**

1. In how many cases has the review and all notifications been completed?
2. How many cases remain entirely unreviewed?
3. In how many cases is the review and notification process still pending?
4. In how many cases has an independent authority determined that the testimony was not material to a conviction?
5. In how many cases has an independent scientific review been completed?
6. How many staff are devoted (please indicate full-time and part-time and contract employees) to this effort?
7. What are the job titles of these staff members?
8. What is the target completion date for the last of these reviews?

Until these case reviews have been completed, please provide quarterly updates to this Committee on the answers to Questions 1-7 above.

**Root Cause Analysis**

9. Please provide the complete results of the root cause analysis addressing how the laboratory began to offer scientifically invalid testimony as well as how and why the problem persisted for so long. Specifically, please provide:
  - a. a copy of the root cause analysis procedure and the laboratory policy that defines what events trigger a root cause analysis;
  - b. specific details regarding the makeup of the investigative team conducting the root cause analysis in this case, including, at a minimum, the number and job titles of the staff involved and the scope of their work; and
  - c. evidence that recommendations resulting from the analysis are themselves systemic in nature and designed to prevent recurrence of the error or nonconformity to standard hair analysis and other forensic disciplines.<sup>3</sup>

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<sup>3</sup> ISO/IEC 17025:2005, General Requirements for the Competence of Testing and Calibration Laboratories, 4.11.3 Selection and implementation of corrective actions. "Where corrective action is needed, the laboratory shall identify potential corrective actions. It shall select and implement the

We would like to schedule this briefing for no later than April 30, 2015.

Thank you for your prompt attention to these requests and for your cooperation in working with us to prevent future breakdowns in the reliability and trustworthiness of the FBI's laboratory systems. Should you have any questions regarding these issues, please contact Paul Junge of Chairman Grassley's staff at (202) 224-0747 or Emily Livingston of Ranking Member Leahy's staff at (202) 224-4932 .

Sincerely,



Charles E. Grassley  
Chairman  
Committee on the Judiciary



Patrick J. Leahy  
Ranking Member  
Committee on the Judiciary

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action(s) most likely to eliminate the problem and to prevent recurrence. Corrective actions shall be to a degree appropriate to the magnitude and the risk of the problem. The laboratory shall document and implement any required changes resulting from corrective action."