



DEPARTMENT OF THE ARMY
Office of the Judge Advocate General
Criminal Law Division
2200 Army Pentagon
Washington, D.C. 20310-2200

DAJA-CL

26 April 2016

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Brady Notice – USACIL and FBI Laboratory Notices

1. Please see the enclosed notices regarding issues at the USACIL and FBI Laboratories concerning problems in testing or testing procedures. There were labeling errors in the USACIL laboratory (USACIL memo), the FBI released data regarding DNA reporting (USACIL memo), and the FBI released data regarding hair testing (USACIL memo and FBI letter). See the enclosed documents for additional details.
2. This information is being released pursuant to Brady v. Maryland 373 U.S. 83 (1963) and Rule for Courts-Martial 701. Please ensure this notice is disseminated to all judge advocates in your command as well as judge advocates in subordinate commands.
3. Anyone with technical questions regarding the information contained in the hair testing and evidence labeling in the attached materials should contact Ms. Debbie E. Glidewell at 404-469-4631, debra.e.glidewell.civ@mail.mil. The POC for the DNA notice is as listed in the notice, Mr. Joel Sutton at 404-469-4631, joel.d.sutton2.civ@mail.mil. There is an effort in progress to determine whether any Army courts-martial were affected by hair testing testimony. This office has no further information beyond the material contained in the enclosed documents and this notice.
4. If you have questions particular to this legal notice, please contact Mr. Charles A. Cosgrove at 571-256-8137 or at charles.a.cosgrove.civ@mail.mil.

Enclosures

A handwritten signature in black ink that reads "Walter M. Hudson".

Walter M. Hudson
Colonel, JA
Chief, Criminal Law Division

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Chief, U.S. Army Defense Appellate Division

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SUBJECT: Brady Notice – USACIL and FBI Laboratory Notices

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DEPARTMENT OF THE ARMY
DEFENSE FORENSIC SCIENCE CENTER
U.S. ARMY CRIMINAL INVESTIGATION LABORATORY
4930 N 31st Street
FOREST PARK GA 30297-5205

REPLY TO
ATTENTION OF

CIFS-FSL

26 January 2016

MEMORANDUM FOR Office of the Judge Advocate General, Criminal Law Division,
2200 Army Pentagon, Washington, DC 20310-2200

SUBJECT: Evidence Labeling Error at the U.S. Army Criminal Investigation Laboratory

1. In August 2015, two instances of "labeling errors" with evidence were discovered. In both cases, the labels on two items of evidence were swapped during the labeling/inventory processes in the Forensic Case Management Branch (FCMB) and the errors were not caught prior to the release of the evidence to the technical branches. One case affected evidence for the Latent Prints Branch (LP) and the other affected evidence for the DNA Branch. In one of the affected cases, the error was caught during the technical review and corrections to the notes and report were able to be made prior to the release of the Latent Prints report. However, in the second instance, the mislabeling was not detected in the technical branch and a report on the result of the DNA examinations was released to the submitter with incorrect information (i.e. incorrect individual identified). Upon discovery of these instances, the laboratory stopped all processing of evidence into and out of the laboratory. This process is referred to as an operational pause. A 100% inventory was conducted of any evidence within the laboratory. In the DNA case, the submitting agency was contacted to request resubmission of the samples for retesting. The resubmitted samples were tested and a new report with the corrected labeling was issued.

2. Background:

a. The Forensic Case Management Branch (FCMB) was instituted in July 2014 to increase the efficiency of evidence movement throughout the laboratory. The FCMB is responsible for the intake, inventory, and initial distribution of evidence throughout the USACIL, a task previously conducted by the Evidence Processing Branch. This involves opening shipping containers, reviewing the requests for examination, checking the items received against the custody documents, labeling the items of evidence IAW the laboratory's labeling system, and entering all of this information into the Laboratory Information Management System (LIMS).

b. During the period of September 2014 – January 2015, instances of swapped evidence labels had been observed within the laboratory. The resulting investigation and root cause analysis, found that these instances were traced back to errors made by FCMB personnel. It was determined that none of the labeling errors crossed between cases (i.e. in all cases the items with swapped labels originated from the same case) and that all such errors had been caught and corrected prior to the release of any

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SUBJECT: Evidence Labeling Error at the U.S. Army Criminal Investigation Laboratory

laboratory reports. Based on the root cause analysis, several actions were taken to correct and prevent the reoccurrence of the labeling errors: FCMB branch protocols were revised, branch personnel were provided with additional training, and a process for the verification of the labels was instituted. Corrections were noted in the file of each case that was affected. During FY15 the USACIL received approximately 20,222 evidence exhibits. The erroneous labeling accounted for less than .0009 percent of the evidence received.

c. In August 2015, two new instances of labeling errors were identified. One of the instances involved the labeling of two sets of record prints in a Latent Print case. This error was discovered during the review process in the technical branch and the necessary corrections were made to the notes and report prior to the release of the final LP report. The second instance involved interchanging the labels for two DNA standards (one from the victim and one from the suspect) in a theft case in which both the victim and the suspect were males. DNA examinations were conducted and, using the standards with the interchanged labels, a report was generated which incorrectly identified the suspect as being the contributor to the profile in question. The CODIS Branch was able to identify the error. A review determined there was an error in the labeling and the submitter was contacted. After the standards were resubmitted the items were retested. A corrected report with the correct interpretations was generated and released.

d. The instances occurring in August indicated that the corrective actions enacted previously were not sufficient. New corrective actions were initiated. Further revisions to the FCMB protocols were undertaken, to include more specific procedures regarding the verification of evidence labels.

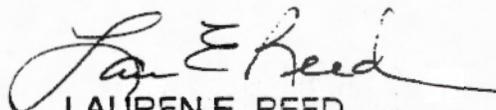
3. Actions taken: In all cases of label "swapping", the laboratory immediately instituted an operational pause and conducted a 100% inventory of all evidence within the laboratory's possession. Complete root cause analysis were conducted. Quality control, in the form of label verification by a second individual, was instituted and added to branch protocols. Branch documents were revised to clarify personnel roles and responsibilities as well as branch processes. Programs of Instruction for FCMB personnel were initiated.

4. Conclusion: In all cases, with the exception of the DNA case identified in August 2015, the errors in the labeling of the items of evidence were caught due to the diligence of the staff and immediately corrected directly. In the final case, the error was identified through the CODIS database system. The submitter was contacted as soon as the issue was detected, corrective actions were taken and a Corrective Report was issued.

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SUBJECT: Evidence Labeling Error at the U.S. Army Criminal Investigation Laboratory

5. For questions regarding this memorandum please contact Ms. Debra Glidewell at debra.e.glidewell.civ@mail.mil.

A handwritten signature in black ink, appearing to read "Lauren E. Reed". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

LAUREN E. REED

Director



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
DEFENSE FORENSIC SCIENCE CENTER
U.S. ARMY CRIMINAL INVESTIGATION LABORATORY
4930 N 31st Street
FOREST PARK GA 30297-5205

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1 February 2016

MEMORANDUM FOR Office of the Judge Advocate General, Criminal Law Division,
2200 Army Pentagon, Washington, DC 20310-2200

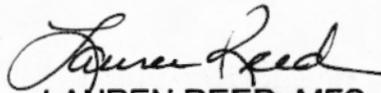
SUBJECT: Notice of Discrepancies in FBI DNA Database

1. In May 2015, the Federal Bureau of Investigation (FBI) laboratory informed all National DNA Index System (NDIS) participating laboratories of errors in the FBI-developed population database. This database was used to calculate the rarity of the STR genetic profile and was published from 1999 to 2001. The FBI subsequently released amended STR population data to correct the inconsistencies. The magnitude of the change in frequencies ranged from 0.000012 to 0.018. These variations in the full DNA profile frequency estimates are within the estimated factor of 10 of the true frequency expected in a given population.
2. The Defense Forensic Science Center (DFSC) used the population database until November 2014. On 19 November 2014, the DFSC casework branches began using the allele frequencies published in the National Institute of Standards and Technology (NIST) 1036 US STR population data (www.cstl.nist.gov/strbase) for profile probabilities. The CODIS branch ceased using the FBI STR population data on 29 May 2015 as a result of this event, and currently also uses the NIST 1036 US STR population data. Although the FBI database has been amended, the DFSC will continue to utilize the NIST database for now.
3. Upon receipt of the amended STR population data, the Defense Forensic Science Center began performing comparisons between the old and amended FBI STR population data allele frequencies by calculating profile probabilities utilizing the DNA profiles from over forty randomly selected DNA profiles. These comparisons consisted of full profiles which included some off-ladders and microvariants, partial profiles, and profiles where mixture calculations were performed. Based on the results of this comparison and the review of the pre-publication of the FBI's erratum notice, the impact of any changed values on the statistics in any previously reported cases have been deemed inconsequential.
4. If specifically requested by counsel, new match statistics may be re-calculated using the NIST 1036 US STR population data set for cases in which the FBI STR population allele frequencies were originally used. Although these requests are not anticipated, the laboratory will provide them on an as-needed basis.

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SUBJECT: Notice of Discrepancies in FBI DNA Database

5. Questions regarding this memorandum and requests for recalculations can be directed to Joel Sutton at the email address joel.d.sutton2.civ@mail.mil.



LAUREN REED, MFS
Director



DEPARTMENT OF THE ARMY
DEFENSE FORENSIC SCIENCE CENTER
U.S. ARMY CRIMINAL INVESTIGATION LABORATORY
4930 N 31ST STREET
FOREST PARK GA 30297-5205

CIFS-FSL

08 February 2016

MEMORANDUM FOR Office of the Judge Advocate General, Criminal Law Division,
2200 Army Pentagon, Washington, DC 20310-2200

SUBJECT: FBI Laboratory Errors in Microscopic Hair Comparison Testimony

1. Recently the Federal Bureau of Investigation (FBI) Laboratory released information about discrepancies in testimony by analysts regarding microscopic hair comparison. An article was also released in the Washington Post discussing problems with hair comparison analysis testimony at the FBI Laboratory.¹ Although the science of microscopic hair analysis was not the focus of the report, the FBI report determined "that the examiners' testimony in at least 90 percent of trial transcripts the Bureau analyzed as part of its Microscopic Hair Comparison Analysis Review contained erroneous statements." The FBI report has prompted the Defense Forensic Science Center (DFSC) to take a proactive look at microscopic hair comparison performed at the US Army Criminal Investigation Laboratory (USACIL).
2. The USACIL conducted microscopic hair comparison examinations until 2003. Requests for hair comparisons have also been referred to the FBI Laboratory for the past 10-20 years. Additionally, Military Criminal Investigation Office (MCIO) Special Agents could directly submit evidence to the FBI Laboratory for hair analysis. The USACIL is currently working with the FBI to determine if any military justice cases may have been affected.² To the extent possible, the USACIL is reviewing its archived files to locate cases in which microscopic hair comparison was performed and testimony is available.
3. The expert testimony from records of trial will be obtained for cases identified in which hair analysis was performed. Attorneys having records that they would like reviewed can submit them to usarmy.gillem.dfsc.mbx.usacil-court@mail.mil for consideration. Criteria for review include: a) cases tried by courts martial as opposed to plea cases, b) cases in which microscopic hair comparison testimony was an important part of the court-martial findings and did not involve DNA testing, c) and cases in which evidence exists that "but for" the hair analysis report (in which DNA testing was not performed) the defendant would not have plead (objection must have been shown prior to plea).

¹ (http://www.washingtonpost.com/local/crime/fbi-overstated-forensic-hair-matches-in-nearly-all-criminal-trials-for-decades/2015/04/18/39c8d8c6-e515-11e4-b510-962fcfab310_story.html)

² See attached letter from U.S. Department of Justice to the U.S. Army Criminal Investigation Laboratory, 11 JAN 2016

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SUBJECT: FBI Laboratory Errors in Microscopic Hair Comparison Testimony

4. The USACIL point of contact for this action is SA Ned Tamburini, USACIL Investigative Support Officer, at edmund.d.tamburini.civ@mail.mil or (404) 469-7471.

Encl
as



LAUREN REED, MFS
Director

OPENED 5/11/16
MSEB



U.S. Department of Justice
Federal Bureau of Investigation

Washington, D. C. 20535-0001

January 11, 2016

U.S. Army Criminal Investigation Laboratory
4930 North 31st St.
Forest Park, GA 30297

Dear Sir/Madam:

From the 1970s to the late 2000s, the Federal Bureau of Investigation (FBI) Laboratory conducted an introductory course on hair and fiber comparative analysis for staff from state and local crime laboratories. These courses were designed to provide an overview of the hair and fiber disciplines. Our records indicate that personnel from your laboratory attended one or more of these training sessions. Portions of this FBI-sponsored two-week familiarization course may have included instruction on courtroom testimony and language used in laboratory reports about the results of the analyses.

The United States Department of Justice (DOJ) and the FBI are currently engaged in a review of microscopic hair comparison analysis testimony and reports provided by the FBI Laboratory before December 31, 1999, when the Laboratory routinely utilized mitochondrial DNA testing when appropriate in hair comparison analysis. We initiated this review in 2012 after DNA testing exonerated three defendants in cases tried before 1999 in which the trial evidence included testimony by FBI examiners about microscopic hair comparative analysis. In reviewing such testimony in other cases tried before 1999, it has been determined that in numerous cases FBI Laboratory examiners, some of whom taught this familiarization course attended by your laboratory personnel, 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. We are providing notices of these instances to the attorneys involved in these trials and as a result, a few cases are currently under review by the original trial courts.

We bring this to your attention to encourage you to evaluate the work product of your own employees who attended the FBI introductory training. In the event that you find that your staff offered conclusions that exceeded the limits of science, we also suggest that you initiate corrective action. A list of the personnel from your laboratory or agency who attended this FBI training course is attached.

If you have any questions regarding this request or the general issue of microscopic hair analysis, please contact Cherise Dreyfus, Unit Chief of the Trace Evidence Unit at FBICaseReview@ic.fbi.gov or Paula Wulff, Assistant General Counsel, Office of the General Counsel at Paula.Wulff@ic.fbi.gov.

Sincerely,

SSA Christopher Todd Doss
Director
FBI Laboratory

1) enclosure