

# United States Senate

WASHINGTON, DC 20510

April 28, 2015

The Honorable Loretta Lynch  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

The Honorable James B. Comey  
Director  
Federal Bureau of Investigation  
935 Pennsylvania Avenue, NW  
Washington, DC 20535

Dear Attorney General Lynch and Director Comey:

We write regarding the stunning recent admission by the Federal Bureau of Investigation (FBI or “the Bureau”) that in a review of 268 trials involving microscopic hair analysis evidence against criminal defendants, forensic testimony was scientifically invalid and flawed in 96 percent of cases. The results of the review, as reported in *The Washington Post*, are chilling. We are deeply disturbed to learn that hundreds of potentially innocent defendants were imprisoned or even executed based at least in part on flawed evidence. We commend the Department of Justice (“the Department”) and the FBI for voluntarily undertaking this review. We now request that you take steps to correct the incredible injustices the review has revealed and to strengthen the science and standards underpinning forensic science.

First, we ask that the Department complete without delay its review of the use of microscopic hair analysis by the FBI in prosecutions. To the degree that this process has been hampered by the failure of state officials to turn over needed information, the Bureau must use every available tool to acquire this information. Since a vast majority (81 percent) of the defendants in this review whose trials involved flawed forensic testimony were convicted at the state level, it is critical that the Bureau redouble its efforts in this regard. It appears that the Bureau currently seeks to collect information by sending a letter to the state or local official determined to possess the information, then following up with a separate letter if the official does not respond. If the second letter does not yield a result, the case is closed. The Bureau can and must do better. When the Bureau seeks information needed to convict a guilty individual, it rightly moves heaven and earth to achieve its goal. The Bureau should be no less zealous in working to ensure that a conviction does not rest on unreliable or flawed evidence.

Second, the Department must work to ensure that individuals who have been convicted using erroneous microscopic hair analysis evidence have a full and fair opportunity to challenge their convictions. Simply informing incarcerated individuals is not enough. As long as these prisoners face nearly insurmountable barriers to effectively challenging their convictions, the Department’s job is not done. Addressing this concern is neither simple nor straightforward, but it is essential. We urge you to consider every tool available to the Department and to notify us if Congressional action in this regard is needed.

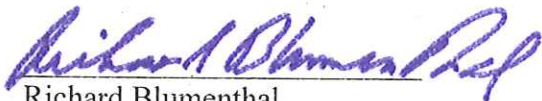
Finally, microscopic hair comparison analysis is just one of the many forensic science disciplines that would benefit from stronger standards, better training, and further scientific research. According to the Innocence Project, for example, more than a quarter of wrongful convictions later overturned by DNA testing involved expert testimony based on questionable

forensic evidence, including bite mark, shoe print, and fire pattern analysis. In its 2009 report on strengthening forensic science, the National Academy of Sciences (NAS) raised similar concerns that a number of other trace, pattern, and impression-based forensic science disciplines are scientifically lacking and vulnerable to human bias.

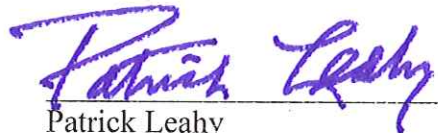
It is critical to the integrity of our criminal justice system that we identify any other forensic science disciplines that may yield flawed or unreliable evidence, and that we learn from and correct any past mistakes. Thus, we ask that you work with the National Institute of Standards and Technology and NAS to identify other forensic disciplines that would warrant the same kind of review and scrutiny that has been undertaken for cases involving microscopic hair analysis evidence. Science and technology are constantly evolving, so it is vital that the courts, law enforcement, forensic science, and research communities work efficiently together to assess the scientific state of those disciplines so that we can ensure that forensic evidence used in the courtroom is scientifically valid and reliable.

We appreciate the work you have done thus far in this critical matter, and hope you recognize that the microscopic hair analysis review is just one step toward identifying and understanding the scope and scale of any systemic problems in forensic science. As you work to undo damages already done, we look forward to working with you to restore faith in our criminal justice system. We respectfully request a response to this letter within 30 days, including your plan to address each of the three steps outlined above.

Sincerely,



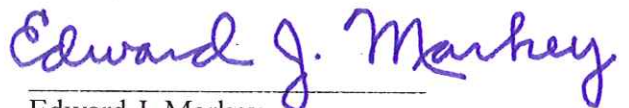
Richard Blumenthal  
UNITED STATES SENATE



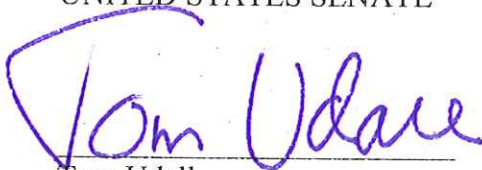
Patrick Leahy  
UNITED STATES SENATE



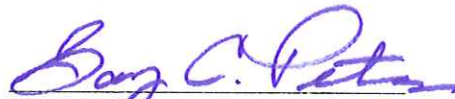
Richard J. Durbin  
UNITED STATES SENATE



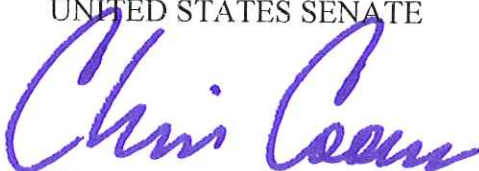
Edward J. Markey  
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Tom Udall  
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