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Prosecutor Who Ran Ethics Unit Leaves Justice Department

McNabb Associates, P.C. (Federal Criminal Defense Lawyers)

Submitted at 10:50 AM April 17, 2012

The New York Times on April 17, 2012 released the following:

"By CHARLIE SAVAGE

WASHINGTON — The Justice Department on Monday announced the departure of a high-profile prosecutor who ran its ethics unit during the botched case against Senator Ted Stevens and has since played a prominent role in the Obama administration's efforts to prosecute officials for leaking information to the press.

The departure of the prosecutor, William M. Welch II, was disclosed in a motion before a federal appeals court in Richmond, Va. The department informed the court that he would no longer represent the government in the case against Jeffrey Sterling, a former Central Intelligence Agency official who is accused of leaking information to James Risen, an author and a reporter for The New York Times.

"Mr. Welch is leaving the Department of Justice for a job in the private sector," the motion said, but it did not give details.

Another department official confirmed that Mr. Welch had retired, saying that his last day was Friday, and that he was taking a job in the Boston area. A law firm that represented him during the fallout from the Stevens case also confirmed that he had left the Justice Department. NPR first reported Mr. Welch's departure on Monday.

A hard-charging prosecutor, Mr. Welch got his start in 1989 in the Justice Department's tax division and later worked as an assistant United States attorney in Nevada and in Massachusetts. In August 2007, he was made acting deputy chief of the public integrity section at Justice Department headquarters, and the following March became its chief.

In that position, he oversaw the trial team that won a conviction against Mr. Stevens in October 2008 for failing to report gifts from an oil-services firm. But the conviction was withdrawn and the case collapsed after it emerged that prosecutors had failed to turn over information to the defense that could have helped Mr. Stevens, an Alaskan Republican who lost re-election in November 2008 and later died in a plane crash.

The federal judge overseeing the case held Mr. Welch and other prosecutors involved in the case in contempt of court, and the judge and the Justice Department opened investigations. Last month, however, the judge made public the results of his investigation, and the findings largely exonerated Mr. Welch.

Specifically, the report found that Mr. Welch had been cut out of direct supervision of the trial team because his superiors in the criminal division had taken a strong interest in the case and so he had focused on other cases. It also found that "to his credit, on each occasion" when disclosure issues were brought to Mr. Welch for a decision, he directed prosecutors to provide the information to the defense.

Back in 2009, Mr. Welch was replaced as head of the public integrity section. In October of that year, he returned to the United States attorney's office in Massachusetts but continued to work for the criminal division, whose new head, Lanny A. Breuer, asked him to take up several largely dormant leak investigations left over from the Bush administration years.

One of those cases was against Thomas Drake, a former National Security Agency official whom Mr. Welch eventually prosecuted in connection with leaks to The Baltimore Sun about enormous waste and mismanagement within the agency.

Mr. Welch initially sought conviction on charges that could have put Mr. Drake in prison for 35 years, winning an indictment in April 2010. But the case against Mr. Drake largely collapsed amid a dispute over what classified evidence prosecutors could use.

Mr. Drake pleaded guilty to a single misdemeanor charge and received a year of probation, while all the major charges were dropped and he avoided prison time. When the judge overseeing the case accepted the deal in July, he called the government's handling of the case — putting Mr. Drake through "four years of hell" and devastating him financially, only to drop the major charges on the eve of trial — "unconscionable."

Mr. Welch also helped revive an investigation against Mr. Sterling, who is accused of providing information about what was portrayed in Mr. Risen's 2006 book, "State of War," as a botched effort to sabotage Iranian nuclear research in 2000. Mr. Sterling was indicted in December 2010.

That case, too, is in trouble. Mr. Welch had been seeking to compel Mr. Risen to testify against Mr. Sterling, but Mr. Risen's lawyers invoked the First Amendment and said he would not testify about any confidential sources. A district court judge ruled in favor of Mr. Risen. In appealing that ruling, prosecutors told the appeals court that if the ruling stands, it "effectively terminated the prosecution" of Mr. Sterling."

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Douglas McNabb and other members of the U.S. law firm practice and write and/or report extensively on matters involving Federal Criminal Defense, INTERPOL Red Notice Removal, International Extradition and OFAC SDN Sanctions Removal.

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Attorney General Eric Holder Speaks at the National Law Enforcement Training on Child Exploitation

(USDOJ: Justice News)

Submitted at 5:28 PM April 17, 2012

"By bringing together so many law enforcement officials, advocates, investigators, and prosecutors – more than 1,700 in total – not only are we raising awareness about the problems of child exploitation – we also are sending a powerful message: that, when it comes to keeping our children from harm, a new era of collaboration has begun," said Attorney General Holder.

Convicted defendants left uninformed of forensic flaws found by Justice Department

McNabb Associates, P.C. (Federal Criminal Defense Lawyers)

Submitted at 11:03 AM April 17, 2012

The New York Times on April 16, 2012 released the following:

"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 exoneration, a retrial or a retesting 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 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. Attorneys 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 2004, 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 — and learned 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 at 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 lifelong parole. They are now seeking exoneration 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 swift and full disclosures, many others 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 and records documented that prosecutors disclosed the reviews' results to defendants in fewer than half of the 250-plus questioned cases.

Michael R. Bromwich, a former federal prosecutor and the inspector general who investigated the FBI lab, said in a statement that even 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."

He added: "It is deeply troubling that after going to 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,

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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 Tribble guilty of murder. He was sentenced in January 1980 to 20 years to life in prison.

Tribble, 17 at the time, his brother, his girlfriend and a houseguest all testified that they were together preparing to celebrate the guest's birthday the night McCormick was killed. All four said Tribble and his girlfriend were asleep between 2 and 4:30 a.m. in Seat Pleasant.

Tribble took the stand in his own defense, saying what he had said all along — that he had nothing to do with McCormick's killing.

The prosecution began its closing argument by citing the FBI's testimony about the hair from the stocking.

This January, after a year-long effort to have DNA evidence retested, Tribble's public defender succeeded and turned over the results from a private lab to prosecutors. None of the 13 hairs recovered from the stocking — including the one that the FBI said matched Tribble's — shared Tribble's or Wright's genetic profile, conclusively ruling them out as sources, according to mitochondrial DNA analyst Terry Melton of the private lab.

"The government's entire theory of prosecution — that Mr. Tribble and Mr. Wright acted together to kill Mr. McCormick — is demolished," wrote Sandra K. Levick, chief of special litigation for the D.C. Public Defender Service and the lawyer who represents Gates, Tribble and Odom. In a motion to D.C. Superior Court Judge Laura Cordero seeking Tribble's exoneration, Levick wrote: "He has waited thirty-three years for the truth to set him free. He should have to wait no longer."

In an interview, Tribble, who served 28 years in prison, said that whether the court grants his request or not, he sees it as a final chance to assert his innocence. "Ms. Levick has been like an angel," Tribble added, "... and I thank God for DNA."

Details of the new round of hair testing illustrate how hair analysis is highly subjective. The 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 microscopic 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 robbing a 27-year-old woman before dawn in her Capitol Hill apartment in 1981.

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 assault, 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 nightgown was "microscopically like" Odom's, meaning the samples were indistinguishable. Prosecutors explained that Scholberg had not been able to distinguish between hair 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, turned over the results of court-ordered nuclear DNA testing of stains left by the perpetrator on a pillowcase and robe.

Only one man left all four partial DNA profiles developed by the lab, and that man could not have been Odom.

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 18 years at the FBI lab, said side-by-side hair comparison "was the best method we had at the time."

Odom, who was imprisoned for 20 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 about these convictions."

"If our comprehensive review shows that either man was wrongfully convicted, we will promptly join him in a motion to vacate his conviction, as we did with Donald Gates in 2009," Machen said.

The trouble with hair analysis

Popularized in fiction by Sherlock Holmes, hair comparison became an established forensic science by the 1950s. Before modern-day DNA testing, hair analysis could, at its best, accurately narrow the pool of criminal suspects to a class or group or definitively rule out a person as a possible source.

But in practice, even before the "'CSI' effect" led jurors to expect scientific

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evidence at every trial, a claim of a hair match packed a powerful, dramatic punch in court. The testimony, usually by a respected scientist working at a respected federal agency, allowed prosecutors to boil down ambiguous cases for jurors to a single, incriminating piece of human evidence left at the scene.

Forensic experts typically assessed the varying characteristics of a hair to determine whether the defendant might be a source. Some factors were visible to the naked eye, such as the length of the hair, its color and whether it was straight, kinky or curly. Others were visible under a microscope, such as the size, type and distribution of pigmentation, the alignment of scales or the thickness of layers in a given hair, or its diameter at various points.

Other judgments could be made. Was the hair animal or human? From the scalp, limbs or pubic area? Of a discernible race? Dyed, bleached or otherwise treated? Cut, forcibly removed or shed naturally?

But there is no consensus among hair examiners about how many of these characteristics were needed to declare a match. So some agents relied on six or seven traits, while others needed 20 or 30. Hilverda, the FBI scientist in Tribble's case, told jurors that he had performed "probably tens of thousands of examinations" and relied on "about 15 characteristics."

Despite his testimony, Hilverda recorded in his lab notes that he had measured only three characteristics of the hair from the stocking — it was black, it was a human head hair, and it was from an African American. Similarly, Scholberg's notes describe the nightgown hair in Odom's case in the barest terms, as a black, human head hair fragment, like a sample taken from Odom.

Hilverda acknowledged that results could rule out a person or be inconclusive. However, he told jurors that a "match" reflected a high likelihood that two hairs came from the same person. Hilverda added, "Only on very rare occasions have I seen hairs of two individuals that show the same characteristics."

In Tribble's case, federal prosecutor David Stanley went further as he summed up the evidence. "There is one chance, perhaps for all we know, in 10 million that it could [be] someone else's hair," he said in his closing arguments, sounding the final word for the government.

Stanley declined to comment.

Flaws known for decades

The Tribble and Odom cases demonstrate problems in hair analysis that have been known for nearly 40 years.

In 1974, researchers acknowledged that visual comparisons are so subjective that different analysts can reach different conclusions about the same hair. The FBI acknowledged in 1984 that such analysis cannot positively determine that a hair found at a crime scene belongs to one particular person.

In 1996, the Justice Department studied the nation's first 28 DNA exonerations and found that 20 percent of the cases involved hair comparison. That same year, the FBI lab stopped declaring matches based on visual comparisons alone and began requiring DNA testing as well.

Yet examples of FBI experts violating scientific standards and making exaggerated or erroneous claims emerged in 1997 at the heart of the FBI lab's worst modern scandal, when Bromwich's investigation found systematic problems involving 13 agents. The lab's lack of written protocols and examiners' weak scientific qualifications allowed bias to influence some of the nation's highest-profile criminal investigations, the inspector general said.

From 1996 through 2004, a Justice Department task force set out to review about 6,000 cases handled by the 13 discredited agents for any potential exculpatory information that should be disclosed to defendants. The task force identified more than 250 convictions in which the agents' work was determined to be either critical to the conviction or so problematic — for example, because a prosecutor refused to cooperate or records had been lost — that it completed a fresh scientific assessment of the agent's work. The task force was directed to notify prosecutors of the results.

The only real notice of what the task force found came in a 2003 Associated Press account in which unnamed government officials said they had turned over results to prosecutors and were aware that defendants had been notified in 100 to 150 cases. The officials left the impression that anybody whose case had been affected had been notified and that, in any case, no convictions had been overturned, the officials said.

But since 2003, in the District alone, two of six convictions identified by The Post in which forensic work was reassessed by the task force have been vacated. That includes Gates's case, but not those of Tribble and Odom, who are awaiting court action and were not part of the task force review.

The Gates exoneration also shows that prosecutors failed to turn over information uncovered by the task force.

In addition to Gates, the murder cases in Texas and Maryland and a third in Alaska reveal examples of shortcomings.

All three cases, in addition to the District cases, were handled by FBI agent Malone, whose cases made up more than 90 percent of scientific reviews found by The Post.

In Texas, the review of Benjamin Herbert Boyle's case got underway only after the defendant was executed, 16 months after the task force was formed, despite pledges to prioritize death penalty cases.

Boyle was executed six days after the Bromwich investigation publicly criticized Malone, the FBI agent who worked on his case, but the FBI had acknowledged two months earlier that it was investigating complaints about him.

The task force asked the Justice Department's capital-case review unit to look over its work, but the fact that it failed to prevent the execution was never publicized.

In Maryland, John Norman Huffington's attorneys say they were never notified of the findings of the review in his case, leaving them in a battle over the law's unsettled requirements for prosecutors to turn over potentially exculpatory evidence and over whether lawyers and courts can properly interpret scientific findings.

In Alaska, Newton P. Lambert's defenders have been left to seek DNA testing of remaining biological evidence, if any exists, while he serves a life sentence for a 1982 murder. Prosecutors for both Huffington and Lambert claim they disclosed findings at some point to other lawyers but failed to document doing so. In Lambert's case, The Post found that the purported notification went to a lawyer who had died.

Senior public defenders in both states say they received no such word, which they say would be highly unlikely if it in fact came.

Malone, 66, said he was simply using the best science available at the time. "We did the best we could with what we had," he said.

Even the harshest critics acknowledge that the Justice Department worked hard to identify potentially tainted convictions. Many of the cases identified by the task force involved serious crimes, and several defendants confessed or were guilty of related charges. Courts also have upheld several convictions even after agents' roles were discovered.

Flawed agents or a flawed system?

Because of the focus on Malone, many questionable cases were never reviewed.

But as in the Tribble and Odom cases, thousands of defendants nationwide have been implicated by other FBI agents, as

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well as state and local hair examiners, who relied on the same flawed techniques.

In 2002, the FBI found after it analyzed DNA in 80 selected hair cases that its agents had reported false matches more than 11 percent of the time. “I don’t believe forensic science truly understood the significance of microscopic hair comparison, and it wasn’t until [DNA] that we learned that 11 percent of the time, two hairs can be microscopically similar yet come from different people,” said Dwight E. Adams, who directed the FBI lab from 2002 to 2006.

Yet a Post review of the small fraction of cases in which an appeals court opinion describes FBI hair testimony shows that several FBI agents gave improper testimony, asserting the remote odds of a false match or invoking bogus statistics in the absence of data.

For example, in testimony in a Minnesota bank robbery case, also in 1978, Hilverda, the agent who worked on Tribble’s case, reiterated that he had been unable to distinguish among different people’s hair “only on a couple of occasions” out of more than 2,000 cases he had analyzed.

In a 1980 Indiana robbery case, an agent told jurors that he had failed to tell different people’s hair apart just once in 1,500 cases. After a slaying in Tennessee that year, another agent testified in a capital case that there was only one chance out of 4,500 or 5,000 that a hair came from someone other than the suspect.

“Those statements are chilling to read,” Bromwich said of the exaggerated FBI claims at trial.

Todd, the FBI spokeswoman, said bureau lab reports for more than 30 years have qualified their findings by saying that hair comparisons are not a means of absolute positive identification. She requested a list of cases in which agents departed from guidelines in court. The Post provided nine cases.

Todd declined to say whether the bureau considered taking steps to determine whether other agents intentionally or unintentionally misled jurors. “Only Michael Malone’s conduct was questioned in the area of hair comparisons,” Todd said. “The [inspector general] did not question the merits of microscopic hair comparisons as a scientific discipline.”

Experts say the difference between laboratory standards and examiners’ testimony in court can be important, especially if no one is reading or watching what agents say.

“It seemingly has never been routine for crime labs to do supervision based on trial testimony,” said University of Virginia School of Law professor Brandon L. Garrett. “You can have cautious standards, but if no one is supervising their implementation, it’s predictable that analysts may cross the line.”

‘Veil of secrecy’

A review of the task force documents, as well as Post interviews, found that the Justice Department struggled to balance its roles as a law enforcer defending convictions, a minister of justice protecting the innocent, and a patron and practitioner of forensic science.

By excluding defense lawyers from the process and leaving it to prosecutors to decide case by case what to disclose, authorities waded into a legal and ethical morass that left some prisoners locked away for years longer than necessary. By adopting a secret process that limited accountability, documents show, the task force left the scope and nature of scientific problems unreported, obscuring issues from further study and permitting similar breakdowns.

“The government has hidden behind the veil of secrecy to shield these abuses despite official assurances that justice would be done,” said David Colapinto, general counsel of the National Whistleblowers Center.

The American Bar Association and others have proposed stronger ethics rules for prosecutors to act on information that casts doubt on convictions; opening laboratory and other files to the defense; clearer reporting and evidence retention; greater involvement by scientists in setting rules for testimony at criminal trials; and more scientific training for lawyers and judges.

Other experts propose more oversight by standing state forensic-science commissions and funding for research into forensic techniques and experts for indigent defendants.

A common theme among reform-minded lawyers and experts is taking the oversight of the forensic labs away from police and prosecutors.

“It’s human to make mistakes,” said Steven D. Benjamin, president-elect of the National Association of Criminal Defense Lawyers. “It’s wrong not to learn from them.”

More specifically, the D.C. Public Defender Service, Benjamin’s group and others said justice would be served by retesting hair evidence in convictions nationwide from 1996 and earlier. “If microscopic hair analysis was a key piece of evidence in a conviction, and it was one of only a limited amount of evidence in a case, would it be worthwhile to retest that using mitochondrial DNA? I would say absolutely,” said Adams, the former FBI lab director.

The promised review by federal prosecutors of hair convictions in the District would not include cases before 1985, when FBI records were computerized, and would not disclose any defendant’s name. That approach would have missed Gates, Odom and Tribble, who were convicted earlier.

Representatives for Machen, the FBI and the Justice Department also declined to say why the review should be limited to D.C. cases. The Post found that 95 percent of the troubled cases identified by the task force were outside the District.

Avis E. Buchanan, director of the D.C. Public Defender Service, said her agency must be “a full participant” in the review, which it has sought for two years, and that it should extend nationwide. “Surely the District of Columbia is not the only place where such flawed evidence was used to convict the innocent,” she said.”

Douglas McNabb – McNabb Associates, P.C.’s

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GSA inspector general is investigating possible bribes, kickbacks

McNabb Associates, P.C. (Federal Criminal Defense Lawyers)

Submitted at 9:40 AM April 17, 2012

The Washington Post on April 16, 2012 released the following:

"By Lisa Rein and Ed O'Keefe

The inspector general for the General Services Administration said Monday that he is investigating possible bribery and kickbacks in the agency, as lawmakers accused the former GSA administrator of allowing a Las Vegas spending scandal to erode taxpayers' trust in government.

Inspector General Brian Miller told a congressional committee scrutinizing an $823,000 Las Vegas conference that his office has asked the Justice Department to investigate "all sorts of improprieties" surrounding the 2010 event, "including bribes, including possible kickbacks." He did not provide details.

Miller's revelations of possible further misconduct by organizers of the four-day event, coming on the heels of a highly critical report, enraged Democrats and Republicans on the House Oversight and Government Reform Committee. The lawmakers put GSA officials on the defensive during a tense four-hour hearing, with some Republicans loudly rebuking former administrator Martha N. Johnson and her colleagues.

GOP lawmakers argued that the excessive spending proves their case for smaller government. Taxpayers picked up the tab for a mind reader, bicycles for a team-building exercise and a slew of private parties at the conference.

"There are those who believe government's reach should be expanded," committee Chairman Darrell Issa (R-Calif.) said in his opening statement. "What has come to light surrounding GSA's activities should give pause to anyone who has opposed cutting government size and spending."

But Democrats joined him in condemning the outsized tab for the conference, with Rep. Elijah E. Cummings (Md.), the committee's ranking Democrat, calling it "indefensible" and "intolerable."

"It's not your money, it's the taxpayers' money," Cummings scolded agency officials.

Johnson, speaking publicly for the first time since her abrupt resignation last week, called the biennial Western Regions Conference a "raucous, extravagant, arrogant, self-congratulatory event that ultimately belittled federal workers." Closing her testimony, she said, "I will mourn for the rest of my life the loss of my appointment."

Seated next to her was Jeffrey Neely, the senior executive in the GSA's Pacific Rim region who organized the event. Neely, 57, who had received a subpoena from the committee, asserted his Fifth Amendment right to not incriminate himself and left the witness table.

Neely, who earns a salary of $172,000, is one of five senior managers who have been placed on paid administrative leave pending further discipline. Several lawmakers said it galled them that the managers are still receiving their full salaries. As civil servants, they have more protections than political appointees.

Johnson's replacement, Acting Administrator Dan Tangherlini, told lawmakers that he has canceled almost every conference scheduled for GSA employees for the rest of the fiscal year. He also sent letters last Friday to Neely, former Public Buildings Service commissioner Robert Peck and Robert Shepard, Neely's chief of staff, demanding repayment for private parties they threw in their rooms at the M Resort Spa Casino.

Peck has been summoned to appear Tuesday at the second of four congressional hearings on the scandal.

Tangherlini also wants repayment from an audiovisual company that was given hotel rooms as part of its $59,000 contract for the conference but that Tangherlini said double-billed the government.

Asked if the GSA has a "culture" problem that led to the freewheeling spending, which included poolside entertainment by a clown and a "Red Carpet" talent show, Tangherlini replied, "We definitely have a culture problem in Region 9," referring to the four-state Pacific Rim office. "I can't say I know enough to say we have a culture problem" in the rest of the agency, he said.

The officials' apologies did little to satisfy lawmakers, who were outraged that top agency officials allowed the spending to take place, then waited to take action even after the inspector general briefed them midway through his year-long investigation.

Issa and others questioned how Johnson could have signed off on a $9,000 bonus for Neely last year over the objections of a committee that reviews bonuses for members of the Senior Executive Service.

In an e-mail released by the committee, Johnson wrote "yes on a bonus," in part because Neely had to serve as regional administrator in an acting capacity "forever and a day." She told lawmakers Monday that the reward was for his job performance. Pressed on whether she would deny the bonus knowing what she knows today, she said she could not say.

Johnson said she received a briefing on the preliminary findings in May 2011. She decided not to launch her own investigation, "as such action would have entailed a terrific duplication of government resources."

Johnson said she believed that Miller would quickly conclude the investigation, but "the deadline slipped repeatedly from October to November to December." She said her office received a final report last month — 15 months after it was requested.

"I personally apologize to the American people for this entire situation," Johnson said.

Also at Monday's hearing, David E. Foley, a former deputy commissioner at the Public Buildings Service, repeatedly apologized for poking fun at the lavish spending during the conference's talent show, comments that were captured on video. But Foley stressed that he was not involved with planning the event.

Most of the contracts for the conference, including for an event planner, the audiovisual company and the bike-building exercise, were not competitively bid, as federal rules require."

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Federal juries to begin deliberations in morning in Jacksonville racketeering trial

McNabb Associates, P.C. (Federal Criminal Defense Lawyers)

Submitted at 10:13 AM April 17, 2012

Jacksonville.com on April 16, 2012 released the following:
"By Jim Schoettler
A rarely used double jury will begin deliberations Tuesday in the federal racketeering trial of two Jacksonville men accused of being part of a gang that terrorized sleeping homeowners, robbed banks, sold drugs and beat people.
Closing arguments in the trial of Maynard Kenneth Godwin, 32, and Eric Steven Ellis, 27, ended Monday afternoon and were followed by 90 minutes of complex jury instructions.
Godwin and Ellis both face life in prison if convicted of being involved in a gang known as the Guardians. Prosecutors said Godwin led the gang and wore dog tags with the title "The Boss," while Ellis was an associate.
The double jury — 12 jurors and four alternates on each — was required to preserve the defendants' rights to confront each other since they had incriminating evidence against one another. Prosecutors said the double jury was the first in the 35 -county federal Middle District of Florida. Double juries have been used in state court in the local circuit.
The juries heard closing arguments separately, returned together to get instructions from District Judge Marcia Howard, then separated to choose foremen.
When the trial began four weeks ago, prosecutors said the gang was named after Godwin and others were watching the cable-based "Sons of Anarchy," a show about an outlaw California motorcycle gang. Defense attorneys argued there was no such influence and that no gang existed.
Testimony included still-terrified victims of the robberies and one man who was nearly beaten to death. Several gang members who have already pleaded guilty also testified, as did the defendants.
Prosecutor Jay Taylor did not mention the television show during his closing arguments. Taylor said neither the gang name nor how it was created mattered.
He said the key was that Godwin and Ellis were involved in a criminal enterprise that shared in the proceeds of multiple criminal acts that benefited the group.
"Stripped to the bone and marrow, Maynard Kenneth Godwin and his band of Guardians are greed. They are brutality," Taylor said.
Godwin's attorney, James Hernandez, admitted his client was a drug dealer and dealt in stolen property. But Hernandez said Godwin acted on his own rather than part of an enterprise.
"He did that for his own proceeds, not the proceeds of a gang," Hernandez said. "There is no gang in existence."
Gerald Bettman, Ellis's attorney, referenced a famous motorcycle daredevil to make the same arguments for his client. "There were sporadic events that people did like Evel Knievel would do, but on his own, by himself," Bettman said. "This was not an enterprise."
Taylor countered that if police, led by the FBI, had not arrested the gang members in November 2010, the enterprise would have continued.
"You know that there was drug deal after drug deal after drug deal, robbery after robbery after robbery," Taylor said. "It was an ongoing activity that was not going to stop."
Prosecutors said some victims were targeted through Internet property record searches of high-dollar homeowners who had paid off their homes. One attack led to the theft of more than $1 million in money and jewelry, while more than $400,000 was taken in another.
Records show gang members often dressed in all black and referred to each other as brothers. They owned and rode expensive motorcycles, frequently going on social rides with each other or in groups. They enjoyed body building together and frequented strip clubs.
Police and federal agents infiltrated the gang with the help of a confidential informant and wiretaps, records show."

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Attorney General Eric Holder Speaks at the Georgia Appleseed Center for Law and Justice Good Apple Awards

(USDOJ: Justice News)

Submitted at 8:22 PM April 17, 2012

"For nearly two decades – since 1993, when a group of concerned and frustrated – but ultimately hopeful – Harvard Law School graduates from the Class of 1958 came together around a common goal – to launch a new, national effort that would help establish public interest law centers across the country and rally support for struggling pro bono organizations – the Appleseed Network has been on the front lines of the fight to realize our nation's founding promise of equal justice under law," said Attorney General Holder.

Two Former Executives of California Valve Company Plead Guilty to Foreign Bribery Offenses

(USDOJ: Justice News)

Submitted at 2:41 PM April 17, 2012

Stuart Carson, the former president of Rancho Santa Margarita, Calif.-based valve company Control Components Inc. (CCI), and Hong "Rose" Carson, the former CCI director of sales for China and Taiwan, have pleaded guilty to violating the Foreign Corrupt Practices Act (FCPA).

Deputy Attorney General James M. Cole Speaks at the National Law Enforcement Training on Child Exploitation

(USDOJ: Justice News)

Submitted at 8:57 AM April 17, 2012

"I am honored to address so many law enforcement professionals from across the country who are devoted to protecting our children from the scourge of sexual exploitation, and I am particularly pleased to be doing so during National Child Abuse Prevention Month," said Deputy Attorney General Cole.

U.S. busts an alleged global online drug market, arrests eight

McNabb Associates, P.C. (Federal Criminal Defense Lawyers)

Submitted at 12:36 PM April 17, 2012

Chicago Tribune on April 16, 2012 released the following:
"Dan Whitcomb | Reuters
LOS ANGELES (Reuters) – Eight men charged with running an elaborate online narcotics market that sold drugs to 3,000 people in the United States and 34 other countries have been arrested following a two-year investigation dubbed "Operation Adam Bomb," prosecutors said on Monday.
The secret ring known as "The Farmer's Market" operated through the TOR computer network, which allows users to communicate anonymously, according to a federal grand jury indictment unsealed on Monday in Los Angeles.
The online drug market provided order forms and customer service, guaranteeing delivery in exchange for a commission and accepting payment through PayPal, Western Union and other means, the indictment charges.
Authorities said the defendants were accused of running one of the most sophisticated drug marketplaces on the Internet and said the prosecution represented a first of its kind.
"The drug trafficking organization targeted in Operation Adam Bomb was distributing dangerous and addictive drugs to every corner of the world, and trying to hide their activities through the use of advanced anonymizing on-line technology," Briane Grey, U.S. Drug Enforcement Administration acting special agent in charge, said in a written release.
"Today's action should send a clear message to organizations that are using technology to conduct criminal activity that the DEA and our law enforcement partners will track them down and bring them to justice," Grey said.
Marc Willems, 42, who is accused of creating and running "The Farmer's Market," was taken into custody at his home in Lelystad, Netherlands, by Dutch authorities, U.S. Attorneys spokeswoman Gymeka Williams said.
Law enforcement officials in Bogota arrested 42-year-old Michael Evron, a U.S. citizen living in Argentina who allegedly oversaw technical and customer support for the online marketplace, as he was attempting to leave Colombia, Williams said.
Jonathan Colbeck, 51; Brian Colbeck, 47; Ryan Rawls, 31; Jonathan Dugan, 27; George Matzek, 20; and Charles Bigras, 37, were arrested at their respective homes in Iowa, Michigan, Georgia, New York, New Jersey and Florida.
All eight defendants were charged with federal drug trafficking and money laundering charges and prosecutors had filed extradition papers to return Willems and Evron back to the United States for trial, Williams said.
Each faces a maximum sentence of life in prison if convicted.
According to the 66-page indictment, "The Farmer's Market" allowed independent sources to advertise illegal drugs – including LSD, ecstasy, fentanyl, mescaline ketamine, DMT and high-end marijuana – for sale to the public.
The deals were allegedly handled through the online marketplace, which processed more than 5,200 orders for controlled substances valued at more than $1 million between January 2007 and October 2009, the indictment charges.
The law enforcement operation was called "Adam Bomb" because the original name of the marketplace was Adamflowers, according to the indictment.
According to its website, TOR offers free software and an open network that allows users to defend against "network surveillance that threatens personal freedom and privacy.""

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Federal trial to begin in Virginia for Somali man accused of being a pirate negotiator

McNabb Associates, P.C. (Federal Criminal Defense Lawyers)

Submitted at 11:45 AM April 17, 2012

Washington Post on April 17, 2012 released the following:
"By Associated Press,
NORFOLK, Va. — The federal trial of a Somali man accused of being a pirate negotiator will begin in Virginia.
Mohammad Saaili Shibin faces piracy, weapons and other charges for his role in the 2011 hijacking of an American yacht off the coast of Africa. All four passengers were shot and killed days later.
Prosecutors say Shibin never boarded the yacht, but acted as a land-based negotiator who researched victims online to determine how much of a ransom to seek.
Shibin's attorney contends Shibin can't be found guilty of piracy because he never boarded the yacht.
The yacht owners, Jean and Scott Adam of Marina del Rey, Calif., along with friends Bob Riggle and Phyllis Macay of Seattle, were the first U.S. citizens killed in pirate attacks that have plagued the Gulf of Aden and Indian Ocean."

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Former Executive of New York-Based Tax Liens Company Pleads Guilty to Bid Rigging at Municipal Tax Lien Auctions in New Jersey

(USDOJ: Justice News)

Submitted at 12:00 PM April 17, 2012

A former executive of a New York-based tax liens company who supervised the purchasing of municipal tax liens at auctions in New Jersey pleaded guilty today for his role in a conspiracy to rig bids for the sale of tax liens auctioned by municipalities throughout the state.

Loan Officer Pleads Guilty for Role in Mortgage Fraud Scheme That Resulted in More Than $6.5 Million in Losses

(USDOJ: Justice News)

Submitted at 4:13 PM April 17, 2012

Alejandro Curbelo, 32, aka Alex Curbelo, of Miami, pleaded guilty before U.S. District Judge Joan Lenard. Curbelo was indicted and arrested on Jan. 24, 2012.

Former Chief Engineer of South Pacific Tuna Vessel Pleads Guilty to Covering up Environmental Crimes

(USDOJ: Justice News)

Submitted at 3:25 PM April 17, 2012

A former chief engineer from the tuna fishing vessel San Nikunau pleaded guilty today in federal court to violating the Act to Prevent Pollution from Ships.