

The Department of Justice Office of the Inspector General (OIG) today released a report related to alleged irregularities by the Federal Bureau of Investigation (FBI) Laboratory (Lab). Based on a congressional request, the OIG analyzed how a Department Task Force in operation during 1996-2004 managed the identification, review, and follow-up of cases involving the use in criminal prosecutions of scientifically unsupportable analysis and overstated testimony by 13 FBI Lab examiners the Task Force determined had been criticized in an OIG report published in 1997.

The OIG found serious deficiencies in the Department's and the FBI's design, implementation, and overall management of the case review process. The deficiencies included the following:

- **The Department did not treat capital cases with sufficient urgency:** The Department and the FBI did not take sufficient steps to ensure that the capital cases were the Task Force's top priority and were treated with urgency. The Department did not notify state authorities that convictions of capital defendants could be affected by involvement of any of the 13 criticized examiners. Therefore, state authorities had no basis to consider delaying scheduled executions. One defendant was executed 4 days after the 1997 OIG report was published, but before his case was identified and reviewed by the Task Force. Subsequently, the prosecutor determined that the Lab analysis and testimony in that case were material to the defendant's conviction. An independent scientist who later reviewed the case found the FBI Lab analysis to be scientifically unsupportable and the testimony overstated and incorrect. Two other capital defendants were executed before their cases were identified for Task Force review.
- **The Department did not review all cases involving a problematic examiner.** The Task Force did not review all cases involving Michael Malone, an FBI Lab examiner whose misconduct was identified in the OIG's 1997 report, and known by the Task Force as early as 1999 to be consistently problematic. Malone's faulty analysis and scientifically unsupportable testimony contributed to the conviction of an innocent defendant who was exonerated 27 years later and the reversal of at least 5 other defendants' convictions.
- **The Department inappropriately eliminated multiple categories of cases from review.** Multiple categories of cases involving the 13 examiners were inappropriately eliminated from the Task Force's scope of review, including most cases that pre-dated 1985. While we recognize that resource management is an appropriate consideration in the Department's decision-making, when it excluded these categories of cases from the Task Force's review the Department fell short of the Task Force's articulated mission to ensure that defendants' rights were not jeopardized by the conduct of any of the 13 examiners.
- **The Department failed to ensure all disclosures were made.** The Department failed to ensure that prosecutors made appropriate and timely disclosures to affected defendants, particularly in cases where the prosecutor determined that Lab analysis or testimony was material to the conviction and the report of the independent scientists established that such evidence was unreliable. As a result, some defendants learned very late – or perhaps never – that their convictions may have been tainted.

- **The Department failed to adequately staff the Task Force that conducted the review.** The Department failed to staff the Task Force with sufficient personnel to implement a case review of the magnitude it undertook, and the FBI did not consistently maintain the project as a sufficiently high priority. In our view, 8 years was much too long for the Task Force and the FBI to complete the case reviews, causing delays with significant consequences for individual defendants' cases.
- **The Department was deficient in its communications with the prosecutors.** The Department failed to require prosecutors to notify the Task Force of their decisions regarding whether to disclose the reports of the independent scientists to defendants or their counsel. As a result, the Task Force was unable to determine whether notification to defendants in appropriate cases had been made. In addition, the Task Force's communications to prosecutors did not emphasize the importance of acting swiftly to disclose the reports, particularly in death penalty cases.

We note that almost all of the problems we identified with the Department's and the FBI's design and management of the FBI Lab case review occurred long ago and most of the employees responsible for the review have left the Department or the FBI.

During the course of this review, we provided the Department and the FBI with information about certain defendants – including all capital cases and all cases reviewed by independent scientists – so that the Department could take immediate action to ensure these defendants received appropriate notice of the possibility that their convictions were supported by unreliable evidence. The Department and the FBI have worked cooperatively with us to expedite potentially remedial action. In this report, the OIG made five recommendations to the Department and the FBI regarding additional review of cases and notification to defendants whose convictions may have been tainted by unreliable scientific analyses and testimony. The Department and FBI concurred with each of the recommendations.