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April 23, 2020

Dr. Jenifer Smith
Director
D.C. Department of Forensic Sciences
401 E Street, S.W.
Washington, D.C. 20024

Re: Independent Audit to Address Firearms and Disclosure Issues at DFS

Dear Dr. Smith:

We share the common objective of enhancing public safety by utilizing high-quality, timely, accurate, and reliable forensic science services from the Department of Forensic Sciences (DFS) to strengthen our prosecutions. As you are aware, the U.S. Attorney's Office for the District of Columbia (USAO), in conjunction with the Federal Bureau of Investigation and the D.C. Office of Inspector General (DC-OIG), recently closed its criminal investigation into allegations of misconduct at DFS, particularly with respect to DFS's Firearms Examination Unit (FEU), which arose after complaints by former DFS employees were brought to the USAO's attention. Although the USAO's investigation concluded with no findings of criminal wrongdoing, the investigation developed facts that raised questions about the operations of the FEU and DFS's past practices with respect to identifying, describing, and disclosing to our Offices impeachment information for DFS employees.

The USAO investigation focused on a firearms examination conducted by FEU Firearms Examiner Steven Chase and an apparent attempt to conceal information about Chase's conduct from the USAO. This event occurred shortly after FEU Firearms Examiner Daniel Barrett failed a proficiency examination, which led to the discovery of three errors in his casework that

Independent Audit to Address Firearms and Disclosure Issues at DFS

erroneously were verified by other FEU examiners. Through the USAO investigation, we learned that Chase verified Barrett's failed proficiency exam and that DFS never notified our Offices of that fact. In addition, to the best of our knowledge, although DFS gave Chase additional proficiency exams, DFS never undertook a review of his casework as it did for Barrett and the examiners who verified his casework errors.

We also have become aware of a potential casework error in United States v. Joseph Brown, 2016CF1014034, and United States v. Ron McLeoud, 2017CF1009869. In those cases, it is our understanding that Chase, Barrett, and two additional FEU firearms examiners concluded through toolmark comparisons that cartridge casings recovered from two homicide scenes were fired from the same firearm. During a reexamination of the evidence, four independent experts retained by the USAO reached the opposite conclusion—that the casings were not fired from the same firearm. As a result, the USAO disclosed the conflicting opinions to the defense and did not oppose severance of the cases shortly before trial.

More broadly, the USAO's investigation identified allegations regarding DFS's past practices with respect to impeachment information for its employees. We commend DFS for its recent effort to make additional disclosures to account for previous non-disclosures. In light of these earlier non-disclosures, however, USAO and OAG prosecutors and the court would benefit from an independent assessment that DFS is in full compliance with, and has a complete understanding of, its obligations to produce discoverable information to our Offices.

Until further notice, we have decided to retain private firearms examiners to reexamine evidence in currently scheduled trials to protect the viability of our prosecutions, which are being attacked by the defense bar because of perceived problems with DFS, especially in FEU cases. We write now to invite you to join in our combined effort to restore public confidence in the work of DFS, especially as to issues arising from the FEU. In that vein, we invite your cooperation in an outside audit process to evaluate the issues raised by the USAO's investigation and expeditiously report any recommended corrective action.

OAG and USAO's common goal is to assure each of DFS's client agencies and the courts that DFS employees can be relied upon and sponsored at trial without jeopardizing the integrity of a case, especially those in which the FEU is involved. Our auditors will share information with DC-OIG and any audit team designated by the D.C. government, as was done in the DFS DNA audit review. DC-OIG supports our proposed audit and has indicated that it will incorporate the auditors' findings into its administrative investigation of the issues raised by the USAO's investigation. It is our hope that we can work collaboratively to identify all relevant issues and develop a path forward.

To that end, we have secured the expertise of three leaders in the forensic science community to serve as auditors: Dr. Bruce Budowle, Director of the Center for Human Identification and Professor and Vice Chair in the Department of Microbiology, Immunology, and Genetics at the University of North Texas Health Science Center at Fort Worth, Texas; Todd Weller, Chair of the Organization of Scientific Area Committees' Firearm and Toolmark Subcommittee; and Jim Carroll, Assistant Director of the Los Angeles County Sheriff's Department's Crime Laboratory. Between them, our audit team has extensive experience both in leading and auditing forensic

Independent Audit to Address Firearms and Disclosure Issues at DFS

laboratories and in the field of firearms and toolmark examination. We have attached their *curriculum vitae* for your information.

Although we agree that a prompt, independent audit is required to restore confidence in DFS, in general, and the FEU, in particular, we are mindful of the current situation in which we find ourselves. It is our understanding that DFS's Public Health Laboratory Division is leading DFS's important efforts related to the COVID-19 pandemic. Our audit focuses primarily on the Forensic Science Laboratory Division. Nevertheless, we plan to structure our audit in a way that avoids interfering with DFS's important work during this crisis.

We have directed our audit team to begin by first reviewing relevant documents. Next, our team will interview former DFS employees who may have information relevant to the issues under review. Only after our audit team has completed those steps will they need access to current DFS employees and to DFS itself. We are hopeful that, by that time, the pandemic will have abated. In either case, however, we and our audit team will work cooperatively with you and your staff to ensure that there are no disruptions to DFS's COVID-19 operations.

At the conclusion of this process, we are confident that we will have the means to allow prosecutors to convince the courts that we are meeting our legal obligations to sponsor witnesses whose performance and conclusions are grounded in good science and that we are in compliance with our Constitutional and ethical disclosure obligations in these cases. Our past audit practice worked well in the DNA context and we believe it will work well here. We hope that you agree that anything less than complete transparency via independent auditors may leave doubt in the minds of jurors and judges as to whether these issues have been resolved objectively and with finality.

The United States Attorney's Office and the Office of the Attorney General look forward to working through this issue and resolving any outstanding concerns with DFS' work.

Sincerely,



Timothy J. Shea
United States Attorney
District of Columbia



Karl A. Racine
Attorney General
District of Columbia

Attachments

Cc: Kevin Donahue, Deputy Mayor for Public Safety and Justice
Daniel W. Lucas, D.C. Inspector General