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January 24, 2022

DFS Independent Project Executive Advisory Committee

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Re: DFS Defense Stakeholder Recommendations for Evidence Retesting

Dear Advisory Committee members:

PDS and FPD write to follow up on the next steps discussed at our December 22, 2021 meeting regarding the Mayor's plan to hire an independent project executive to oversee the District's mass retesting of latent fingerprint and ballistics evidence originally analyzed by the Department of Forensic Sciences.

In Mayoral Order 2021-146, the Mayor charged this Advisory Committee with two tasks:

1. Recommend[] a process for identifying an independent project executive to manage the implementation of the SNA report recommendations related to re-examining casework from reports issued by FEU and LFU.
2. [C]ollaboratively work[] with the independent project executive to create a process for conducting this work.¹

Consistent with the goals of equity, transparency, and scientific rigor shared by all criminal legal system stakeholders, PDS and FPD recommend that the Executive proceed with the selection of the independent project executive by focusing on the following criteria and qualifications:

Proven absence of conflict of interest. The independent project executive must not have been previously paid by any stakeholder agency or DFS, must not be a current or former employee of a stakeholder or DFS, and must not have any close personal relationships with leadership in any of these agencies. The independent project executive must not be in an industry or field where they compete for DOJ or DC government contracts. Given the scope of this project, there will doubtless be time and resource pressures and disagreements amongst stakeholders about testing priorities. It is critical, therefore, that the independent project executive be insulated from inappropriate influence and that the public trust that the process is transparent and decisions are made based on named criteria alone.

Demonstrated understanding of the critical role human factors and cognitive bias play in firearms/toolmarks and latent fingerprint analysis. Given the subjective nature of the fingerprint and firearms disciplines, the ongoing controversy regarding the scientific validity of these fields, and the well-documented problem of confirmation and other cognitive biases, it is crucial that the independent project executive coordinating such a large-scale retesting effort be uniquely qualified to implement and oversee rigorous procedures to minimize bias and human factors errors.

The independent project executive should have familiarity with the relevant scientific literature² and experience implementing recommendations from advisory bodies like the National Commission on Forensic Science's Human Factors Subcommittee.

¹ Mayoral Order 2021-146 at III.1.

² See, e.g., Dror and Scurich, (Mis)use of scientific measurement in forensic science, *Forensic Science International: Synergy* 2, 333- 338 (2020); Gardner, Kelley, Murrie & Blaisdell, Do evidence submission forms expose latent print examiners to task-irrelevant information? *Forensic Science International* (April 2019); Dror, I.E., Thompson, W.C., et al., Context management toolbox: A linear sequential unmasking (LSU) approach for minimizing cognitive bias in forensic decision making. *Journal of Forensic Sciences*, 60(4): 1111-1112 (2015); Dror, I. E. & Hampikian, G., Subjectivity and bias in forensic DNA mixture interpretation. *Science & Justice*, 51 (4), 204-208 (2015).

Audit leadership experience. The independent project executive should have previously managed a project of similar scale, including managing a process of evidence retesting with all of the logistical challenges this poses.

PDS and FPD further make the following recommendations regarding the structure of the review:

1. In addition to retesting evidence originally examined by DFS, the District should retest latent print examination and firearms comparison casework from MPD dating back to at least 1995.³
2. Prioritize retesting based on length of time of incarceration.
3. Ensure comprehensive documentation of all communications, bench notes, case file documentation, and verifications for each reexamination.
4. Implement “sequential unmasking,” where examiners analyze features of the evidence and document their analysis before conducting comparisons.
5. Make all results and accompanying case files immediately available to all stakeholders as well as the affected person.
6. Use independent, forensic science service providers for evidence reexamination, meaning that these providers are not housed within law enforcement agencies.
7. Review providers’ protocols in advance and ensure compliance with best practices. For latent print analysis, this includes the best practice recommendations for friction ridge examinations that have been proposed by the OSAC Friction Ridge Subcommittee.
8. For firearms examination, require that examination and verification be conducted by separate providers using different visualization tools.

³ Michael Mulderig, a firearms examiner at the center of the *McLeod* scandal who committed multiple false positive case work errors in that case, began working as an examiner at MPD in 1995. The 2020 FPC Report and 2021 SNA Report both make clear that many of the problematic practices and personnel in both FEU and LFU originated in the MPD CSID forensic units. *See, e.g., SNA Report, Appendix D* at 74 (“Several of the staff members who transitioned into the DFS from the DC MPD were “grandfathered” into their positions and did not undergo meaningful screening or selection process to determine the presence of desired attributes, values, and beliefs. SNA document review indicated that, during the establishment of the DFS laboratory in 2012, nine of the eleven LFU examiners assessed for skills did not meet the minimum requirements to demonstrate competency and were placed into duty, nonetheless. SNA SME [“Subject Matter Expert”] program assessments found that examiners in the FEU did not have the knowledge to correctly perform targeted comparisons of specimens known to have been fired in the same firearm as well as specimens known to have been fired in different firearms.”).

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9. For latent print analysis, require that examination and verification be conducted by separate providers and that at least one provider use a digital visualization tool.
10. Decline to hire any firearms provider that prohibits examiners from making eliminations unless there is class characteristic disagreement.

Please reach out to us at the contact information below should you have any questions about any of the requests or concerns outlined above. We look forward to meeting soon to discuss next steps.

Sincerely,

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