



**Statement of Karl A. Racine
Attorney General for the District of Columbia**

**Before Councilmember Charles Allen, Chairperson
Committee on the Judiciary and Public Safety**

**Public Oversight Roundtable
on
The Operations of the Department of Forensic Science**

**Thursday, April 29, 2021
12:00 p.m.**

Virtual Hearing via Zoom

Good afternoon. My name is Karl A. Racine. I am the Attorney General for the District of Columbia. Thank you, Chairman Allen and Councilmembers, for the invitation to speak with you regarding the Department of Forensic Sciences (DFS). Here with me is Elizabeth Wieser, Deputy Attorney General for Public Safety, who can assist with answering any specific questions you may have.

The recent developments regarding the handling of scientific evidence by DFS are significant and troubling. In sum, OAG received information indicating that the results of scientific testing conducted by the Firearm Examination Unit (FEU) at DFS were not reliable. We further received information that, instead of working with its law enforcement partners, including the Office of the Attorney General, to address and resolve those concerns, DFS management concealed and withheld important information about its operations, including exculpatory evidence in a homicide case. This undermined our confidence in the lab as a whole and in our ability to comply with our ethical and constitutional obligations. This was a very difficult place to arrive at, and one we tried hard to avoid. But I want to be clear about what is at stake here: the integrity of scientific evidence in the District's most serious criminal cases, faith in the validity of criminal convictions, and public safety in the District of Columbia. In my testimony today, I will walk through the information underlying these concerns and why we took the steps we did. The goal of my testimony, however, is to help chart a path forward.

First, let me explain how we got here. A little over a year ago, we learned that, in a homicide case being prosecuted by USAO, *United States v. Rondell McLeod*, DFS firearms examiners and independent examiners hired by USAO compared bullet casings from two different homicide scenes and reached conflicting results. The four DFS examiners who tested the casings determined they were fired by the same firearm. The independent examiners hired by USAO reported that the casings came from different firearms.

In February of last year, my office also received a report and letter sent to Inspector General Daniel Lucas from the USAO, which prompted an investigation by OIG, an investigation which is ongoing. The report included allegations that a firearms examiner had falsified another examiner's verification of his work, that examiners were not properly documenting their work, and that managers had downplayed and ignored this information.

As a result of the conflicting reports in the *McLeod* case and the USAO's report and referral to OIG, OAG and USAO decided to conduct an audit of DFS to determine whether we could continue to use the FEU lab, and, if we could not, to develop solutions so that we could begin using it again. We decided that, until the audit was concluded, we could not sponsor witnesses from the FEU in juvenile and adult prosecutions.

In April 2020, OAG and USAO sent a joint letter to DFS, informing Director Smith that we were retaining private firearms examiners to conduct examinations of firearms and ballistic evidence in scheduled trials. We also told DFS we would be conducting an independent audit of the FEU and invited DFS to participate in it. DFS refused. My office then retained private firearms examiners for cases set to proceed to trial while the audit was pending. This proved to be very costly. Thus far, my office has spent \$7,000 contracting independent examiners for two juvenile cases.

To conduct the audit, we hired three experts: Todd Weller, Chair of the Organization of Scientific Area Committees' Firearm and Toolmark Subcommittee; James Carroll, Assistant Director of the Los Angeles County Sheriff's Department's Crime Laboratory and certified ANAB assessor, and 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.

The outside audit, the ongoing OIG investigation, and court orders in the *McLeod* case uncovered information that is extremely concerning, to say the least. Our concerns can be divided into two buckets: the reliability of the scientific testing and OAG's ability to comply with our ethical and constitutional obligations.

First, the scientific component: The *McLeod* case involved multiple examiners who reached incorrect conclusions. By itself, that is extremely troubling. But our audit and the OIG investigation indicate the issues are much more widespread. There were an additional five cases in which independent examiners had reached conclusions that conflicted with the FEU's conclusions and, based on the information available to the auditors—remember, DFS would not let them into the lab—the outside examiners appeared to be correct. The auditors noted that the five cases suggested a pattern of interpretation that may be indicative of more serious issues with the work performed by the FEU.

Perhaps as concerning, however, the audit and investigation yielded information that DFS had conducted additional tests of the evidence in the *McLeod* case but concealed the tests and their results. In one set of tests, two DFS examiners determined the casings had not been fired by the same weapon—the same conclusion reached by the independent examiners. This information—exculpatory information in a homicide case—was not provided to USAO. USAO did not learn of this additional, secret, testing until a Superior Court judge ordered DFS to provide to USAO documents it had previously not disclosed. Perhaps most alarming, however, the documents indicated that the additional, undocumented testing was ordered by DFS management, and that DFS management made the decision to conceal the results of the exculpatory tests.

It was upon learning this information that we became concerned that, in addition to the Firearms Examination Unit, we may not be able to use any evidence or witnesses from any part of DFS. That DFS managers may have actively concealed exculpatory evidence in a homicide case, in an apparent attempt to paper over its own mistaken testing, raised alarms about the accuracy of all information coming out of the lab. This conduct, that a former DFS employee characterized as “answer shopping,” as well as the potential concealment of evidence, goes to the heart of what is wrong at the lab.

As this information was trickling into us, we were engaging with DFS and EOM in an effort to understand what was happening and to find solutions. But DFS refused to cooperate with the audit or collaborate on a path forward. Instead, it consistently downplayed the nature of the problem, characterizing the dispute as an attempt to influence the results of its testing and as a personality conflict between DFS and an Assistant United States Attorney. Leadership pointed repeatedly to its accreditation by ANAB—a national accrediting body—as evidence that there was no problem at the lab.

But OAG had no interest in undermining DFS. We were being guided by the facts we were learning. And we knew that the ANAB accreditation process would not have uncovered the type of misconduct we were seeing—it is not designed to.

On March 18, 2021, at OAG’s request, our auditors issued their final report. The auditors stated that they do not have confidence in the analytical results of testing conducted by DFS’s Firearms Examination Unit. The report recommended that the FEU immediately cease performing casework and that OAG not rely on results from the FEU. It also concluded that actions by DFS management had cast doubt on the reliability of the work product of the entire DFS lab. Soon after ANAB received the auditors’ report, it suspended DFS’s accreditation. In explaining why the accreditation was being suspended, ANAB said that it had “received credible evidence that [DFS] has deliberately concealed information from the ANAB assessment team, violated accreditation requirements, engaged in misrepresentations and fraudulent behavior, and engaged in conduct that brings ANAB into disrepute.”

We cannot ignore the information discovered by OIG and our auditors, and ANAB’s conclusion that it had been deceived in the accreditation process. But OAG’s goal is to regain confidence in the lab and to begin using it again. We want to be supportive of a fellow DC agency. We are here to collaborate on finding a solution.

A previous, similar matter involving DFS provides a model for a path forward. In the summer of 2014, concerns had been raised about DFS’s interpretation of DNA evidence in a particular case. This triggered a comprehensive review of cases in which DFS had done the same type of DNA testing. To conduct the review, USAO retained experts—including Dr. Bruce Budowle, one of the three auditors who conducted the recent audit—to conduct an independent audit. In that instance, unlike in this one, the Mayor’s Office permitted the independent auditors to conduct a two-day site-visit and to interview analysts. The experts determined that the issue was systemic and made recommendations for training and process improvements. The independent audit team shared its findings with ANAB. After ANAB issued its final report in April 2015, the Forensic Biology Unit was taken off of casework for ten months to receive training, regain competency and respond to the findings in the audit report. These efforts allowed stakeholders to regain confidence in the lab, and, since then, my office has relied on the work of DFS’s forensic biology unit in numerous cases.

Here we are seven years later, facing another lab failure. We had hoped DFS would join us in taking a similar approach this time around, but it has refused. We hope the lab will reconsider now.

The issue is urgent and more serious than ever, as the District is in the middle of a wave of gun violence and homicides. We use the lab in some of our most serious cases—my office currently has six open juvenile homicide cases that might require forensic testing. It is costly and time consuming to use another lab for forensic testing. Not only must the District bear the cost of outsourcing forensic testing but, if expert witness testimony is required, we will incur the cost of travel and expert witness fees. Because juvenile cases must be tried within 30 to 45 days if the youth is detained, outsourcing forensic work makes trial preparation more difficult. As courts open up and more trials move forward, this will become more problematic and expensive. Perhaps most importantly, though, we simply cannot risk convicting innocent people of crimes, while the actual perpetrator walks free. And the public must have confidence in the integrity of

criminal convictions. This goes to the heart of the criminal justice system and, indeed, our democracy.

Confidence in criminal convictions raises another aspect of this problem: OAG must now conduct a robust conviction review in cases where DFS examiners conducted scientific analysis. We are taking preliminary steps to evaluate the types of cases that will require review, the time period of review, and the process to ensure that juvenile respondents and adult criminal defendants get appropriate relief.

Notwithstanding where we are today, for years, our office has had a strong relationship with DFS. We take no pleasure in being in this situation and want it resolved as soon as practicable. To that end, I propose that our audit team be allowed to enter the lab and perform the same kind of review that the 2014 independent audit team conducted. This review should be of the entire lab, not just the FEU. These experts are best positioned to conduct this kind of independent, neutral review: they are already familiar with the issues (which are complex), the structure of the lab, and the key players involved. Once the audit is completed, the auditors can provide recommendations for steps that would allow DFS to obtain accreditation and re-establish credibility with all stakeholders. We also are open to solutions others will offer. But we must solve this problem now. Thank you for holding this roundtable and giving me an opportunity to express OAG's concerns and offer a path to reestablishing confidence in the lab. As always, we are ready to help.