

BulletPath.com

August 6, 2010

U.S. Senator Richard Shelby (R-Ala.), ranking member of the Commerce, Justice, Science, and Related Agencies Appropriations Subcommittee (CJS), sent a letter to FBI Director Robert Mueller requesting a timely response to his previous correspondence regarding a profit-driven initiative proposed to benefit for-profit DNA vendors.

To date, the April 13th letter has gone unanswered by the FBI Director. More alarmingly, since Senator Shelby's first letter was submitted to the Director, significant concerns have come to light. Specifically, FBI Lab employees have been inappropriately moonlighting while the FBI Lab has had a backlog of 225,000 offender samples and recently, while addressing a conference in London, the FBI Lab director made unfounded and disrespectful comments about state and local crime labs.

The full text of the letter is below.

August 6, 2010

Via Electronic Transmission

The Honorable Robert S. Mueller, III

Director

Federal Bureau of Investigation

935 Pennsylvania Avenue, N.W.

Washington, D.C. 20535

Dear Director Mueller,

On April 13, 2010, I wrote to express concern regarding the FBI Laboratory's March 22, 2010, decision to revisit procedures relating to the technical review of DNA data contained in the National DNA Index System (NDIS). In that letter, I also asked for a response to several questions regarding this issue, and that you do so in a timely manner. As of today, it has been four and a half months, and I have still received no response. Further, since my first letter was submitted, other troubling concerns have been brought to my attention regarding this matter, and I ask that these are added to the list of questions to which you have yet to respond.

In the April 15, 2010, Fiscal Year 2011 FBI budget hearing, you testified that the FBI had received numerous requests from law enforcement and victim groups to move forward with this decision. We have since discovered that some of the groups that solicited the FBI Lab on behalf of this effort have received substantial contributions from for-profit DNA vendor labs and have seats on their advisory boards, with one group even having the CEO of a DNA vendor as a board member. Many prominent victim and law enforcement groups were solicited by these for-profit labs but declined to write in support.

In an effort to create data to back up the FBI Lab's decision to eliminate the DNA technical review standards and presuming the results would be different than the outcome, state and local crime labs were surveyed for their number of offender samples under the false premise that the nation has thousands of offender DNA samples needing review. My staff requested this survey information and met great resistance by the FBI Lab director. After reviewing the data, it is clear that the true backlog of offender samples needing review for the Combined DNA Index System (CODIS) entry is 233,000 nationwide - with 225,000 of these samples attributable solely to the FBI Lab. The reality is that 96.5 percent of the 233,000 samples needing review are in the FBI's own laboratory.

It is my understanding that out of 225,000 backlogged offender samples, more than likely there exists un-reviewed samples of violent offenders, rapists, and other criminals that could be identified. For every minute these samples are not processed, the odds increase of a perpetrator committing another crime that could be prevented.

Therefore, I am sure you share my disappointment in learning that seven current FBI Lab employees have been moonlighting for the National Forensic Science Technology Center (NFSTC) as either quality assurance standards auditors or contractors to assist the NFSTC assessment program in the review of DNA quality assurance audit reports. They are being paid by an entity that has a derogatory DOJ Inspector General Report and a documented relationship with for-profit DNA vendors that have solicited the FBI to eliminate the technical reviews.

More alarmingly, the FBI Lab's DNA unit chief and another scientific staff member have been moonlighting with the NFSTC to review DNA audits of public labs before they are submitted to the FBI lab for approval. The NFSTC is a non-governmental entity, and FBI employees are independently contracting with it to assist in the same line of work as their professional FBI responsibilities. Other auditing groups are available and used by many public labs, but they do not have the benefit of having their reports pre-screened and then edited by the FBI Lab's DNA unit chief before they are "officially" submitted to the FBI Lab for approval. This gives the NFSTC an unfair advantage, and provides the FBI Laboratory with a perception of questionable behavior by its DNA employees. While the FBI may approve of this moonlighting by their employees, the appearance of impropriety is evident to those in the crime lab community.

If the FBI has a backlog of 225,000 offender samples, why are FBI Lab employees being allowed to moonlight elsewhere, much less for an entity that gains a marketing advantage from this unseemly relationship? Additionally, during the extended period I have awaited your response, the FBI Lab director traveled to London to attend the International Crime Science Conference, where he gave a presentation that undermined the work of the FBI's state and local crime laboratory partners.

BulletPath.com

His comments can be found in the July 22, 2010, edition of Nature News, in the article titled "Forensic Science Braces for Change:"

"We've (the FBI) tried to make minor changes to the quality assurance standards recently in the States, and there has been a vociferous reaction on the part of the community (state and local crime labs). They don't want to change. There is a perception that anything we (the FBI) do to transition that research might potentially risk our accreditation, and that's just nonsense."

While the FBI Lab director's lack of law enforcement experience might lead him to presume the FBI Lab's proposed technical review changes were minor, the changes could be devastating to victims, prosecutors, and law enforcement. DNA vendors are for-profit companies and have no federal restrictions on who they employ or in what profit-driven activities they engage. Whether taken out of context or not, these remarks were unfounded and this behavior in the international arena is unacceptable. Eliminating the DNA technical review is a disservice to the overall reputation of the FBI in the international community and disrespectful to state and local crime labs in our own country.

To summarize, the FBI Lab was about to move forward with a profit-driven initiative proposed to benefit for-profit DNA vendors; FBI Lab employees have been inappropriately moonlighting while the FBI Lab has had a backlog of 225,000 offender samples; the FBI Lab director has made questionable comments about state and local crime labs; and the response to my last letter has languished over the last four and a half months during which I have waited for a reply.

I also requested answers to subsequent questions regarding travel of FBI Laboratory employees. The response is almost 100 pages of an illegible, six-point type, document that is impossible to search. I request that this information be submitted in a legible and electronically searchable format.

Again, I ask that you expeditiously answer the concerns raised in my April 23, 2010, letter, as well as the concerns raised in this one.

Sincerely,

Richard Shelby