AMERICAN BAR ASSOCIATION

ADOPTED BY THE HOUSE OF DELEGATES

FEBRUARY 6, 2017

RESOLUTION

RESOLVED, That the American Bar Association urges the United States Department of Justice to continue its accuracy and quality assurance efforts in the area of microscopic hair analysis.

FURTHER RESOLVED, That the American Bar Association urges state, local and tribal prosecutors:

(i) to review in a timely manner cases in which they have received notice from the United States Department of Justice, or notice from their own jurisdiction, of the possibility that forensic examiners provided erroneous or potentially misleading statements or testimony concerning microscopic hair analysis;

(ii) to consider establishing a policy, in the interest of justice, of waiving any statute of limitations or procedural defense, in order to permit the resolution of post-conviction claims arising from errors that undercut the reliability of the conviction; and

(iii) to ask state and local forensic laboratories whether their examiners have provided erroneous or potentially misleading statements or testimony concerning microscopic hair analysis and, if such instances are identified, to take appropriate corrective action.

FURTHER RESOLVED, That the American Bar Association urges all defense counsel and criminal defense organizations to take appropriate action upon receiving notice or becoming aware of any such erroneous statements or testimony given in cases in which they represented a defendant at trial or on appeal. Appropriate action, consistent with ABA Criminal Justice Standards for the Defense Function, Standard 4-9.4, would include:

(i) to evaluate the information, investigate if necessary, and determine what potential remedies are available;
(ii) to advise and consult with the client; and

(iii) to determine what action if any to take, which might include, if prior counsel is unavailable, taking steps to see that new counsel is appointed.

FURTHER RESOLVED, That the American Bar Association urges the United States Department of Justice and appropriate state, local and tribal authorities to continue efforts to identify other erroneous or misleading forensic testimony and, if discovered, to take appropriate remedial steps similar to those recommended in this Resolution.
REPORT

Summary

Following a series of DNA exonerations in cases where expert testimony from Federal Bureau of Investigation (FBI) forensic examiners purporting to link, by microscopic comparison, hair taken from crime scenes to hair samples taken from particular suspects, the United States Department of Justice (DOJ) undertook a comprehensive review of cases, both state and federal, that had involved expert reports and testimony from FBI examiners on the subject of microscopic hair analysis. Recognizing the scope of the problem and the nature of the issue raised, DOJ and the FBI formed a partnership with the Innocence Project, the National Association of Criminal Defense Lawyers (NACDL) and private counsel, acting pro bono, to identify erroneous or potentially misleading reports and testimony in these cases and to notify state and local prosecutors, as well as defense counsel, of their findings. DOJ also agreed to provide modern DNA testing in cases that had involved flawed testimony and also agreed, in federal cases, to waive procedural defenses to post-conviction relief.

These measures commendably establish a policy of promoting conviction integrity, in partnership with the bar that is consonant with a broad range of ABA policy in the areas of criminal justice, legal ethics and forensic evidence.

The National Academy of Sciences Report

In 2005, Congress, “recognizing that significant improvements are needed in forensic science,” directed the National Academy of Sciences (NAS) to undertake a study that led to the publication, in 2009, of a wide-ranging report that, among other things, revealed flaws in the way expert testimony concerning the comparison of hairs under a microscope was being submitted in forensic reports and admitted in court.1

The 2009 NAS Report concluded that, even though “courts have explicitly stated that microscopic hair analysis is a technique generally accepted in the scientific community,”2 the technique is not supported by scientifically accepted statistics or uniform standards and that expert reporting terminology concerning the technique, therefore, is susceptible of significant “imprecision.”3 The NAS Report also noted that despite the finding of some courts concerning this technique’s general acceptance in the scientific community, “courts also have recognized that testimony linking microscopic hair analysis with particular defendants is highly unreliable.”4

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3 Id.
4 Id.
**Early Research On Hair Comparison Testimony**

In an important 2009 law review article, Brandon L. Garrett of the University of Virginia School of Law and Peter J. Neufeld, Co-Founder and Co-Director of the Innocence Project, explored the forensic science testimony of prosecution experts that was given in the trials of 137 persons who had been convicted of serious crimes and were later exonerated by post-conviction DNA testing.\(^5\) Professor Garrett and Mr. Neufeld identified two basic types of “invalid science testimony” as having occurred in these cases (the “misuse of empirical population data” and conclusions regarding the probative value of evidence “that were unsupported by empirical data”) and concluded that of the 65 trials that involved microscopic hair comparison analysis, 25 of these cases -- or 38% -- included invalid hair comparison testimony.\(^6\)

**Three Exonerations Focus Attention On Flaws In Hair Comparison Testimony**

Further bringing this issue onto the forefront of public concern, between 2009 and 2012, in three separate, widely publicized cases, Donald Gates, Kirk Odom and Santae Tribble, who had served lengthy prison sentences and who had been convicted in part on the basis of microscopic hair analysis that exceeded the limits of science, were exonerated.\(^7\)

**Collaborative Response Efforts Of The FBI, DOJ, The Innocence Project and NACDL**

Throughout 2012, as the result of these circumstances, DOJ and the FBI collaborated with the Innocence Project, NACDL and private attorneys acting pro bono to create protocols for a joint project that quickly was hailed as an “historic breakthrough” in law enforcement’s commitment to conviction integrity.\(^8\) DOJ first committed to identify and review cases where a microscopic hair examination conducted by the FBI was part of the evidence in a case that resulted in a conviction and promised to make FBI resources available to facilitate reliable forensic testing on any hair samples that might still be available.\(^9\) The review focused on cases worked prior to 2000, when mitochondrial DNA testing on hair became routine at the FBI.\(^10\) Then, on November 9, 2012, an agreement was reached among DOJ, the FBI, the Innocence Project and NACDL:


\(^6\) Id., at 47.


The scientific analysis of hair evidence permits a well-trained hair examiner to offer an opinion that a known individual can either be included or excluded as a possible source of a questioned hair collected at a crime scene. Microscopic hair analysis is limited, however, in that the size of the pool of people who could be included as a possible source of a specific hair is unknown. *An examiner report or testimony that applies probabilities to a particular inclusion of someone as a source of a hair of unknown origin cannot be scientifically supported.* This includes testimony that offers numbers or frequencies as explicit statements of probability, or opinions regarding frequency, likelihood, or rareness implicitly suggesting probability. Such testimony exceeds the limits of science and is therefore inappropriate.

Error Type 1: The examiner stated or implied that the evidentiary hair could be associated with a specific individual to the exclusion of all others. This type of testimony exceeds the limits of the science.

Error Type 2: The examiner assigned to the positive association a statistical weight or probability or provided a likelihood that the questioned hair originated from a particular source, or an opinion as to the likelihood or rareness of the positive association that could lead the jury to believe that valid statistical weight can be assigned to a microscopic hair association. This type of testimony exceeds the limits of the science.

Error Type 3: The examiner cites the number of cases or hair analyses worked in the lab and the number of samples from different individuals that could not be distinguished from one another as a predictive value to bolster the conclusion that a hair belongs to a specific individual. This type of testimony exceeds the limits of the science.  

These errors have turned out to be widespread. After the first phase of review, DOJ, the FBI, the Innocence Project and NACDL reported that over 96% of the cases reviewed had turned up erroneous reports or testimony concerning the significance of microscopic hair comparisons. Where this review identified potentially flawed report or testimony in a state case, DOJ did not conduct merits review but rather notified the prosecution and defense for further review. As of September 2016, DOJ had sent notice in over 1,200 cases. Many of these errors, unrecognized at the time, were found to have been used by federal and state prosecutors in cases that resulted in convictions, and the FBI thereupon notified a large number of defendants in 46 states and the District of Columbia.

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that their convictions involved flawed expert testimony, without regard to whether those errors were material to the conviction or not.\textsuperscript{13}

\textbf{Ongoing Debate Concerning Microscopic Hair Analysis As A Forensic Discipline And DOJ's Proposed Expert Testimony For Hair Examiners.}

As a result of this preliminary work on hair microscopy, there was sufficient interest in conducting a more comprehensive review of forensic disciplines that DOJ established, on April, 23, 2015 the National Commission on Forensic Science, in partnership with the National Institute of Standards and Technology.\textsuperscript{14} The Commission’s goal is to review and strengthen the reliability of various forensic disciplines, enhance quality control in forensic labs and recommend protocols for evidence collection, testing, analysis and reporting by forensic science laboratories and units, to the end (among other things) of developing “proposed guidance concerning the intersection of forensic science and the courtroom.”\textsuperscript{15} On March 22, 2016, the National Commission on Forensic Science recommended that the Attorney General direct all attorneys appearing on behalf of the Department of Justice “(a) to forego use of the terms ‘to a reasonable degree of scientific certainty’ or ‘to a reasonable degree of [forensic discipline] certainty’ unless directly required by judicial authority as a condition of admissibility for the witness’ opinion or conclusion, and (b) to assert the legal position that such terminology is not required and is indeed misleading.”\textsuperscript{16}

DOJ, in consultation with the NCFS, undertook an independent forensic science discipline review (FSDR) to determine whether “testimonial overstatement” exists in “disciplines that rely heavily on human interpretation and where the degree of certainty can be difficult to quantify.”\textsuperscript{17} In the course of that review, DOJ developed a draft methodology for retrospective review of testimony offered in various forensic disciplines, to ensure the consistency of expert forensic testimony with “scientific principles and just outcomes.”\textsuperscript{18} The draft methodology was presented to the NCFS, published for public comment, and scrutinized by a DOJ-hosted statistician roundtable. DOJ also posted a written response to

\begin{itemize}
\item \textsuperscript{13} Spencer S. Hsu, “After FBI admits overstating forensic hair matches, focus turns to cases,” The Washington Post, April 20, 2015, available at https://www.washingtonpost.com/local/crime/after-fbi-admits-overstating-forensic-hair-matches-focus-turns-to-cases/2015/04/20/a846aca8-e766-11e4-9a6a-e1ab95a06006_story.html
\item \textsuperscript{15} Id., ¶¶3, 4.
\item \textsuperscript{18} Department of Justice, \textit{Forensic Science Discipline Review: Draft Methodology,} at 3, available at https://www.justice.gov/ncfs/file/899731/download
\end{itemize}
public comments. Finally, the DOJ also developed sets of uniform language, spanning several forensic disciplines, for prospective use by DOJ forensic examiners when drafting reports and giving testimony. DOJ presented the proposed language to the NCFS and published it for public comment.¹⁹

Finally, the President's Council of Advisors on Science and Technology (PCAST) undertook a parallel review of some forensic disciplines, at the request of President Obama, to determine what additional steps the Administration could take to “help ensure the validity of forensic evidence used in the Nation's legal system.”²⁰ PCAST issued a report in September 2016 that identified two important needs: 1) clarity about the scientific standards for the validity and reliability of forensic methods, and 2) evaluation of specific forensic methods to determine whether they have been scientifically established to be valid and reliable.²¹

**State Court Issues**

As a result of DOJ’s initiative, there have been efforts to promote federal and state law enforcement cooperation in identifying cases in which erroneous hair comparison analysis may have played a part in convictions. On February 26, 2016, and again on June 10, 2016, FBI Director James B. Comey sent letters to all state Governors explaining that in the 1980s and 1990s FBI examiners commonly had provided erroneous expert testimony and seeking specific transcripts from prosecutors in cases where an FBI hair examiner had testified.²² Director Comey also advised the Governors that the FBI had previously offered introductory training on hair comparison to state and local labs, which could have introduced error into state and local lab work, and that the FBI has notified the labs that sent employees to this training; Director Comey encouraged the Governors to look into whether state and local lab examiners were staying within the bounds of science and, if they weren't, to take appropriate corrective action.²³ On April 21, 2013, the American Society of Crime Lab Directors recommended that all state and local crime labs consult with appropriate legal authorities to consider whether there may be past cases involving convictions in which it would be appropriate to evaluate the potential impact of any

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²¹ Id.


²³ Id.
erroneous testimony concerning hair analysis on the conviction.24

Some states have followed DOJ’s lead and undertaken their own review of cases in which state crime lab analysts conducted forensic analysis of hair samples.25 For example, the Texas Forensic Science Commission has created a microscopic hair comparison review panel that includes the state affiliates of IP and the NACDL, the Texas District & County Attorneys Association, and the Texas Criminal Justice Integrity Unit, an ad hoc committee of the Texas Court of Criminal Appeals.26 The approach undertaken in Texas has avoided unduly aggravating existing laboratory backlogs by providing some funding for review and adopting an initial sub-sampling approach.27 The largest District Attorney’s office in Massachusetts has established a partnership with the New England Innocence Project.28 Similarly, in Minnesota, the Bureau of Criminal Apprehension, which operates state forensic laboratories, is working with the state Innocence Project, the state public defender’s office and the state bar association to flag cases that may involve flawed hair comparison testimony.29

With respect to the decision whether to assert procedural defenses in particular cases however, DOJ’s lead has not commonly been followed. For example, in Commonwealth v. George Perrot, Hampden Superior Court No. 85-5415, a Massachusetts Superior Court judge granted a defendant a new trial in a case where procedural waiver was hotly contested.30 The judge in Perrot reasoned that a claim of error based on a theory of improper hair analysis testimony was not sufficiently developed at the time of Perrot’s 1992 trial or any prior post-conviction motion and allowed the new trial motion.31 The state has appealed.

The Rationale For This Resolution

28 The Massachusetts State Police is conducting a review of cases in which hair analysis testimony was given and Middlesex District Attorney Marian T. Ryan has partnered with the New England Innocence Project (“NEIP”), as part of a Post-Conviction DNA Testing Assistance Working Group, to facilitate NEIP’s consideration of cases identified by the state police review. See http://www.wcvb.com/news/5-investigates-review-of-old-forensic-hair-cases-begins/35712380.
29 Correspondence with Kelly Mitchell, Executive Director, Robina Institute of Criminal Law and Criminal Justice (Aug. 18, 2016).
The Hair Microscopy Review Project “constitutes a commendable recognition by the FBI and DOJ that there is an affirmative duty to correct when events establish that the evidentiary value of a scientific opinion has exceeded the limits of science.”\textsuperscript{32} But it is only the first step in identifying and remedying tainted verdicts. The necessary next steps are urged by this resolution.

The Supreme Court, in recent years, has twice cited the 2009 Garrett and Neufeld study of vacated convictions, which found that 60\% of those convictions rested in part upon “invalid forensic testimony.”\textsuperscript{33} Although such testimony may relate to a broad range of forensic disciplines,\textsuperscript{34} microscopic hair analysis stands out because the United States Department of Justice (a) has publicly acknowledged that erroneous testimony regarding hair microscopy was given by FBI examiners in well over one thousand cases and (b) has publicly committed to taking affirmative action to help rectify the errors.

This resolution is germane to the important, ongoing conversation in this country concerning public trust in our legal system. It is also an issue on which it is particularly appropriate for the ABA to speak, because of its national scope and the importance of conviction integrity to the legitimacy of our legal system.

DOJ’s approach to this problem provides an excellent example of a prosecutor’s proper response to new information concerning settled convictions, as is contemplated in the recently adopted Prosecution Function Standard 3-8.3.\textsuperscript{35} Beyond this, DOJ’s willingness to partner with the bar to promote conviction integrity is an emerging “best practice” recognized by both defense and prosecution commentators; it is a collaborative approach that one prosecutor has aptly viewed as creating a “more meaningful” process in the public righting of old wrongs.\textsuperscript{36}

For defense counsel presently or formerly involved in these cases, this policy -- highlighting the duty to act -- is both consistent with recently adopted ABA Defense Function Standards 4.1.3(f) and 4.9.4,\textsuperscript{37} and is also consistent with ABA policy

\textsuperscript{32} Reimer, \textit{The Hair Microscopy Review Project: An Historic Breakthrough for Law Enforcement and a Daunting Challenge for the Defense Bar}, \textit{Champion} (July 2013) at 16.


\textsuperscript{34} See, e.g., Paul C. Giannelli, \textit{Bite Mark Testimony Under Attack}, Criminal Justice, pp.40-42 (Summer 2016) (describing several appellate opinions criticizing expert testimony regarding bite-mark analysis as inaccurate).

\textsuperscript{35} Prosecution Function Standard 3-8.3 (adopted February 9, 2015) (it is the proper function of a prosecutor to “develop policies and procedures to address such information [\textit{i.e., such as gives rise to a risk of wrongful conviction}] and take actions that are consistent with the applicable law, rules, and the duty to pursue justice.”)

\textsuperscript{36} See, e.g., Inger Chandler, \textit{Conviction Integrity Review Units: Owning the Past, Changing the Future}, \textit{Criminal Justice}, at 14-16 (Summer 2016).

\textsuperscript{37} ABA Defense Function Standards 4.1.3(f) and 4.9.4 (adopted February 9, 2015) (concerning the continuing duty to act, even post-representation, where there is newly discovered evidence of wrongful conviction).
highlighting the prosecutor’s duty to act, such as ABA Model Rules of Professional Conduct 3(g) and (h).\textsuperscript{38}

Additionally, to the extent that it touches upon ABA policy with respect to expert testimony in the field of forensic evidence, this resolution is consistent with our blackletter DNA Evidence Standard 16-6.1,\textsuperscript{39} as well as DNA Evidence Standard 16-5.3.\textsuperscript{40} This resolution is also consistent with DNA Evidence Standard 16-3.3 and 2012 ABA Resolution 101B, which concern laboratory reports, as well as 2012 Resolution 101C, which concerns the proper presentation of expert forensic testimony.\textsuperscript{41} This resolution is furthermore consistent with ABA policy promoting liberal access to forensic re-testing.\textsuperscript{42} It is also consistent, more broadly, with long standing ABA policy concerning the need to prevent erroneous convictions.\textsuperscript{43}

This resolution builds upon, and is entirely consistent with, current ABA policy. It moreover provides concrete examples of proactive, collaborative conviction-integrity efforts by prosecutors and defenders in the context of an evolving understanding of emerging studies on forensic techniques. These efforts represent an illustrative model of the policies of Prosecution Function Standard 3-8.3 and Defense Function Standard 4-9.4 in action.

It is appropriate to commend the United States Department of Justice and appropriate also to call upon all state, local and tribal prosecution offices to join in DOJ’s proactive approach to this issue. This includes urging state, local and tribal prosecution offices to consider following DOJ’s lead in addressing claims of erroneous conviction like this on the merits, as opposed to raising defenses such as waiver, statutes of limitations or other procedural default. It is also appropriate to call upon defense counsel who have represented defendants in such cases to take action, even if the representation has ended, in the interest of justice. Additionally, there is a particular urgency in the need to carry this message to our state and local bar organizations because most of the prosecutions in which erroneous testimony or statements concerning microscopic hair analysis were provided are state court cases.

\textsuperscript{38} ABA Model Rules of Professional Conduct 3(g), (h) (as amended February, 2008) (prosecutor’s duty to disclose evidence creating a likelihood that a convicted defendant did not commit an offense of which the defendant was convicted and to investigate).

\textsuperscript{39} ABA Standards for Criminal Justice, DNA Evidence, Standard 16-6.1, approved August, 2006 (post-conviction testing should be available “if there is credible evidence that prior test results or interpretations were unreliable”).

\textsuperscript{40} ABA Standards for Criminal Justice, DNA Evidence, Standard 16-5.3, approved August, 2006 (“Expert testimony should be presented to the trier of fact in a manner that accurately and fairly conveys the significance of the expert’s conclusions.”).

\textsuperscript{41} ABA 2012 Winter Meeting Resolution 101C, adopted February 6, 2012 (lawyers and judges should cause experts to present their testimony in a manner that accurately and fairly conveys the significance of their conclusions, including any relevant limitations of the methodology used).

\textsuperscript{42} ABA 2010 Annual Meeting Resolution 100I, adopted August 9-10, 2010 (concerning the need to make resources available to assure that an accused can obtain the testing or re-testing of evidence, when feasible, by qualified experts and obtain the expert assistance necessary to assure a fair trial or sentencing).

\textsuperscript{43} ABA 2005 Annual Meeting Resolution 115A, adopted August 8-9, 2005 (concerning the need for government to identify and eliminate causes of erroneous convictions).
Respectfully submitted,

Matthew Redle
Chair, Criminal Justice Section
February 2017
1. **Summary of Resolution(s).** This resolution urges the United States Department of Justice continue its microscopic hair review efforts. This review has already identified many cases in which federal and state prosecutors utilized expert testimony of forensic examiners, regarding microscopic hair comparisons that exceeded the limits of science. The resolution also urges DOJ to continue to implement an array of remedial protocols intended to address the risks of erroneous convictions thereby created. This resolution also calls upon state prosecutors to commit to a timely review of all cases in which such erroneous expert testimony was used and to strongly consider a policy, in litigating motions for new trial premised upon such errors, of disavowing available defenses based upon procedural default or waiver, in order to facilitate the resolution of motions seeking a new trial that are based upon such errors on the merits. This resolution also calls upon all defense counsel who have received notice that such erroneous statements or testimony may have been given in cases in which they represented a defendant at trial or on appeal to take action, as prescribed by ABA Defense Standard 4-9.4, to evaluate the information, investigate if necessary and determine what potential remedies are available, to advise and consult with the client, and to determine what action if any to take. Finally, the resolution urges authorities in all jurisdictions—including prosecutors, state forensic entities, and bar associations—to continue efforts to identify other erroneous or misleading forensic reports or testimony and, if discovered, to take appropriate remedial steps similar to those recommended in this Resolution.

2. **Approval by Submitting Entity.** This resolution was approved by the Criminal Justice Council at the fall meeting in Washington, D.C., November 2016.

3. **Has this or a similar resolution been submitted to the House or Board previously?**
   No.

4. **What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?** ABA Model Rules of Professional Conduct 3(g) and (h), concerning the prosecutors’ duty to disclose new evidence creating a likelihood of a wrongful conviction and to investigate, is relevant. Prosecution Function Standard 3-8.3 (adopted February 9, 2015), concerning the prosecutors’ duty to develop policies and procedures to address such information and take actions that are consistent with the applicable law, rules, and the duty to pursue justice, is relevant. ABA Defense Function Standard 4.1.3(f) and Standard 4.9.4 (adopted February 9, 2015), concerning defense counsel’s continuing duty to act based on newly discovered evidence of wrongful conviction, is also relevant.
5. If this is a late report, what urgency exists which requires action at this meeting of the House? N/A

6. **Status of Legislation.** (If applicable) N/A

7. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.** If adopted, this policy will be promoted in local, state, and federal jurisdictions.

8. **Cost to the Association.** (Both direct and indirect costs) None.

9. **Disclosure of Interest.** (If applicable) None.

10. **Referrals.** Concurrent with the filing of this resolution and Report with the House of Delegates, the Criminal Justice Section is sending the resolution and report to the following entities and/or interested groups:

    Center for Human Rights  
    Civil Rights and Social Justice Section  
    Commission on Disability Rights  
    Commission on Homelessness and Poverty  
    Commission on Hispanic Legal Rights & Responsibilities  
    Commission on Immigration  
    Commission on Racial & Ethnic Diversity in the Profession  
    Commission on the Federal Judiciary  
    Government and Public Sector Lawyers  
    Health Law Section  
    International Law Section  
    Judicial Division  
    Law Practice Division  
    Litigation Section  
    Office of Diversity & Inclusion  
    Science & Technology Law Section  
    Solo, Small Firm and Government Practice Division  
    Standing Committee on Legal Aid & Indigent Defense  
    Young Lawyer’s Division  
    Youth at Risk Commission
11. **Contact Name and Address Information.** (Prior to the meeting. Please include name, address, telephone number and e-mail address)

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12. **Contact Name and Address Information.** (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

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EXECUTIVE SUMMARY

1. **Summary of the Resolution**

   This resolution recognizes the United States Department of Justice for acknowledging the many cases in which federal and state prosecutors utilized expert testimony of forensic examiners, testifying on microscopic hair comparisons, that exceeded the limits of science and for establishing an array of remedial protocols intended to address the risks of erroneous convictions thereby created.

   This resolution also calls upon state prosecutors to commit to a timely review of all cases in which such erroneous expert testimony was used and to strongly consider a policy, in litigating motions for new trial premised upon such errors, of disavowing available defenses based upon procedural default or waiver, in order to facilitate the resolution of motions seeking a new trial that are based upon such errors on the merits.

   This resolution also calls upon all defense counsel who have received notice that such erroneous statements or testimony may have been given in cases in which they represented a defendant at trial or on appeal to take action, as prescribed by ABA Defense Standard 4-9.4, to evaluate the information, investigate if necessary and determine what potential remedies are available, to advise and consult with the client, and to determine what action if any to take.

2. **Summary of the Issue that the Resolution Addresses**

   Expert testimony, based on the microscopic comparison of hair samples, that purported to link evidentiary hair to hair taken from particular suspects was formerly widely accepted but is now recognized as highly unreliable. This resolution commends DOJ’s proactive response to this particular circumstance. DOJ’s collaboration with NACDL and the Innocence Project illustrates a commendable response to a problem that can exist when advances in research on forensic scientific evidence suggest that significant errors may have occurred in older cases. This resolution urges action by prosecutors and defense counsel to address, in particular cases, the risk of wrongful conviction that this widespread problem has generated.

3. **Please Explain How the Proposed Policy Position Will Address the Issue**

   This resolution urges action by prosecutors and defense counsel to address, in particular cases, the risk of wrongful conviction that now exists in many old cases in which erroneous and misleading expert testimony on microscopic hair comparisons was used to obtain convictions.
4. **Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified.**

During presentation to the Criminal Justice Section Council, and later during circulation to other ABA entities, several people asked whether the resolution should be generalized to relate to a broad range of forensic disciplines. We considered, but ultimately did not adopt, that approach for three reasons:

1) Significant differences of opinion exist among experts and major institutions regarding the extent of individual types of forensic pattern analysis; even within the Obama Administration there are at least three distinct positions that have been staked out: DOJ, National Commission on Forensic Science (DOJ-NIST collaboration), Presidential Council of Advisors on Science & Technology.

2) Although the DOJ has undertaken broad efforts to define best practices for forensic analysis and testimony, it has undertaken a methodical, collaborative effort to identify flawed testimony and notify prosecutors and defense counsel only as to hair microscopy.

3) To the extent that similar consensus emerges regarding other disciplines, such as bitemark analysis, we believe it is covered by the final paragraph of the resolution which was added during debate by the CJS Council for that purpose.