

**Written Statement of
Dan S. Alcorn**

on behalf of the

**NATIONAL ASSOCIATION OF
CRIMINAL DEFENSE LAWYERS**

**before the
Judiciary Committee, United States House of Representatives;
Subcommittee on Crime**

**Re: Oversight Hearings into the
Forensic Laboratory of the Federal Bureau of Investigation**

May 13, 1997

**Mr. Chairman and Other Distinguished Members of the
United States House Judiciary Subcommittee on Crime:**

Thank you for affording me this opportunity to speak on behalf of my client, the National Association of Criminal Defense Lawyers (NACDL), a non-profit, non-partisan, professional bar association with 9,000 direct members, and 78 state and local affiliates with another 25,000 members, including private criminal defense lawyers, public defenders, judges and law professors committed to preserving fairness within America's criminal justice system.

We commend you, Mr. Chairman, for convening these important oversight hearings into the recent revelations by the report of the Department of Justice (DOJ) Inspector General (IG) into the liberty-threatening misconduct and mishaps of the forensic laboratory of the Federal Bureau of Investigation (FBI). *The FBI Laboratory: An Investigation into Laboratory Practices and Alleged Misconduct in Explosives-Related and Other Cases* (DOJ April 1997) ("*Lab Report*"). We speak from a *non-governmental* perspective about the importance of restoring integrity to, and citizen confidence in the FBI lab.

I. Introduction -- Need for Continuation and Expansion of Subcommittee's Oversight

Whether you like him or not, whether you believe everything he says or not, one thing is undeniable: were it not for the courage and determination of a "good cop," FBI Supervisory Special Agent Frederic Whitehurst, Ph.D., the public never would have been apprised of ongoing, systemic wrongdoing in the FBI lab. But for his perseverance, no DOJ Inspector General would ever have been assigned, and no investigation and no report would have been undertaken. The report documents an absence of integrity within the lab -- an integrity upon

which many American lives depend.¹

Keep in mind, the IG's inquiry, by his own admission, was a very limited one. *In fact, only 3 lab units out of 23 were investigated.* His report raises this obvious question: if so much is wrong with the few units dealing with primarily high-profile cases, how much more is awry with the rest of the lab?

Also keep in mind, the American public still does not even have the underlying notes, interviews, and original source material from the IG's very limited investigation. What patterns of prejudgment, lack of scientific method, and outright bias might these show? American citizens have a right to know.

It is the American people, and the media on behalf of the public, who need to have access to *all* of this information about the lab, and not just the undoubtedly sanitized, thumbnail sketch that is found in the IG's nonetheless disturbing report that *was* released. The public has a right to know this information. If the IG's report tells us anything, it teaches that we simply can't let the government police itself, nor keep this information to itself. At the core, what is involved here is lab misconduct that has undoubtedly resulted in some number of innocent Americans being unjustly convicted and losing their lives or liberty. And, conversely, some number of guilty people are being left to roam America's streets as a result of the lab's faulty analyses pointing the government's finger of guilt at the *wrong* people.²

¹ Dr. Whitehurst has been calling attention to shoddy FBI lab practices since 1986. Three previous internal "investigations" of his allegations, conducted by FBI officials, concluded there were no problems.

² One need only look at the U.S. Department of Justice, OJP-NIJ's own work, the Research Report of June 1996, "Convicted by Juries, Exonerated by Science: Case Studies in the

There is an overriding public interest in this Subcommittee undertaking not just this worthy hearing but indeed, continued and expanded oversight hearings into *all* of the units of the FBI lab. The FBI lab has long been regarded as the preeminent lab within government investigatory agencies. If this much has been voluntarily disclosed by the DOJ as being wrong with but 3 of 23 units in the once-highly-regarded FBI lab, not only does the public need to know what may be wrong with the other FBI units, but also what corrective measures are suggested within the labs of other federal law enforcement agencies -- most particularly, the Drug Enforcement Agency (DEA), Bureau of Customs, the Immigration and Naturalization Service (INS), and the Bureau of Alcohol, Tobacco and Firearms (BATF).

Mr. Chairman and other distinguished members of the Subcommittee, we urge you to not only persist in these oversight hearings into the other areas of the FBI lab left unexamined by the IG, but also, to expand your oversight hearings into the similar work affecting so many American lives and citizen liberties conducted each and every day by the many other federal enforcement agencies.

My client, the National Association of Criminal Defense Lawyers, is interested in America having a rational and fair criminal justice policy. Our goal in this instance is to help make the FBI lab (and the labs of all other federal investigatory agencies) a reliable center for forensic excellence. We want to help restore integrity to the FBI lab. That is our goal. That is why we filed a lawsuit in February to overcome the institutional reluctance on the part of the

Use of DNA Evidence to Establish Innocence After Trial," for proof of the importance of scientific analysis in criminal cases [hereinafter referenced as *Convicted by Juries, Exonerated by Science*]. We have submitted copies of this revealing government report to Subcommittee staff, and ask that it be made a part of the record of this hearing.

Department of Justice to release to the American people the IG report.³

We are more than willing to participate, because justice is not served by a "conviction at any cost" mentality among government actors -- least of all, among the forensic scientists who are supposed to give us "just the facts," *just science*, and not predisposition, bias, or embellishment.⁴ We are more than willing to help because we are interested in a rational criminal justice system for America -- one Americans deserve and the one envisioned by the Founders of our nation. A rational and humane criminal justice policy promotes fairness for all; due process for even the least among us who may be accused of wrongdoing; compassion for witnesses and victims of crime; and just punishment for the guilty. Such a policy respects cherished civil rights and liberties so fundamental to our democracy.

Whatever the disagreements among policymakers about the precise contours of a rational and humane criminal justice policy, this much is axiomatic: There can be no rational criminal

³ *NACDL, et al v. U.S. Department of Justice*, D.D.C., Civil No. 97-372 (GK), filed 2/25/97, amended 3/3/97. While successful in disgoring for the public from the DOJ the Inspector General's conclusory report, we have yet to get for the American people the further information it needs -- the underlying notes and original source materials used by the Inspector General in reaching his report conclusions.

⁴ *See e.g.*, Paul Craig Roberts, "Whatever Happened to Justice?," *Washington Times*, May 7, 1997, at A13, wherein he observes: "Getting convictions has become more important than getting the right person. A recent 517-page report by the inspector general of the Justice Department shows what has happened. * * * [For instance,] [t]he report concludes that the FBI's explosives expert and key witness in the World Trade Center trial 'worked backward.' Instead of objectively examining the evidence, the agent 'first determined the result he wanted and then tailored his testimony to reach that result.' The inspector general is 'deeply troubled that his [the agent's] testimony on direct examination may have misled the court.'" In the Oklahoma City case, the report concludes that the FBI 'repeatedly reached conclusions that incriminated the defendants without a scientific basis.' When the FBI ceases to give suspects the benefit of the doubt and, instead, tailors evidence to obtain their conviction, justice is dead." [hereinafter Roberts (quoting IG Bromwich)]

justice policy when the scientific and forensic “facts” upon which the government’s criminal cases are based are themselves irrationally derived, *or even contrived*. Science must be neutral and detached. Bad science by the FBI lab strikes at the very heart of our society’s highest aspirations for fairness within America’s criminal justice system.

We believe that if the FBI lab is again to become the center for excellence in forensic science that it once had the reputation for being, vigilant, external oversight is necessary. Forensic science is neither pro-prosecution nor pro-defense. It is a search for *facts* -- facts which will help a judge or jury determine the *truth*. When institutional pressures or bias drive forensic examiners to produce only reports which corroborate the prosecution’s “theory of the case,” the whole of America’s criminal justice process is undermined.

II. What the Inspector General’s Report Says and Does Not Say

For too long, the FBI laboratory has operated beyond oversight and beyond any meaningful external review and accountability. The recent IG report just scratches the surface, yet demonstrably and saliently points up the need for real reform. Although the IG was quite limited in the areas he was allowed to investigate and he rejected some of Dr. Whitehurst’s assertions, he still calls his findings “deeply troubl[ing].”⁵

As United States District Court Judge Gladys Kessler has found, misconduct and mishaps in the FBI lab “call into question the scientific integrity of the FBI crime lab and the thousands of

⁵ See e.g., Roberts, *id.*

prosecutions that rely on evidence it has processed.”⁶ Out of these thousands of cases, some unknown number of defendants have been victimized by unfair trials tainted by shoddy lab work and exaggerated and biased testimony by FBI lab examiners. There is a substantial probability that some of the lab’s subjects are actually innocent of the crimes for which they were convicted. Moreover, innocent people behind bars or on death row means that there are guilty people left unapprehended and walking free among us. This injustice cannot be tolerated.

Today, public confidence in the lab is at an ebb. Newspapers and broadcast media of all political stripes across the country have editorialized on the need to impose uncompromising, external oversight over the lab.

For example, *The New York Times* has called the Inspector General’s report a “damning indictment” which “essentially vindicates long-ignored complaints by Frederic Whitehurst.”⁷ *The Washington Post* says the lab’s myriad troubles “are the kinds of problems that won’t be corrected by an administrative reorganization. They go to the culture of the institution, the . . . bias of the examiners toward the prosecution and the disinclination of supervisors to hold personnel to a high, truly scientific standard.”⁸ *The Arizona Republic* suggests: “Perhaps the ultimate solution is the transfer of the laboratory to an independent agency, one that can objectively administer the science and even serve as an educational base for state police crime

⁶ *Whitehurst v. Federal Bureau of Investigation*, No. 96-572 (GK), slip op. (D.D.C. Feb. 4, 1997) (Kessler, J.), at 2.

⁷ “The Unscientific F.B.I. Lab” (editorial), *New York Times*, April 17, 1997, at A34.

⁸ “Lab Report” (editorial), *Washington Post*, April 19, 1997, at A20.

labs.”⁹ And, calling the lab’s bias toward the prosecution “outrageous,” *USA Today* condemned the lab, noting that the Inspector General’s praise for FBI’s meager efforts to improve the laboratory is “like praising the Good Humor man for selling ice cream.” The paper went on to remind its readers that “[t]he job of the lab isn’t to pursue convictions but to find the truth. And it fell down on that job.”¹⁰

The Inspector General stresses that he only looked at 3 out of the lab’s 23 lab units. Yet the types of problems he found suggest a rampant “culture” of substandard work and deliberate deception, where poorly-trained FBI agents would testify wrapped in a mantle of near-infallibility. Among the IG’s most troubling findings are the following types of folly and wrongdoing.¹¹

- **Scientifically flawed and inaccurate testimony.**
- Testimony beyond the examiner’s expertise.
- **Outright fabrication of test results.**
- Tampering with lab reports.
- **Inadequate or nonexistent record-keeping and test result documentation.**
- Unqualified examiners, with little training and little or no formal education in their assigned areas of expertise.
- **Failure by management to resolve serious and credible allegations of**

⁹ “FBI Needs Repair:” (editorial), *Arizona Republic*, April 18, 1997.

¹⁰ “Poor Lab Work Gives Both FBI, Justice a Black Eye” (editorial), *USA Today*, April 17, 1997, at A14.

¹¹ *Lab Report*, at 2-3.

incompetence.

Already we know that FBI Lab incompetence and bias have forced prosecutors to forgo use of what could have been important evidence in a number of high-profile cases. For example, Robert Cleary, the lead prosecutor in *United States v. Kaczynski*, the so-called "Unabomb case," has been forced to repudiate work done by the lab in that case and has asked for new explosive experts from outside the FBI to re-examine the evidence.¹² What has been identified as incredibly shoddy work performed by FBI examiner David R. Williams and his supervisor J. Thomas Thurman has forced prosecutors in the Oklahoma City cases to do the same.¹³

More disturbing still, the IG's investigation indicates that misconduct and incompetent testimony occurs not just in *high-profile* cases, where there is bound to be the most pressure from prosecutors. The lab's culture of deception is apparently so pervasive that even the "little cases" are corrupted, involving the far greater number of ordinary Americans. For example, FBI examiner Roger Martz, of the FBI's Chemistry and Toxicology Unit, testified under oath in *State v. Trepal* that Coca Cola found in the murder victim's home had been laced with the rat poison thallium nitrate, and that a quantity of thallium nitrate had been found in defendant George Trepal's garage. But the IG's investigation proved that Martz did not perform the tests needed to conclude the soft drink contained thallium nitrate.¹⁴ Such misconduct in a *state prosecution*,

¹² See Steven A. Caps, "FBI lab probe hits UNABOM case," *Washington Times*, April 17, 1997, at A3.

¹³ See Jo Thomas, "A Tarnished Case: Flaws at F.B.I. Lab Offer Latest Setback to Prosecutors in Oklahoma City Bombing," *New York Times*, April 17, 1997, at A1.

¹⁴ See *FBI Lab Report* at 392-399, 446. See also Mireya Navarro, "Doubts About F.B.I. Lab Raise Hopes for Convict, On Death Row, but Seeking New Trial," *New York Times*, April

where there is no arguable federal interest, raises a number of red flags indicating the lab needs vigilant congressional or other significant and neutral oversight, as well as *overhauling* from top to bottom.

Following are more specific *known examples* documented by the IG of the systematic damage wreaked by the lab over the years --

Carelessness in Scientific Investigation

➤ In 1992 and 1995, Materials Analysis Unit Chief James Corby was directed to review all cases in which Terry Rudolph, Frederic Whitehurst's predecessor, worked as an examiner. The first review covered approximately 200 cases and found significant flaws, such as Rudolph's failing to follow his own explosives residue protocol, to form conclusions from valid scientific bases, and to conduct necessary tests. In 1995, Corby found that nearly one-quarter of Rudolph's files did not meet the administrative or technical guidelines *at the time the cases were worked*. It took FBI management nearly six years to perform the type of comprehensive review that should have occurred in 1989 after Rudolph's performance in the *Psinakis* case was sharply criticized by the very same Assistant United States Attorney who handled that case.

➤ Chemistry-Toxicology Unit Chief Roger Martz failed to conduct certain tests that were appropriate under the circumstances of the *Florida v. George Trepal* case, in which the defendant was accused of adding the poison thallium nitrate to bottles of Coca Cola.

22, 1997, at A10.

Martz' negligent conduct resulted in the death penalty for Trepal.

Inaccurate/Incomplete Testimony

➤ In the Oklahoma City bombing case, Explosives Unit Examiner David Williams claimed the velocity of detonation indicated that the main explosive charge was ammonium nitrate fuel oil (ANFO). His categorical identification of the main charge as ANFO was inappropriately based on the evidence available to him. He did not draw a valid scientific conclusion, but rather, *speculated* from the fact that one of the defendants purchased ANFO components. His estimate of the weight of the main charge was too specific, and again was based in part on the improper, non-scientific ground of what a defendant had allegedly purchased. According to the IG report, "In other respects as well, [Williams'] work was flawed and lacked a scientific foundation. The errors he made were all *tilted* in such a way as to incriminate defendants. We conclude that Williams failed to present an objective, unbiased, and competent report." (emphasis added)

➤ In the *Salameh* World Trade Center bombing case, Explosives Unit examiner David Williams opined 1) that the defendants had the capacity to manufacture approximately 1200 pounds of urea nitrate, an explosive rarely used for criminal purposes, and 2) that the main explosive used in the bombing consisted of about the same amount (1200 pounds) of the urea nitrate. The FBI chemists specializing in the examination of explosive residue, however, did not find any residue identifying the explosive at the World Trade Center. To quote the IG report: "[Williams'] opinions about the explosive

used in the bombing were based on *invalid inference* concerning the velocity of detonation (VOD) of the main charge, an *incomplete* statement of the VOD of urea nitrate, *invalid* and *misleading* statements about the type of explosive used, and *speculation* beyond his scientific expertise *that appeared to be tailored to the most incriminating result.*" (emphasis added)

➤ The *Avianca* case involved the midair explosion aboard Avianca Airlines Flight 203 shortly after its takeoff from Bogota, Colombia, on November 27, 1989. Everyone aboard, including two Americans, were killed in the crash. Agent Richard Hahn collected evidence at the crime scene, examined evidence, and prepared a final report which resulted in the 1994 conviction of Dandeny Munoz-Mosquera (*Munoz*). However, Hahn's correlation of fuselage indentations to a high-velocity explosive within a narrow range of velocity of detonation was, according to the Bromwich report, *scientifically unsound* and *not justified* by his experience. Moreover, in light of scientific literature Frederic Whitehurst submitted to Hahn before the *Munoz* trial, Hahn erred by not inquiring about the validity of the theory upon which he based his testimony concerning the fuselage indentations. Finally, Hahn supported a theory claiming that a fuel-air explosion followed the initial blast and that certain passengers' injuries were indicative of such an explosion. That testimony was *flawed* and *exceeded Hahn's expertise*, the IG found.

➤ Mail bombs in Alabama killed U.S. Eleventh Circuit Court Judge Robert Vance and a civil rights attorney in 1989. A massive investigation ensued, ultimately leading to the indictment and conviction in 1991 of Walter Leroy Moody, Jr. The conclusions of Materials Analysis Unit examiner Robert Webb were crucial to the conviction. The recent IG investigation charitably found that some of Webb's conclusions were *stronger than warranted* by the results of his examinations.

➤ During Former U.S. District Court Judge (now U.S. Congressman) Alcee Hastings' 1985 impeachment hearing before a judicial committee of the Judicial Council of the Eleventh Circuit, the IG report notes that former Hairs and Fibers Unit examiner Michael Malone *falsely* testified that he had performed a tensile test. Malone compounded that mistake by testifying beyond his area of expertise. Hastings was impeached as a result of that testimony.

Managerial Failures

➤ Upon request of the Assistant United States Attorney in the 1989 *Psinakis* case, Chemistry-Toxicology Unit Chief Roger Martz was assigned to review the files of agent Terry Rudolph, Frederic Whitehurst's predecessor. Martz reviewed 95 files, concluded that Rudolph's analyses supported his results, and reported finding no technical errors. The recent IG investigation showed that Martz's review was seriously deficient, that he failed to engage in the type of technical review that would actually have assessed the competence and sufficiency of the work purportedly performed by Rudolph, and that

Martz's written reporting led Laboratory managers to believe that there were no problems with Rudolph's work or his files.

➤ J. Thomas Thurman, supervisor of Explosives Unit examiner David Williams of the Oklahoma City bombing case, did not properly review Williams' report, the IG report notes. Thurman allowed certain conclusions to stand even though he now does not agree with them and cannot justify them.

➤ The Avianca Airlines midair explosion produced two trials, the first a mistrial, the second the *Munoz* trial. On the day investigating agent Richard Hahn testified in the first trial, Frederic Whitehurst wrote a memorandum advancing theories that Hahn had not considered. Scientific Analysis Section Chief James Kearny contributed to agent Richard Hahn's incomplete testimony in the *Munoz* case by not resolving the issues raised earlier in Whitehurst's memorandum.

➤ Explosives Unit supervisor J. Thomas Thurman and Explosives Unit examiner Wallace Higgins changed Frederic Whitehurst's reports in numerous instances, according to the IG report. Some of those changes resulted in inaccuracies and unsubstantiated conclusions. Both the Thurman and Higgins alterations underscore the need for lab personnel to follow clear-cut policy to ensure that reports of analytical work prepared by scientists are not substantively altered unless agreement is reached on the changes.

These cases confirm that the FBI lab needs ongoing and expanded, neutral oversight and overhaul. They demonstrate what an unstinting effort it will take to discover and undo the long-lasting damage brought on by the lab's culture of dishonesty and sloppiness. While the precise magnitude of remedying the problem is unknown, there could well be thousands of cases which need revisiting. For instance, *just one* of the agents criticized in the report reportedly worked on *4,000 cases*, and another faulted for sloppy work was intricately involved in 600 cases.¹⁵

III. Where We Stand

NACDL is attempting to help on two fronts. Our Freedom of Information Act lawsuit forced out the public version of the report, released by a reluctant Department of Justice on April 15. During settlement discussions with DOJ, NACDL offered to mediate our remaining Freedom of Information Act requests and discuss the broader policy issues of improving the lab with Justice Department lawyers, through the Court's cost-reducing Alternative Dispute Resolution program. Unfortunately, DOJ continues to demur. The only reason given is that the "feeling" at the "higher levels" of Main Justice is that a revamp of the lab is a problem within the sole domain of the Justice Department and the FBI -- that is, the very agencies with these deep-seated problems and who for so long ignored them.

We respectfully disagree, and trust that your oversight hearings reflect that Congress disagrees as well. As I stated at the outset, NACDL's position is that the American people need to have *all* of this information about the lab, and not just a sanitized version. The public has a right to know this information. If the IG's report tells us anything, it teaches that we cannot let

¹⁵ See e.g., Michael J. Sniffen, AP Wire Story, April 16, 1997.

the government police itself and keep this information to itself. The FBI lab's misconduct has undoubtedly resulted in some number of innocent Americans being convicted and losing their lives or liberty. Conversely, the lab has made us all less secure in another sense: guilty people have been left to roam our streets as a result of the lab's faulty analyses pointing the government's finger of guilt at the *wrong* people.

IV. Conclusion

Notwithstanding the DOJ's reluctance to work with NACDL and other interested parties toward unbiased lab reform, we anticipate that we will prevail in the remaining facets of our litigation. NACDL is forming a Task Force of volunteer forensic scientists and attorneys to sort through any agency records released, in order to identify cases in which defendants have been wrongfully convicted. We welcome the opportunity to make these findings available to this Committee in a much-needed, continuing and expanded deployment of its vital oversight responsibilities on behalf of the American people. We respectfully offer the following suggestions for the Committee to consider as it continues its arduous efforts to help restore integrity to the FBI lab, and other federal law enforcement agencies.

- Continue and *expand* your oversight, like that begun by this hearing. Congress must expand its probe into all aspects of the FBI lab, and other federal law enforcement agencies' forensic centers, as well.

- Perhaps this undertaking is so complex that Congress should provide for an independent commission to be convened to more intensely study and make

recommendations about it. This could well be a commission like that already envisioned by Section 806 of the Antiterrorism and Effective Death Penalty Act of 1996 (Pub. L. 104-132, April 24, 1996) (“Commission on the Advancement of Federal Law Enforcement”) (still unfunded by Congress).

➤ Currently, the FBI lab does not even submit itself to the independent review of the very minimal industry standards of the independent American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB). At the very least, Congress should ensure that the FBI laboratory meet these minimum industry, ASCLD/LAB standards: lab personnel must be properly trained and must hold at least a Bachelor’s degree in their field of expertise or related field; protocols must be established in order to assure high levels of accuracy; management must be held accountable for fostering the necessary environment, in which the search for the truth -- and not “convictions at any cost” -- is paramount and where scientists are permitted to be scientists. And we urge that other labs in the other federal law enforcement agencies also at least meet these minimum standards of the industry. But more, if the FBI lab’s integrity is truly to be restored to the preeminent place it has historically held, Congress must ensure that its standards are above and beyond the bare minimum industry standards.

➤ Congress also should weigh a measure like that introduced by Representative Joseph McDade (R-PA), to make it plain that lawyers who work for the federal government -- be

they DOJ prosecutors or FBI agents working in or out of the lab -- cannot be allowed to operate only according to their own boss's special set of legal ethics rules, but rather, must abide by the same rules of ethics as those by which all other lawyers must abide. *See* H.R. 232 (105th Congress) ("Ethical Standards for Federal Prosecutors Act"); see also hearing record on H.R. 3386 (104th Congress), Before the Subcommittee on Courts and Intellectual Property of U.S. House Judiciary Committee, September 12, 1996. This should ensure ongoing, neutral oversight and accountability not only for those agents working in the lab who are also licensed lawyers. It should also serve to deter FBI case agents who are lawyers, and federal case prosecutors, from encouraging or suborning lab misconduct. It would certainly discourage federal prosecutors from seeking to improperly influence FBI agents and scientists to falsify or hide evidence in the lab. It clarifies the principle that neutral and detached, external state bar licensing, ethics commissions could hold accountable the lawyers they license -- even if these lawyers work for the federal law enforcement community -- should they remain undeterred and act "above the law."

➤ Congress should consider amending Rule 16 of the Federal Rules of Criminal Procedure and the federal "Jencks Act," 18 U.S.C. sec. 3500, to ensure a more open discovery process for federal criminal cases. Lab errors or misconduct could be revealed much earlier, and more often, under such procedures. Such beneficent "sunshine" procedures are statutorily required in many states (including the Chairman's state of Florida, for instance), and by practice or judicial order in many federal districts (including my own Eastern District of Virginia). This could be done in a "pilot program" fashion,

conducted under the auspices of the U.S. Judicial Conference and studied by the Federal Judicial Center, in much the same way the cost and delay reduction reforms in the *civil litigation system* have been undertaken by Congress pursuant to the Civil Justice Reform Act of 1990.¹⁶

➤ Finally, Congress should consider whether the forensic lab now housed within the FBI should be made an *independent agency*, separate from the FBI. Perhaps a national crime lab should be created, governed by an independent board of judges and lawyers.

Thank you again for considering our testimony and suggestions regarding how to make the FBI lab a reliable center for forensic excellence in which the American people can have renewed faith, confidence and pride.

¹⁶ 28 U.S.C. 471 *et seq.*, enacted as Title I of the Judicial Improvements Act of 1990, Pub.L. 101-650, 104 Stat. 5090-96 (1990).

Daniel S. Alcorn is counsel for the National Association of Criminal Defense Lawyers in its Freedom of Information Act (FOIA) suit to force the Department of Justice to release the Inspector General's various draft reports on the FBI lab, and underlying working papers and interviews to the American public. He is a partner in the Vienna, Virginia law firm of Fensterwald & Alcorn, where he specializes in Freedom of Information Act and constitutional issues litigation.

He graduated with distinction from the University of Virginia in 1977, and from the University of Virginia School of Law in 1980. He is a member of the Virginia and District of Columbia Bar Associations, and the National Association of Criminal Defense Lawyers.

He has also devoted himself to public service in Virginia and the Nation's Capital Area, including service as Special Counsel to the Office of the Attorney General, Commonwealth of Virginia; Director and Vice-Chairman of the Metropolitan Washington Airports Authority; and a member of the Dulles Corridor Task Force.

The only client Mr. Alcorn represents at this hearing is the National Association of Criminal Defense Lawyers (NACDL). Neither he nor his firm have received any federal grant or contract in the past two years. Nor has NACDL.

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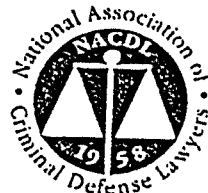
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Ensure justice and due process
for persons accused of crime . . .

Foster the integrity,
independence and expertise
the criminal defense profession . . .

Promote the proper and fair
administration of criminal justice.



NACDL is the preeminent organization in the United States advancing the mission of the nation's criminal defense lawyers to ensure justice and due process for persons accused of crime. A professional bar association formed in 1958, NACDL's 9,000 direct members — and 78 state and local affiliates with another 25,000 members — include private criminal defense lawyers, public defenders, judges and law professors committed to preserving fairness within America's criminal justice system.

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