

TEXAS FORENSIC SCIENCE COMMISSION

Justice Through Science

FINAL REPORT ON COMPLAINT NO. 20.47
CRUTCHER, TRISA (FT. WORTH POLICE
DEPARTMENT CRIME LAB; MULTIPLE)

July 16, 2021



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I. COMMISSION BACKGROUND AND JURISDICTION

A. History and Membership

The Texas Legislature created the Forensic Science Commission (“Commission”) during the 79th Legislative Session in 2005. The Act amended the Code of Criminal Procedure to add Article 38.01, which describes the composition and authority of the Commission.¹ During subsequent legislative sessions, the Texas Legislature further amended the Code of Criminal Procedure to clarify and expand the Commission’s jurisdictional responsibilities and authority.²

The Commission has nine members appointed by the Governor of Texas.³ Seven of the nine commissioners are scientists or medical doctors and two are attorneys (one prosecutor nominated by the Texas District and County Attorney’s Association and one criminal defense attorney nominated by the Texas Criminal Defense Lawyer’s Association).⁴ The Commission’s Presiding Officer is Jeffrey Barnard, MD. Dr. Barnard is the Chief Medical Examiner of Dallas County and Director of the Southwestern Institute of Forensic Sciences in Dallas.

B. Investigations of Professional Negligence and Misconduct

Texas law requires the Commission to “investigate, in a timely manner, any allegation of professional negligence or professional misconduct that would substantially affect the integrity of the results of a forensic analysis conducted by a crime laboratory.”⁵

The term “forensic analysis” is defined as a medical, chemical, toxicological, ballistic, or other examination or test performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action.⁶ The statute excludes

¹ TEX. CODE CRIM. PROC. art. 38.01.

² *See e.g.*, Acts 2013, 83rd Leg. ch. 782 (S.B. 1238) §§ 1-4 (2013); Acts 2015, 84th Leg. ch. 1276 (S.B. 1287) §§ 1-7 (2015); TEX. CODE CRIM. PROC. art. 38.01 § 4-a(b).

³ TEX. CODE OF CRIM. PROC. art. 38.01 § 3.

⁴ *Id.*

⁵ TEX. CODE CRIM. PROC. art. 38.01 § 4(a)(3).

⁶ TEX. CODE CRIM. PROC. art. § 38.35(a)(4).

certain types of analyses from the “forensic analysis” definition, such as latent fingerprint analysis, a breath test specimen, and the portion of an autopsy conducted by a medical examiner or licensed physician.⁷ The statute does not define the terms “professional negligence” and “professional misconduct.” The Commission has defined those terms in its administrative rules.⁸

C. Accreditation Jurisdiction

The Code of Criminal Procedure prohibits forensic analysis from being admitted in criminal cases if the crime laboratory conducting the analysis is not accredited by the Commission.⁹ The term “crime laboratory” includes a public or private laboratory or other entity that conducts a forensic analysis subject to this article.¹⁰ The Fort Worth Police Department Crime Laboratory (“FWPDCL”) is accredited by the Commission and the ANSI-ASQ National Accreditation Board (“ANAB”) under International Organization for Standardization (“ISO”) Standard 17025.¹¹

As part of its accreditation authority, the Commission may establish minimum standards relating to timely production of forensic analysis; validate or approve specific forensic methods or methodologies; and establish procedures, policies and practices to improve the quality of forensic analysis in the state.¹² The commission is permitted, at any reasonable time, to enter and inspect

⁷ For complete list of statutory exclusions see TEX. CODE CRIM. PROC. art. 38.35 § (a)(4)(A)-(F) and (f).

⁸ “Professional misconduct” means the forensic analyst or crime laboratory, through a material act or omission, deliberately failed to follow the standard of practice that an ordinary forensic analyst or crime laboratory would have followed, and the deliberate act or omission would substantially affect the integrity of the results of a forensic analysis. An act or omission was deliberate if the forensic analyst or crime laboratory was aware of and consciously disregarded an accepted standard of practice required for a forensic analysis. “Professional negligence” means the forensic analyst or crime laboratory, through a material act or omission, negligently failed to follow the standard of practice that an ordinary forensic analyst or crime laboratory would have followed, and the negligent act or omission would substantially affect the integrity of the results of a forensic analysis. An act or omission was negligent if the forensic analyst or crime laboratory should have been but was not aware of an accepted standard of practice. 37 Tex. Admin. Code § 651.302 (7) and (8) (2020).

⁹ TEX. CODE CRIM. PROC. art. 38.35 § (d)(1).

¹⁰ TEX. CODE CRIM. PROC. art. 38.35 § (a)(1).

¹¹ See, <https://www.txcourts.gov/fsc/accreditation/> for a list of accredited laboratories.

¹² TEX. CODE CRIM. PROC. art. 38.01 § 4-d(b-1).

the premises or audit the records, reports, procedures, or other quality assurance matters of a crime laboratory that is accredited.¹³ The Commission has adopted a Code of Professional Responsibility for Forensic Analysts and Crime Laboratory Management.¹⁴ The following are expectations specific to management:

1. Encourage a quality-focused culture that embraces transparency, accountability and continuing education while resisting individual blame or scapegoating.
2. Provide opportunities for forensic analysts to stay abreast of new scientific findings, technology and techniques while guarding against the use of non-valid methods in casework, the misapplication of validated methods or improper testimony regarding a particular analytical method or result.
3. Maintain case retention and management policies and systems based on the presumption that there is potential evidentiary value for any information related to a case, including work notes, analytical and validation data, and peer or technical review.
4. Provide clear communication and reporting systems through which forensic analysts may report to management non-conformities in the quality system and other adverse events, such as an unintended mistake or a breach of ethical, legal, scientific standards, or questionable conduct.
5. Make timely and full disclosure to the Texas Forensic Science Commission of any non-conformance that may rise to the level of professional negligence or professional misconduct.
6. Provide copies of all substantive communications with the laboratory's national accrediting body to the Commission.
7. For any laboratory that performs forensic analysis on behalf of the State of Texas, develop and follow a written forensic disclosure compliance policy for the purpose of ensuring the laboratory's compliance with article 39.14 of the Texas Code of Criminal Procedure.
8. Ensure the laboratory's forensic disclosure policy provides clear instructions for identifying and disclosing any exculpatory, impeachment, or mitigating document, item, or information in the possession, custody, or control of the laboratory. The policy should explicitly address how to inform potentially affected recipients of any non-conformances or breaches of law or ethical standards that may adversely affect either a current case or a previously issued report or testimony.

¹³ TEX. CODE CRIM. PROC. art. 38.01 § 4-d(d).

¹⁴ See, 37 Tex. Admin. Code § 651.219 (2020).

9. Inform all forensic analysts working on behalf of the laboratory that they may report allegations of professional negligence or professional misconduct to the Texas Forensic Science Commission without fear of adverse employment consequences.

II. INVESTIGATIVE PROCESS

A. Limitations

The Commission's authority contains important statutory limitations. For example, no finding by the Commission constitutes a comment upon the guilt or innocence of any individual.¹⁵ The Commission's written reports are not admissible in civil or criminal actions.¹⁶ The Commission has no authority to subpoena documents or testimony. The information the Commission receives during any investigation is dependent on the willingness of stakeholders to submit relevant documents and respond to questions posed. The information gathered in this report has not been subject to the standards for admission of evidence in a courtroom. For example, no individual testified under oath, was limited by either the Texas or Federal Rules of Evidence (*e.g.*, against the admission of hearsay) or was subject to cross-examination under a judge's supervision.

B. Components

If the Commission conducts an investigation of a crime laboratory that is accredited pursuant to an allegation of professional negligence or professional misconduct involving an accredited field of forensic science, the investigation must include the preparation of a written report that identifies and also describes the methods and procedures used to identify: (A) the alleged negligence or misconduct; (B) whether negligence or misconduct occurred; (C) any corrective action required of the laboratory, facility, or entity; (D) observations of the commission regarding the integrity and reliability of the forensic analysis conducted; (E) best practices

¹⁵ TEX. CODE CRIM. PROC. art. 38.01 § 4(g).

¹⁶ *Id.* at § 11.

identified by the commission during the course of the investigation; and (F) other recommendations that are relevant, as determined by the commission.¹⁷

In addition, the investigation *may* include one or more: (A) retrospective reexamination of other forensic analyses conducted by the laboratory, facility or entity that may involve the same kind of negligence or misconduct; and (B) follow-up evaluations of the laboratory, facility, or entity to review; (i) the implementation of any corrective action required....; or (ii) the conclusion of any retrospective reexamination under Paragraph (A).¹⁸

C. Investigative Panel

The Commission's administrative rules set forth the process by which it determines whether to accept a complaint or self-disclosure for investigation as well as the process used to conduct the investigation.¹⁹ The rules include the process for appealing final investigative reports by the Commission and, separately, disciplinary actions by the Commission against a license holder or applicant.²⁰

At its October 23, 2020 quarterly meeting, the Commission voted to form an investigative panel ("Panel") to assist in determining whether the complainant's allegations are supported by the facts and circumstances, available data and related documents. The Panel included Dr. Bruce Budowle, Dr. Nancy Downing, and Elected District Attorney Jarvis Parsons.

D. Document Review and Interviews

Once an investigative panel is created, the Commission's investigation includes: (1) relevant document review; (2) interviews with members of the laboratory as needed to assess the facts and issues raised; (3) collaboration with the laboratory's accrediting body and any other

¹⁷ *Id.* at § (4)(b)(1).

¹⁸ *Id.* at § 4(b)(2).

¹⁹ *See*, 37 Tex. Admin. Code § 651.304-307 (2018).

²⁰ 37 Tex. Admin. Code § 651.309 (2020); *Id.* at § 651.216 (2021).

relevant investigative agency; (4) requests for follow-up information where necessary; (5) hiring of subject matter experts where necessary; and (6) any other steps needed to meet the Commission's statutory obligation.

The Commission interviewed eight individuals including four DNA analysts formerly employed in the Biology Unit (this group included the complainant as well as the former CODIS manager),²¹ the Technical Leader and Biology Unit Supervisor, the Crime Lab Contact and Evidence Screening Analyst, the Quality Manager, and the Laboratory Forensic Science Division Manager.

Commission staff collected and reviewed thousands of pages of relevant documents, laboratory policies, and other information submitted by interested parties. Staff also spoke with representatives from ANAB and the Tarrant County Criminal District Attorney's Office.

III. SUMMARY OF COMPLAINT AND MANAGEMENT RESPONSE

A. General Summary of Complaint

On August 5, 2020, Trisa Crutcher, a licensed DNA analyst with the FWPDCCL, filed a complaint with the Commission alleging professional misconduct by the Laboratory Manager (Michael Ward), the DNA Technical Leader/Section Supervisor (Cassie Johnson) and the Crime Laboratory Contact (CLC) (Sundaye Lopez).²² The complaint is lengthy and contains numerous allegations outside the Commission's jurisdiction. This report focuses on an allegation related to the laboratory's process for obtaining permission to consume evidence in DNA cases, which the Commission determined to be the sole issue meriting investigation within its jurisdiction.

²¹ One of the former FWPDCCL DNA analysts is currently employed as a DNA analyst at the University of North Texas Health Science Center-Center for Human Identification (UNTHSC-CHI). Because Commissioner Bruce Budowle is the Director of the Center, he did not participate in the interview of this analyst. In an abundance of caution, the Commission also obtained consent from both the complainant and the laboratory for Dr. Budowle's participation.

²² The Crime Laboratory Contact is the person assigned to assist officers with the evidence submission process, among other tasks.

1. Description of the Issue

In September 2016, FWPDCL implemented a DNA Submission Form for detectives and submitting officers to complete that provides information about evidentiary items submitted for DNA testing.²³ The laboratory introduced the form as the result of a Lean Six Sigma study, and its purpose was to reduce the extensive back-and-forth between DNA analysts and detectives that was commonplace at the time. One section of the form asked whether the submitting officer granted permission to consume evidence during testing. The answer to this question defaulted to “yes”.

After creating the submission form, the laboratory enacted policies regarding case approval,²⁴ acceptance,²⁵ and evidence consumption,²⁶ that required clear written permission to collect and consume evidence if the examiner believed consumption of the material was necessary to maximize the likelihood of obtaining a usable DNA profile. According to the evidence consumption policy, this written permission requirement could be provided by the officer or detective via email communication or on a completed DNA submission form.

The written policies and procedures enacted by the laboratory requiring the detective or officer to fill out the submission form differed from a historical practice verbally authorized by the former lab manager which allowed the CLC to complete the form for the detective. The CLC regularly assisted submitting officers with understanding and completing the form. In some cases, the CLC filled out the form on the officer’s behalf.

For cases in which the CLC filled out the form for the submitting officer, her practice was to obtain confirmation from the officer via email that the information was correct. The CLC did

²³ See, **Exhibit A**: DNA Submission Form, effective September 21, 2016; published January 4, 2017.

²⁴ See, **Exhibit B**: Biology Unit Case Assessment and Approval Procedure, effective 01/23/2017.

²⁵ See, **Exhibit C**: Biology Unit Case Acceptance Policy, effective 01/04/2017.

²⁶ See, **Exhibit D**: Evidence Consumption Policy – Biology Unit, effective 11/22/2017.

not retain these confirmatory emails or import them into the corresponding case records unless the officer made a change to the form. The CLC's practice was to alert the officers regarding the consumption question only when she believed the type of evidence submitted would likely result in consumption. Examples could include items where "trace" levels of DNA are commonly found, such as with firearms suspected to have been handled during the commission of a crime. In cases where she did not expect consumption to be an issue, the CLC did not expressly discuss with the officers that by allowing her to fill out the form on their behalf, they were granting FWPDCCL permission to consume DNA evidence during testing.

The CLC appears to have made a good faith effort to use her background as a biology screener to flag cases with a high probability of consumption. However, there is no way for even the most senior DNA analyst to predict whether a particular item of evidence will yield high or low quantities of DNA without performing the extraction and quantitation steps of the analytical process. Sometimes, an evidentiary item that one might expect to yield low quantities of DNA actually produces a robust profile, while other items that may seem more promising yield a low quantity or quality of DNA.

Members of the DNA section (including but not limited to the complainant) did not realize the CLC had been filling out the form for the detectives in some cases. In June 2018, the complainant became aware the CLC (and not the detective) had filled out the form in a case for which the complainant was conducting technical review. On June 13, 2018, the complainant sent an email to the Lab Manager documenting her concerns within the Biology Unit regarding whether written permission to consume had been properly obtained and documented. The email also raised concerns regarding whether the Tarrant County Criminal District Attorney's Office was aware that FWPDCCL lacked documentation to indicate permission to consume had been granted in all cases.

Each DNA analyst the Commission interviewed except for the current Technical Lead/Section Supervisor believed the submission form practice violated the FWPDCL's standard operating procedures ("SOPs") requiring detectives or other submitting officers to fill out the forms. The DNA analysts explained that absent documentation indicating the officer either filled out the form or confirmed the accuracy of the information entered by the CLC, there was no way for an analyst to tell from the case record whether permission to consume had been granted. Though DNA analysts could and did reach out to detectives and submitting officers when there was a concern or special consideration regarding consumption, in the ordinary course they relied on the answer provided in the submission form as an accurate representation of the officer's acknowledgement and consent for consumption of DNA evidence.

The basis for the analysts' view that an SOP violation occurred was a plain reading of the following SOP provisions:

- The DNA Submission Form stated, "this form must be fully completed by the Detective."²⁷
- The Biology Unit "Case Acceptance Policy" had a Q&A format where the following question was posed: "Who is responsible for filling out the form?" The answer provided was: "The detective or investigating officer."²⁸
- The Biology Unit "Case Assessment & Approval Procedure" stated that "the DNA submission form must be completed by the Detective or Investigating Officer and e-mailed to the Crime Lab Contact (CLC)."²⁹
- "The case record object repository generally includes all documents related to the current case request. Items to be entered into the case record object repository include the SAK exam paperwork, the submission report, any emails with the detective generated while the request is still being processed, DNA worksheets, statistical analysis, CODIS entry worksheets, and CODIS hit documentation."³⁰

²⁷ See, **Exhibit A**.

²⁸ See, **Exhibit C**.

²⁹ See, **Exhibit B**.

³⁰ See, **Exhibit E**, DOC-Case Notes, effective March 2, 2017.

The analysts shared the view that the appropriate way to address the non-conformance was to identify affected cases and obtain supplemental documentation for the case records. These actions would have been a tedious but achievable task, in part because the CLC had a practice of retaining all emails. She explained to the Investigative Panel that if she had been asked to retrieve confirmation emails for the case folders at that time, she likely would have been able to retrieve many (if not all) of the emails from detectives and other submitting officers for as long as the e-mail system automatically retained employee e-mails. New confirmation could have been obtained for those cases lacking email acknowledgement. The DNA analysts also shared an expectation that the SOP violation and corrective action(s) would be described in a non-conformance report or other appropriate quality document, and that pertinent information would be communicated to the Tarrant County Criminal District Attorney's Office.

2. Evidence Consumption Policies and Impact on Forensic Analysis

For potentially low quantity DNA samples, the entire sample may need to be extracted, and then the quantity of the DNA determined, so that informed decisions can be made on how best to proceed with analysis. This approach is based on sound scientific principles that ensure the best chances of obtaining a DNA typing result, as well as minimizing unnecessary sample consumption. Splitting samples in such situations may reduce the chances of obtaining DNA typing results that could include or exclude individuals as possible contributors to the evidentiary profile(s).

A competing consideration regarding consumption of evidence is that it can adversely impact or eliminate a defendant's ability to retest the evidence or employ future technologies to the evidence to obtain additional information. A defendant may challenge the State's consumption

of potentially exculpatory evidence as a violation of due process.³¹ Questions regarding the consumption of evidence have resulted in extensive habeas litigation,³² and issues surrounding consumption have been a source of debate during pre-trial proceedings.³³

The Quality Assurance Standards for Forensic DNA Testing Laboratories provide that where possible, the laboratory shall retain or return a portion of the evidence sample or extract,³⁴ and the laboratory shall have and follow a documented policy for the disposition of evidence that includes a policy on sample consumption.³⁵

ANAB Guiding Principles provide a framework describing the ethical and professional responsibilities of laboratories subject to its jurisdiction. One of the principles provides that ethical and professionally responsible forensic personnel give the utmost care to the treatment of any samples or items of potential evidentiary value to avoid...unnecessary consumption.³⁶ This principle comports with the Texas Code of Professional Responsibility for Forensic Analysts adopted in May of 2018 which provides that a forensic analyst shall avoid...unnecessary consumption of evidentiary materials.³⁷

³¹ To prevail on such a claim, the defendant must show bad faith on the part of the State. *See, Arizona v. Youngblood*, 488 US 51 (1988). Justice Stevens warned, however, that “there may well be cases in which the defendant is unable to prove that the State acted in bad faith in which the loss or destruction of evidence is nonetheless so critical to the defense as to make a criminal trial fundamentally unfair. *Id.* at 61-62 (Stevens, J. concurring). *See also, Illinois v. Fisher*, 540 US 544, 549 (2004) (Stevens, J. concurring).

³² *See, Ex parte Napper*, 322 SW3d 202 (Tex. App. 2010).

³³ *See, In re State ex. Rel. Best*, 616 SW3d 594 (Tex. App. 2021). *See also, United States v. Burns*, 2016 U.S. Dist. LEXIS 184584 (U.S. District Court - District of Columbia 2016); *United States v. Haight*, 153 F. Supp. 3d 240 (U.S. District Court - District of Columbia 2016).

³⁴ FBI Quality Assurance Standards for Forensic DNA Testing Laboratories Standard 7.2, effective 9-1-11.

³⁵ *Id.* at Standard 7.3. *See also, FBI Quality Assurance Standards for Forensic DNA Testing Laboratories Standard 7.4 and 7.4.1* (2020).

³⁶ ANAB Guiding Principles of Professional Responsibility for Forensic service Providers and Forensic Personnel: Item 11.

³⁷ 37 Texas Admin. Code § 651.219(b)(4), effective May 16, 2018.

3. Management's Interpretation of the SOPs

On June 27, 2018, the Lab Manager sent an email to a sergeant in the homicide unit of the police department asking if any of the detectives had any concerns, issues, or problems with the laboratory consuming biological evidence in its DNA analytical process. The sergeant advised they had never had an issue with evidence being consumed against their wishes. The DNA analysts explained that while the email was informative, it was not a replacement for documentation in individual case records.

One reason the DNA analysts believed the issue regarding consumption needed to be addressed on a case-by-case basis was that the technical review process required analysts to certify that all case worksheets and reports complied with laboratory policies and procedures. Most analysts did not feel comfortable answering this question “yes” until action was taken to document permission to consume in cases where the CLC filled out the form and it was unclear whether the submitting officer even knew the consumption question was part of the process.

The Lab Manager and DNA Technical Leader met with the complainant on June 22, 2018 and attempted to fashion a remedy for the concern. They first proposed drafting a deviation from technical review form or case notation outlining the issue. The complainant and other DNA analysts did not believe a deviation from protocol was an appropriate way to handle the issue.³⁸ The tension between the need to issue reports and the need to answer accurately the technical review question regarding SOP compliance continued until management convened a mandatory meeting with the members of the Biology Unit on June 27, 2018. During the meeting, analysts expressed concerns about the lack of documentation in the case record, especially with respect to the question of whether permission to consume had in fact been granted. Contemporaneous notes

³⁸ The Commission notes that laboratory policy deviations may be appropriate for forward-looking variations from procedure. They are not typically used retroactively to justify why a laboratory policy was not followed.

from the meeting show the Quality Manager agreed at the time that the practice was a violation of the SOP sections cited above but noted the violation did not affect the quality of the DNA analysis.³⁹

The Lab Manager disagreed with the analysts and the Quality Manager on the question of whether the practice violated the SOP. He explained that because the case acceptance policy stated that submitting officers were “responsible for” filling out the form, this meant the responsibility could be delegated by a submitting officer to the CLC. He analogized the situation to a Homeowner’s Association (HOA) rule on yard maintenance which may assign responsibility to homeowners for maintaining their properties but would not require the homeowners to personally mow the lawn.

The Lab Manager insisted that analysts get back to issuing reports, emphasizing that failure to do so may result in disciplinary action. He also conveyed that all members of the laboratory are “replaceable.” The Lab Manager emphasized that the FWPDCCL and Tarrant County Criminal District Attorney are primarily interested in the report’s end result and the timeliness of the result. This messaging only served to amplify concern among the DNA analysts who attended the meeting, all of whom have since separated from the laboratory. The analysts who voluntarily resigned from the laboratory cited the language regarding replaceability as a contributing factor.

In an attempt to address concerns raised by the DNA analysts, management drafted an “Inter-Office Correspondence” (IOC) memo.⁴⁰ Initially, the IOC was only employed in cases that

³⁹ See, **Exhibit F**: 6.27.18 Biology Unit Meeting Notes-Official and **Exhibit G**: 6.27.18 Biology Unit Meeting Notes-Crutcher.

⁴⁰ **Exhibit H**, Technical Review IOC.

were in technical review. Because the capital murder case that spurred this complaint was not in technical review at the time, no IOC was included in the casefile.⁴¹

Two days after the mandatory meeting, the laboratory manager issued a “Memorandum of Expectations” to the Biology Unit.⁴² This memorandum addressed the implementation of the IOC to inform the prosecutors “if it is related to a case that is going to trial.” The memorandum also warned that “Employees will follow all proper instruction given to them.... Insubordination, failure or refusal to obey an order, or failure to perform work in a satisfactory manner will not be tolerated.” “Failure to comply with the [expectations in the memo] may lead to immediate disciplinary action.” The memo included a signature line for all members of the Biology Unit to confirm receipt.

Shortly afterwards, on July 3, 2018, complainant and other members of the Biology Unit met with a Fort Worth Deputy Chief to share concerns about management’s handling of the issues discussed during the June meeting.

On July 30, 2018, the Lab Manager issued a draft “Non-conformance Report” related to the issue. This draft report included the following language. “The root cause of this concern does not appear to stem from any factual issues, but rather appears to stem from some type of personal animus, bias, or jealousy of [the complainant].” The same day, the Quality Manager sent members of the Biology Unit a copy of the draft Non-conformance Report with an email stating the matter was closed pending updates to certain policies.

A revised version of the Non-conformance Report was finalized on August 24, 2018. The Final Non-conformance Report concluded there was no policy non-conformity and the laboratory

⁴¹ **Exhibit I**, Findings on Defendant’s Motion to Suppress, *State of Texas v. James Floyd*, Cause Number 1494376D, 369th Judicial District Court of Tarrant County, Texas; Finding #32.

⁴² **Exhibit J**, Memorandum of Expectations.

was in compliance with its own internal policies. It acknowledged that certain policies and certain technical review questions were updated/changed for clarification purposes. In addition to changing the language of some technical review questions, the laboratory did the following:

- Updated the Biology Unit Case Acceptance Policy to: (1) clarify that crime laboratory personnel could assist with the completion of the DNA Submission Form; and (2) require that email correspondence documenting the officer's approval of the DNA Submission Form be saved in the appropriate Object Repository.
- Updated the submission process to require officers and detectives to print, initial and date all pages of the DNA Submission Form, and submit the initialed and dated form to the crime laboratory.

It is notable that these changes reflect the proposals suggested by the DNA analysts when they raised their concerns. The final version of the Non-conformance Report did not include the language regarding the complainant's alleged motives. No corrective action plan was issued. The FWPDCL did not provide a copy of the Final Non-conformance Report to the Commission, the Tarrant County Criminal District Attorney's Office, or ANAB.

4. Review by ANAB

The FWPDCL is accredited by the ANSI-ASQ National Accreditation Board (ANAB). The complainant submitted the same complaint to both ANAB and the Commission. ANAB representatives reviewed the allegations and described their observations during a meeting held with Commission staff in April 2021. In conducting their investigation, ANAB did not speak with anyone from FWPDCL other than the Lab Manager.

ANAB provides laboratory management with ample discretion in interpreting the laboratory's policies. ANAB informed the Commission that it would have been "conforming" (*i.e.*, compliant with governing standards) for FWPDCL to treat the concern raised about the submission

form as a non-conformance. However, the Lab Manager chose not to do so, and ANAB concluded this decision was also conforming under accreditation standards.

ANAB relied on the following rationale in concluding the Lab Manager's determination was acceptable:

- Accreditation rules require the laboratory to retain all technical records. Emails with the submitting officer regarding the submission form (including those regarding permission to consume DNA evidence) are not "technical records" but rather are part of "contract negotiations" between the Fort Worth Police Department and the FWPDC. Once the submission form is complete, the negotiation phase of the contract ends and the casework begins. From that point forward, communications with the submitting officer(s) must be retained in the case record.
- The Lab Manager's interpretation of the term "responsible for" in the SOP was an acceptable interpretation. The language could be read to permit delegation of the form to the CLC.

ANAB did not appear to consider that this interpretation allows one party to conduct "contract negotiations" on behalf of both parties to the contract.⁴³ ANAB did acknowledge two important limitations of their conclusions:

- Their review is limited to applicable accreditation standards and does not consider the possible implications of disclosure requirements under *Brady v. Maryland*, the Michael Morton Act, or any other applicable laws. ANAB acknowledged there may be elements of a complaint dismissed by ANAB that would still require disclosure to criminal justice stakeholders.
- Their review does not take into account the principles set forth in the Texas Code of Professional Responsibility for Forensic Analysts and Crime Laboratory Management.

⁴³ Other accredited laboratories (such as Texas DPS) build permission to consume evidence when necessary into the contract governing all forensic analyses in the laboratory. In that context, the submitting agency agrees to accept the terms of the contract in exchange for receipt of services. The laboratory does not establish contractual conditions while at the same time providing consent to those conditions on behalf of the submitting agency.

5. Concerns Raised During Hearing on Defendant's Motion to Suppress Evidence

One of the effects of declining to categorize the Submission Form issue as a non-conformance was that the Tarrant County Criminal District Attorney's office did not become aware of the issue until the complainant made the attorneys aware shortly before a capital murder pretrial hearing on Defendant's Motion to Suppress.⁴⁴ The FWPDCL did not disclose the issues to the Commission or ANAB on the basis that the analyst's complaint constituted an "internal administrative investigation."⁴⁵ The judge received a copy of the complaint and supporting materials shortly before the date of the scheduled hearing, and made the following observation:

"The caselaw seeks to avoid exactly what happened in this case. All of the *Brady* and *Giglio* information and the investigations in this case were in the exclusive possession of the FWPDCL and FWPD; a Defendant would have no way of knowing it existed if not for the voluntary disclosure or discovery by an outside investigating agency, or by inquiry by the prosecutors. When this concealed information did come to light at the insistence of the lab analyst, the Court was presented with over 3,000 pages of material days before testimony was to begin before the jury. Under *Brady* and *Kyles*, this information should have long ago been provided to the defense."⁴⁶

6. Complainant Credibility and Allegations of Retaliation

The Lab Manager and complainant experienced recurring and intractable conflict. One former analyst described their personalities as "oil and water." The Commission reviews many non-conformances submitted by laboratories from all relevant sectors. What is remarkable about the facts of this scenario is that it would have been a straightforward (though perhaps tedious) process to address the concerns raised by the complainant and the other DNA analysts. While a laboratory might choose to suspend casework to address a nonconformance, it is not typically necessary to do so. The Commission does not believe there was a need to suspend the operations

⁴⁴ **Exhibit K:** Tarrant County Criminal District Attorney's Office Disclosure Compliance Policy.

⁴⁵ **Exhibit L:** Email Correspondence Aviles/Garcia.

⁴⁶ See, **Exhibit I:** Findings on Defendant's Motion to Suppress; *State of Texas v. James Floyd*, Cause Number 1494376D, 369th Judicial District Court of Tarrant County, Texas; Findings 125 and 126.

of the DNA section for any length of time to address the issues in this case. The laboratory could have enacted a plan to contact the submitting officers for pending cases and obtain supporting information for all other cases while continuing casework. Laboratory management and quality divisions are frequently required to consider multiple options to address challenging problems. The conflict between the Lab Manager and the complainant resulted in unwavering positions that were on full display at the pre-trial hearing on Defendant's Motion to Suppress referred to in this report. The court's frustration with FWPDCL's inability to resolve concerns effectively was described in the Findings on Defendant's Motion to Suppress.⁴⁷ "A criminal trial, most seriously a capital murder case in which the State is seeking the death penalty, is not the proper forum for airing petty grievances among employees....One cannot help but lend more credibility to the claims of intimidation and retaliation going on in the FWPDCL after seeing this sequence of events unfold in the courtroom."⁴⁸

The complaint alleges a litany of retaliatory acts by management. Many of the allegations are currently in litigation and are beyond the scope of the Commission's jurisdiction. The Commission is aware that the City of Fort Worth terminated the complainant's employment on April 1, 2021, citing the sole reason for termination as unspecified "information" from the Tarrant County Criminal District Attorney's office that the complainant's "ability to testify has been compromised."⁴⁹ Internal communications between FWPD and the Tarrant County Criminal District Attorney's Office are not known to the Commission and are beyond the scope of this report. Notably, each person the Commission interviewed who worked with the complainant found

⁴⁷ See generally, **Exhibit I**: Findings on Defendant's Motion to Suppress; *State of Texas v. James Floyd*, Cause Number 1494376D, 369th Judicial District Court of Tarrant County, Texas.

⁴⁸ **Exhibit I**: Findings on Defendant's Motion to Suppress; *State of Texas v. James Floyd*, Cause Number 1494376D, 369th Judicial District Court of Tarrant County, Texas; Findings 114 and 115.

⁴⁹ See, **Exhibit M**: City of Ft. Worth March 26, 2021 Notice of Pre-Decision Meeting and Administrative Leave.

her to be a hardworking member of the section who did quality work and paid close attention to detail.

IV. FINDINGS

A. Professional Negligence or Misconduct

“Professional Misconduct” means the forensic analyst or crime laboratory, through material act or omission, deliberately failed to follow a standard of practice that an ordinary forensic analyst or crime laboratory would have followed, and the deliberate act or omission *would substantially affect the integrity of the results of a forensic analysis* [emphasis added]. An act or omission was deliberate if the forensic analyst or crime laboratory was aware of and consciously disregarded an accepted standard of practice.⁵⁰

“Professional Negligence” means the forensic analyst or crime laboratory, through material act or omission, negligently failed to follow the standard of practice that an ordinary forensic analyst or crime laboratory would have followed, and the negligent act or omission *would substantially affect the integrity of the results of a forensic analysis* [emphasis added]. An act or omission was negligent if the forensic analysis or crime laboratory should have been but was not aware of an accepted standard of practice.⁵¹

The Commission declines to extend a finding of professional negligence or misconduct to the events described in this report. The Commission has been clear historically that the term “would substantially affect the integrity of the results of a forensic analysis” does not necessarily require that a criminal case be impacted or a report be issued to a customer in error. The term includes acts or omissions that would call into question the integrity of the forensic analysis, the

⁵⁰ 37 Tex. Admin. Code § 651.302(7) (2020).

⁵¹ 37 Tex. Admin. Code § 651.302(8) (2020).

forensic analyst or analysts, or the crime laboratory as a whole.⁵² The decision-making in this matter may call into question the laboratory's understanding of its role in legal disclosure, the laboratory's transparency and the leadership style of management. But the nexus between these shortcomings and the forensic analysis itself is too tenuous for a finding of negligence or misconduct.

B. Observations Regarding Code of Professional Responsibility

The Texas Code of Professional Responsibility for Forensic Analysts and Crime Laboratory Management requires management to encourage a quality-focused culture that embraces transparency, accountability and continuing education while resisting individual blame or scapegoating. It also requires management to maintain case retention and management policies and systems based on the presumption that there is potential evidentiary value for any information related to a case, including work notes, analytical and validation data, and peer or technical review.

The Lab Manager had a choice about how to approach the concerns raised by the analysts in the DNA section. A choice showing consideration for their perspective would have resulted in some additional work in the short-term but likely would have avoided the long-term consequences that ensued. The Lab Manager chose instead to take a different view that interpreted one ambiguous provision of the SOP in a way that ignored the plain language of two others. To support the interpretation, he incorporated the use of an analogy to HOA covenants. The Commission finds the analogy less than compelling when one considers the seriousness of the work performed in forensic laboratories. *The Lab Manager's approach ultimately created more problems than it solved.* From a risk management perspective, it is better to err on the side of caution and address the issue directly in a way that is responsive to the forensic analysts who must testify under oath

⁵² 37 Tex. Admin. Code § 651.302(10) (2020).

about all aspects of their work, especially when the analysts' interpretation of their own SOP was aligned with the plain language. This approach has the additional benefit of avoiding future allegations that the laboratory's decision-making lacks transparency.

The Lab Manager's admonition about everyone being "replaceable" was also a contributing factor to attrition in the DNA section, resulting in considerable adverse downstream consequences for the criminal justice system. The loss of qualified analysts led ANAB to reduce the scope of DNA services FWPDCCL is authorized to provide its customer until new employees can be trained and approved for independent casework.

C. Observations Regarding Quality System

Quality Assurance provides the infrastructure to promote high performance, address errors, and improve processes. The ultimate goals of a high-quality system are to minimize the occurrence of error and to develop and encourage an environment for improving processes and services.

One of the more troubling aspects of the Commission's investigation is that it revealed serious questions about the effectiveness of the FWPDCCL's quality division which currently has a single employee. It was clear from all interviews that the DNA analysts did not understand the process employed by the Quality Manager to identify issues and conduct root cause analysis as they were not involved in the process. They also did not understand why the Lab Manager drafted the Non-conformance Report instead of the Quality Manager in collaboration with individuals with subject matter expertise. Three former DNA analysts expressed a lack of confidence in FWPDCCL's capacity to perform thorough and effective root cause analysis. This observation is supported by the Non-Conformance Report itself, which was not written by the quality division or a team of individuals dedicated to the task, had no input from anyone in the DNA section, takes a defensive

posture and fails to employ any of the tools commonly recommended by experts in the field of quality assurance.

It is also unclear why the Quality Manager's initial observation that an SOP violation occurred, which aligned with the interpretation of four DNA analysts, was superseded by the Lab Manager's own reading. The Quality Manager was careful to distinguish between SOP violations that impact the quality of the forensic analysis and those that do not. While the permission to consume does impact the quality of the data in the sense that the inability to consume may result in less complete data, the concerns raised by the analysts were not that reports had been issued with erroneous results. The need to document and address policy violations is not limited to violations that have a direct adverse impact on the analytical work and data generated. Indeed, in the population of self-disclosures the Commission has received over the years from all laboratories subject to its jurisdiction, non-conformances that impact reported results are among the least frequent types of non-conformances.

Management decisions can have a tremendous impact on the laboratory's overall transparency as a key player in the criminal justice system. For example, a critical component of every laboratory's quality program is the transparent assessment of an alleged nonconformity and an effective root cause analysis. The ability of the laboratory to conduct a fair and thorough root cause analysis in the wake of a non-conformance is essential to the integrity of the laboratory. When laboratory management stretches the plain reading of the lab's own SOP to find a compliant explanation for an event, or issues a draft root cause analysis that attributes responsibility to the animus, bias, or jealousy of the reporting analyst, the resulting environment may be one in which analysts are hesitant to report mistakes or violations of policy. This dynamic can have a chilling effect on laboratory self-disclosure and contradicts fundamental concepts in both the established

accreditation standards under ISO-17025 and Article 38.01 of the Texas Code of Criminal Procedure.

D. Observations Regarding Sufficiency of Disclosure

The Commission makes no comment about the value of potential impeaching information, its materiality, relevance, or admissibility. Laboratory management and staff should not attempt to engage in that analysis either. The appropriate venue for adjudication of this question is the court with jurisdiction over the criminal matter.

An assertion by members of the laboratory that an SOP was violated could be used to impeach *if a court determines that it is proper impeachment and otherwise admissible under the rules of evidence.*⁵³ Under *Brady*,⁵⁴ and its progeny, impeachment evidence must be disclosed to the accused in a criminal case. Additionally, under the Michael Morton Act, the State has a duty to disclose to the defendant any exculpatory, impeachment, or mitigating information in the possession of the State.⁵⁵

As noted by the court in its Findings on Defendant's Motion to Suppress, the laboratory's efforts to notify stakeholders were insufficient in this case. When notification to the Tarrant County Criminal District Attorney's office was discussed during the Commission's investigation, there were differing answers about who was responsible for contacting the office. For some issues, the Lab Manager asserted the notification process would have been handled by the Quality Manager and the Quality Manager asserted it would have been handled by the Lab Manager.⁵⁶ There did

⁵³ See, **Exhibit I**, Findings on Defendant's Motion to Suppress; *State of Texas v. James Floyd*, Cause Number 1494376D, 369th Judicial District Court of Tarrant County, Texas; Finding 106. "State agrees that under *Giglio*, Defendant has a right to cross examine lab personnel on...lab policies and how they were potentially violated."

⁵⁴ *Brady v. Maryland*, 373 US 83 (1963).

⁵⁵ TEX. CODE CRIM. PROC. art. 39.14 § (h).

⁵⁶ Members of the Investigative Panel were troubled by the Quality Manager's inability to describe the Michael Morton Act when asked what it was. While Commissioners do not expect non-lawyers to recite the statute line and verse, it is reasonable to expect that all quality management personnel understand and be able to describe the basic statutory requirements in general terms.

not appear to be a clear and consistent understanding regarding the responsibility for communication.

The June 27, 2018, IOC disclosure concerning the subject of technical reviews was initially only placed into affected files that were in the technical review process at that time. If a case was not in technical review, no IOC was included in that file. Additional instructions were given to the analysts in the June 29, 2018 Memorandum of Expectations that the IOC should be given to prosecutors “if the case is going to trial.” Both approaches were very limited in scope and did not capture all the potentially affected case files.

The Final Non-conformance Report signed by laboratory management on August 24, 2018, was also deployed in a very limited fashion. Commission staff asked laboratory management to supply a list of cases that contained or referenced the IOC or Non-conformance Reports. Ultimately, the laboratory generated data indicating that for Biology Unit cases completed between June 28, 2018 (when the IOC was signed) and August 24, 2018 (when the Non-conformance was signed) only 25% of the cases they reviewed had an IOC, Non-conformance Report, or both, present in the file. Notably, this collection of data fails to capture all the affected cases. It captures only cases reported between those dates. Management subsequently reported that these cases were updated with stakeholder notifications. However, there has not been a systematic effort made to create a complete list of affected cases.

The Texas Code of Professional Responsibility for Forensic Analyst and Crime Laboratory Management places an affirmative duty on crime laboratory management to develop and follow a written disclosure policy for ensuring the laboratory’s compliance with Article 39.14 of the Texas Code of Criminal Procedure.

There are many examples of events that occur in a forensic laboratory that require disclosure to the criminal justice stakeholders. Laboratories should establish a framework for notification assessment and rely on quality assurance and quality control systems, input from accrediting bodies and prosecuting agencies, and internal policies to aid in assessing situations that warrant disclosure.⁵⁷ Where the need to disclose is in question, laboratories should always lean toward disclosure as transparency is critical to the fair administration of justice.

V. RECOMMENDATIONS

1. Case Audit. FWPDCCL should include documentation granting the lab permission to consume in each case file for which it is unclear whether permission was granted for the time period from January 4, 2017 to August 24, 2018.

This effort may be as straightforward as generating a spreadsheet of cases and asking FWPDCCL and the Tarrant County Criminal District Attorney's office⁵⁸ to confirm permission for all of them; it should be more case-specific than a general email from FWPDCCL stating they have never experienced any problems regarding consumption of evidence.

2. Quality Division. The Quality Division of FWPDCCL needs to be strengthened considerably, and the roles and responsibilities of individuals within the quality system should be clearly defined. The Lab Manager should refrain from assuming the Quality Manager role at any point because this leads to confusion among laboratory staff regarding roles and responsibilities. The Quality Division's independence from the Lab Manager should be sacrosanct.
3. Disclosure Policy. FWPDCCL should work closely with the Tarrant County Criminal District Attorney's Office to review the laboratory's forensic disclosure policy and ensure it provides clear instructions for identifying and disclosing any potentially exculpatory, impeachment, or mitigating document, item or information in the possession, custody, or control of the laboratory.⁵⁹ Further, the policy should specifically address lines of communication, including a mutually agreed upon understanding of exactly how the Tarrant County Criminal District Attorney's

⁵⁷ See e.g., **Exhibit N**: UNT Center for Human Identification Self-Disclosures and Notifications Policy 21-030, effective March 15, 2021.

⁵⁸ While initial permission is granted by the submitting agency, there is a point in each case where decisions regarding consumption shift to the Criminal District Attorney's office. For this reason, we include the Criminal District Attorney's office as a key stakeholder in this process.

⁵⁹ 37 Tex. Admin. Code § 651.219 (c)(8).

Office expects the FWPDCL to provide information.⁶⁰ This level of communication requires cooperation from all stakeholders.

4. Training. The Commission published a three-hour free online training program on legal disclosure obligations for forensic laboratories and the application of the Texas Code of Professional Responsibility for Forensic Analysts and Crime Laboratory Management. All personnel in the crime laboratory whose work involves evidence handling, analysis and reporting could benefit from watching this training. The laboratory should consider extending the training requirement beyond those analysts who must watch it to meet the continuing education obligation for license renewal.
5. Just Culture. The Commission encourages the Lab Manager to reflect on what it means to “embrace transparency and resist individual blame or scapegoating.” While police departments have many valid reasons to embrace a hierarchical chain of command, strong scientific leadership in the laboratory setting requires management to work openly and collaboratively and consider the many downstream consequences of decision-making. Management must bear in mind the impact of the laboratory’s processes on analysts, victims of crime and the accused, lawyers, judges and juries.

⁶⁰ *Id.*

EXHIBIT A

Lab #: _____

Fort Worth Police Department Crime Lab

3616 E. Lancaster Avenue, Fort Worth, TX 76103

FORT WORTH DNA Submission Form

When evidence is submitted with a Biology/DNA exam request, this form must be *fully completed* by the Detective. Testing will not be approved until the completed form has been received by the laboratory.

Case Information

Offense Type Select from dropdown	Offense #	Investigating Detective/Officer
Offense Date	Jury Trial Date (or click 'unknown' if not set) <input type="checkbox"/> unknown	ADA Name (or click 'unassigned') <input type="checkbox"/> unassigned

Crime Scene Locations

Scene #1 (e.g. VIC's car) Scene #2 (e.g. SUS home)
 Scene #3 (e.g. apt. parking lot) Scene #4 (e.g. drug house)

Case Scenario & Special Testing Instructions

A general case scenario and relevant information must be provided. (Ex: Video shows The Pawn Shop was burglarized by 3 males overnight. Clothing similar to what was seen on the video was found in a dumpster a block away from the scene. Several soda cans and a cigarette butt were found in a garbage can inside the shop. The store owner says that he emptied the trash before closing the store for the night, so these items must have been left by the suspects during the offense. One SUS may have cut himself while breaking in, so see if there is any blood on the shirt.)

ARCHIVED

Sexual Assault Cases

Consensual Sex Partner within 3 days of assault? No Yes*
 Relationship: Consensual partner's name (or list 'unknown')
 * Please collect the buccal sample & submit it to the lab for testing.

Case Circumstances (check all that apply):

<input type="checkbox"/> Active serial offender suspected (add info to case scenario)	<input type="checkbox"/> CPI <input type="checkbox"/> Juvenile VIC or SUS <input type="checkbox"/> SUS flight risk/upcoming jail release <input type="checkbox"/> Upcoming trial with NO continuances (email from ADA is required)	<input type="checkbox"/> CODIS confirmation <input type="checkbox"/> Upcoming trial <input type="checkbox"/> Statute of limitations <2yrs <input type="checkbox"/> Statute of limitations 5 yrs <input type="checkbox"/> No SUS leads <input type="checkbox"/> SUS in custody	<input type="checkbox"/> No billed or uncooperative VIC <input type="checkbox"/> None of these apply
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Consumption of Evidence

Can the Biology Unit collect & consume all biological material, if needed, to increase the chances of obtaining interpretable DNA results?
 Yes No

Persons Involved

SUSPECT IS UNKNOWN

If known reference standards are not received with the original submission of evidence it may delay analysis or prohibit case approval.

	Name, Sex Assault Pseudo, or Business Name	Type	Known collected?	Reason Not Collected
1		<input type="checkbox"/> Victim <input type="checkbox"/> Suspect <input type="checkbox"/> Elimination Elim type: n/a	<input type="checkbox"/> Yes <input type="checkbox"/> No	n/a
2		<input type="checkbox"/> Victim <input type="checkbox"/> Suspect <input type="checkbox"/> Elimination Elim type: n/a	<input type="checkbox"/> Yes <input type="checkbox"/> No	n/a
3		<input type="checkbox"/> Victim <input type="checkbox"/> Suspect <input type="checkbox"/> Elimination Elim type: n/a	<input type="checkbox"/> Yes <input type="checkbox"/> No	n/a
4		<input type="checkbox"/> Victim <input type="checkbox"/> Suspect <input type="checkbox"/> Elimination Elim type: n/a	<input type="checkbox"/> Yes <input type="checkbox"/> No	n/a
5		<input type="checkbox"/> Victim <input type="checkbox"/> Suspect <input type="checkbox"/> Elimination Elim type: n/a	<input type="checkbox"/> Yes <input type="checkbox"/> No	n/a

Evidence (Only list questioned evidence here, not reference samples. Enter reference samples in the table above.)

Tag #	Item #	Evidence Description from Tiburon	Location of Evidence (Ex. -SUS #3's Car, Scene #1, VIC's body)	How is the item related to/involvement in the offense?
1				
Examine for:	<input type="checkbox"/> Blood <input type="checkbox"/> Semen <input type="checkbox"/> Saliva <input type="checkbox"/> Wearer	<input type="checkbox"/> Contact/Skin (Elim may be req'd) Is there a reasonably assumed contributor to this evidence? Who?		Items left at scene: Are you reasonably certain this item was left by the SUS and not an innocent individual? Yes <input type="checkbox"/> No <input type="checkbox"/>
2				
Examine for:	<input type="checkbox"/> Blood <input type="checkbox"/> Semen <input type="checkbox"/> Saliva <input type="checkbox"/> Wearer	<input type="checkbox"/> Contact/Skin (Elim may be req'd) Is there a reasonably assumed contributor to this evidence? Who?		Items left at scene: Are you reasonably certain this item was left by the SUS and not an innocent individual? Yes <input type="checkbox"/> No <input type="checkbox"/>
3				
Examine for:	<input type="checkbox"/> Blood <input type="checkbox"/> Semen <input type="checkbox"/> Saliva <input type="checkbox"/> Wearer	<input type="checkbox"/> Contact/Skin (Elim may be req'd) Is there a reasonably assumed contributor to this evidence? Who?		Items left at scene: Are you reasonably certain this item was left by the SUS and not an innocent individual? Yes <input type="checkbox"/> No <input type="checkbox"/>
4				
Examine for:	<input type="checkbox"/> Blood <input type="checkbox"/> Semen <input type="checkbox"/> Saliva <input type="checkbox"/> Wearer	<input type="checkbox"/> Contact/Skin (Elim may be req'd) Is there a reasonably assumed contributor to this evidence? Who?		Items left at scene: Are you reasonably certain this item was left by the SUS and not an innocent individual? Yes <input type="checkbox"/> No <input type="checkbox"/>
5				
Examine for:	<input type="checkbox"/> Blood <input type="checkbox"/> Semen <input type="checkbox"/> Saliva <input type="checkbox"/> Wearer	<input type="checkbox"/> Contact/Skin (Elim may be req'd) Is there a reasonably assumed contributor to this evidence? Who?		Items left at scene: Are you reasonably certain this item was left by the SUS and not an innocent individual? Yes <input type="checkbox"/> No <input type="checkbox"/>
6				
Examine for:	<input type="checkbox"/> Blood <input type="checkbox"/> Semen <input type="checkbox"/> Saliva <input type="checkbox"/> Wearer	<input type="checkbox"/> Contact/Skin (Elim may be req'd) Is there a reasonably assumed contributor to this evidence? Who?		Items left at scene: Are you reasonably certain this item was left by the SUS and not an innocent individual? Yes <input type="checkbox"/> No <input type="checkbox"/>
7				
Examine for:	<input type="checkbox"/> Blood <input type="checkbox"/> Semen <input type="checkbox"/> Saliva <input type="checkbox"/> Wearer	<input type="checkbox"/> Contact/Skin (Elim may be req'd) Is there a reasonably assumed contributor to this evidence? Who?		Items left at scene: Are you reasonably certain this item was left by the SUS and not an innocent individual? Yes <input type="checkbox"/> No <input type="checkbox"/>

EXHIBIT B

Title	Unit	ID.Revision	Effective Date
SOP-Case Assessment & Approval Procedure	BIO	3177.1	01/23/2017

BIOLOGY UNIT CASE ASSESSMENT & APPROVAL PROCEDURE

Biology Unit - Fort Worth Police Department Crime Laboratory

A. INTRODUCTION

As part of a Lean Six Sigma efficiency study, a DNA Submission Form was developed by the Biology Unit as a means to streamline the case review process prior to the start of lab work. The DNA Submission Form must be completed by the Detective or Investigating Officer and e-mailed to the Crime Lab Contact (CLC). The CLC will be responsible for reviewing each Biology DNA Submission Form for completeness and adherence to the Biology Unit Case Acceptance Policy, requesting edits to DNA Submission Forms deemed incomplete, and ensuring testing requests are accepted or rejected in a timely manner. Due to the variety and complexity of cases submitted to the Biology Unit, the CLC is advised to refer technical and CODIS-specific questions to the appropriate Biology staff members.

B. REVIEW OF THE DNA SUBMISSION FORM

Red boxes or text on the DNA Submission Form indicate fields which are required for every request. Depending on the case particulars, other fields may additionally be required.

Case Information

- Each of the six fields must be completed, using the 'unknown' and 'unassigned' check boxes as appropriate.

Crime Scene Locations

- A minimum of one crime scene must be listed and should be consistent with the information provided in the 'Case Scenario & Special Testing Instructions' section.
- Where applicable, ensure the description indicates how/if each scene is related to the individuals listed under 'Persons Involved' (i.e. 'VIC's car' instead of simply 'car').
- The crime scenes listed should be "user-friendly" rather than an address (i.e. SUS's apartment instead of '456 Main Street').

Case Scenario & Special Testing Instructions

- Verify that a general case scenario was provided in sufficient detail to make pertinent testing decisions (e.g. Who was injured and thought to be bleeding?,

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What was the manner of death?, How are various crime scenes associated with the crime?)

- Examples of special testing instruction that may be provided in this section include:
 - 'Top 10' priority list sexual assault
 - Request for comparison to a buccal sample collected under another offense number
 - Specified item(s) for testing when multiple items packaged together
 - Indicate that this form is for a subsequent submission
 - Further information about how the item should be tested (i.e. if the knife is negative for blood, contact DNA is not required)
 - Information provided about related cases

Sexual Assault Cases

- Completion of this section is required if the offense type and/or requested evidence is from a sexual assault.
- Ensure only 1 selection (yes or no) is marked and a "relationship" has been selected.
- If the form indicates there was a consensual partner within 3 days of the assault, a name or 'unknown' must also be provided.
- In most instances, a consensual partner's buccal swab is preferred, but not required for testing. However, depending on the case scenario, a consensual partner's buccal sample may be required before approval. If a consensual partner's sample is required, ensure he/she is listed in the 'Persons Involved' section. An example of when a consensual partner's buccal is required includes, but is not limited to:
 - VIC reports she was sexually assaulted by an unknown male on Wednesday morning. On Thursday she has consensual sex with her boyfriend. A SAK was collected on Friday. Based on the timeline of events, a buccal sample from the consensual partner will be required before the DNA profile will be considered eligible for CODIS entry.

Case Circumstances

- A minimum of 1 'Case Circumstance' must be appropriately checked and verified to be consistent with other data provided on the DNA Submission Form.
- The case circumstances will be used to prioritize the case for testing. Refer to the section below entitled "Prioritization".

Consumption of Evidence

- The default selection for evidence consumption is "Yes".

Persons Involved

- For each individual listed, the appropriate type and the collection status must be documented.

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- This section will be verified against Property Connect to ensure that all relevant parties have been appropriately included on the DNA Submission Form.
 - All relevant suspect(s), victim(s), and other applicable eliminations must be included.

Person(s) Listed in Property Connect	Type on DNA Submission Form
VIC or DEC	VIC
SUS or ARR	SUS
OWN, etc.	Elimination

- If the SUS is listed as unknown, the checkbox above the 'Persons Involved' table must be clicked.
- In general, if a known sample is listed as evidence in Property Connect, the individual should be listed on the Submission Form to ensure the reference sample is processed.
 - If the CLC notices VIC or SUS buccal samples in Property Connect which were NOT included in the 'Persons Involved' section, the detective may be contacted for verification that this sample does not require processing and comparison to evidentiary items.
- *All reference samples requiring testing must be listed in the 'Persons Involved' table.*
 - Note: Individuals other than the VIC and SUS (i.e. reporting parties, witnesses) that are listed in Property Connect only need to be listed on the 'Persons Involved' table if his/her buccal sample was collected and requires testing.
- If an elimination individual is listed in the 'Persons Involved' table, a type must be selected from the 'Elim Type' dropdown and further defined in the 'Case Scenario & Special Testing Instructions' if 'other' is selected.
- If a known has not been collected, the reason must be selected from the dropdown menu.
 - If 'other' is selected, it must be further defined in the 'Case Scenario & Special Testing Instructions' section.
 - Examples of when 'don't need a DNA comparison' may be appropriate include, but are not limited to:
 - The case scenario indicates only SUS Smith was bleeding, therefore SUS Jones' buccal swab was not collected.
 - The VIC's house was burglarized and blood was reportedly left behind by the SUS. The VIC's known was not collected because a DNA comparison to him/her is not required.
 - A convenience store was robbed. One of the SUS went into the manager's office and rifled through the desk drawers. After the SUS fled, an employee found a hat in the manager's office. The hat does not belong to the manager or any employees, therefore no elimination samples are required.

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Evidence

- Verify that the number of evidentiary items submitted for testing does not exceed the maximum number of items listed in the Biology Unit’s Case Acceptance Policy.
 - Note: The Case Acceptance Policy does not preclude the Detective from requesting additional items for testing in a subsequent submission.
- Each item of evidence will be evaluated to determine the following:
 - ‘Examine For’ is acceptable based on offense type (per the Case Acceptance Policy) and is appropriate based on the item description and case scenario
 - Note on contact/touch DNA requests: contact DNA should ONLY be approved as a last resort (i.e. no probative biological fluids are available for testing) AND if there is a high likelihood of obtaining probative results.
 - Examples of contact DNA which are not suitable for approval regardless of offense type are listed in the Case Acceptance Policy.
 - Examples of contact DNA items what are acceptable for processing include: gun or knife used in a homicide/aggravated assault/robbery case, steering wheel swab in a carjacking case (if all appropriate elimination samples are provided).
 - Description of where the item was recovered was provided
 - Association to the offense and probative value have been established
 - All necessary knowns have been collected
 - CODIS eligibility or direct comparison is supported
- Evidence accompanying a sexual assault kit (SAK) may be approved initially in accordance to case type as described in the Case Acceptance Policy; however, if available, the SAK will be examined first and testing of subsequent items will be based on SAK results.

CACU	5 total items or 1 SAK + 4 additional items
Sexual Assault	3 total items or 1 SAK + 2 additional items

C. FLOW CHART

To ensure consistent evaluation of each request, the Crime Lab Contact’s Biology Case Approval Flowchart (DOC 3178) should be used to review each DNA Submission Form.

D. FORM CORRECTION AND REQUEST REJECTION

The DNA Submission Form is designed to promote the collection of commonly required case information from the investigating officer or detective prior to case acceptance. If

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the DNA Submission Form is deemed incomplete, the CLC will make reasonable attempts to have the form edited by the submitter. However, if the requested information is not provided in a timely manner the Biology Unit testing request may be rejected

DNA Submission Form Edits

Incomplete DNA Submission Forms must be sent back to the submitter for electronic edits. In order to provide consistent feedback to the submitter, any requests for edits may reference the following standardized correction prompts:

Code	Description
01	All fields highlighted in red are required along with any associated columns within a row. Additional field(s) may be required based on other responses. Examples include: <ul style="list-style-type: none"> • If 'No' is selected under 'Known collected?' then a complete 'Reason Not Collected' must be provided. • A proper elimination sample may be required.
02X	Responses don't seem logical and/or various sections appear to be discrepant. <p>A: 'Crime Scene Location'/'Case Scenario' B: 'Tag/Item#' and/or 'Evidence Description' C: 'Location of Evidence' D: 'Examine for' E: 'Case Circumstances'</p>
03	Case Scenario does not provide sufficient detail (e.g. Who was injured and thought to be bleeding?, What was the manner of death?, How various crime scenes are associated with the crime?)
04	'Sexual Assault Cases' section incomplete: 'Yes' or 'No' and the relationship of the suspect must be indicated. If there is a reported consensual, then a name or 'unknown' must also be listed.
05	At least one 'Case Circumstance' must be selected. Select 'None Apply' as appropriate.
06	'Name' and/or 'Type' of 'Persons Involved' does not match VIC(s), SUS(s), applicable elimination(s), or collected knowns in Property Connect. Select 'Suspect is unknown' as appropriate.
07	Additional knowns required prior to testing based on evidence type/case scenario.
08X	Evidence item(s) are not acceptable: <p>A: Number of items submitted exceed maximum per submission based on the offense type.</p>

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	<p>B: Item type not acceptable based on offense type. Contact DNA will only be accepted as a last resort AND if there is a high likelihood of obtaining probative results.</p> <p>C: Association to the offense and/or probative value of item(s) not established.</p>
--	--

In some instances, the only required edit to the DNA Submission Form is the removal of item(s) from the 'Evidence' section (e.g. removal of non-probative items, items in excess of maximum or type not allowed by Offense Type, etc.). In this situation, the CLC may make and document this edit on the printed version with a cross-out, date, and initials. With the exception of adding a case number and approval date, the CLC will not make any other edits to the Submission Form.

Request Rejection

A Biology Unit Property Connect request may be rejected if:

- No response has been received and more than 48 hours has lapsed since the request for corrections to an incomplete submission form was made
- Required knowns have not been collected.

If a testing request is rejected, the investigating officer or detective who submitted the DNA Submission Form should be notified by e-mail and provided an explanation.

E. TESTING REQUEST APPROVAL

Once a DNA Submission Form is deemed complete, the Property Connect request will be reviewed and edited by the CLC to reflect the final version of the DNA Submission Form prior to approval. If modifications were made to Property Connect by the CLC, proper notification will be sent via e-mail to the submitting officer or detective. The final electronic version of the DNA Submission Form must be uploaded into the respective case record object repository along with any e-mail in which relevant case information not documented on the DNA Submission Form is included in the body of the e-mail.

F. PRIORITIZATION

All newly approved requests are automatically assigned a priority of 1 by Forensic Advantage (FA). As part of the acceptance process, the CLC will be tasked with editing the priority in FA, adding additional comments to the 'Case Record Notes' for clarity (e.g. CPI, trial date, juvenile case, etc.), and creating a paper case file.

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Case Circumstances (check all that apply):

<input type="checkbox"/> Active serial offender suspected (add info to case scenario) Priority 2	<input type="checkbox"/> CPI <input type="checkbox"/> Juvenile VIC or SUS <input type="checkbox"/> SUS flight risk/upcoming jail release <input type="checkbox"/> Upcoming trial with NO continuances (email from ADA is required) Priority 3	<input type="checkbox"/> CODIS confirmation Priority 3	<input type="checkbox"/> Upcoming trial <input type="checkbox"/> Statute of limitations <2yrs <input type="checkbox"/> Statute of limitations 5 yrs Priority 4	<input type="checkbox"/> No billed or uncooperative VIC Priority 6
			<input type="checkbox"/> No SUS leads <input type="checkbox"/> SUS in custody Priority 5	<input type="checkbox"/> None of these apply

The above template should be used to assign case priority. If the selected 'Case Circumstances' indicate multiple priority categories, the highest priority should be assigned. Additionally, if a sexual assault case has been indicated to be on the "top 10" priority list, it should be assigned, at minimum, as a Priority 3.

G. CASE FILE

The case file should be color coded based on the priority assignment and consist of a printed 'Evidence Transmittal(s)' and all case record object repository documents. The CLC will add the lab number, initials, and approval date to the printed version of the DNA Submission Form. In the event that permission to consume was not given, a cover-page with the text "Do Not Consume" should be added to the front of the case file.

H. REQUESTS FOR ADDITIONAL TESTING

Upon the completion of testing the initial submission, additional items of evidence may be requested. This can be accomplished by the investigating officer or detective submitting a supplemental DNA Submission Form with the additional items of evidence listed. Comparison to additional known samples may be requested at any time with a supplemental DNA Submission Form.

I. REFERENCES

1. SOP 3176: Biology Unit Case Acceptance Policy
2. DOC 3178: Crime Lab Contact Biology Case Approval Flowchart
3. DNA Submission Form

EXHIBIT C

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SOP-Case Acceptance Policy	BIO	3176.1	01/04/2017

BIOLOGY UNIT CASE ACCEPTANCE POLICY

INTRODUCTION

Due to high demands and limited resources, the Laboratory will limit the Biology samples that can be initially submitted for a case based on the type of offense committed, case scenario, and type of evidence available for testing. For all case types, the tested samples will be limited to the minimum number necessary to answer the relevant questions in the case.

- Only the most probative evidence items should be requested.
- Cases in which all appropriate reference samples are collected may be prioritized.
- In some instances, reference samples will be required before the case can be approved.
- The lab will be selective about the types of contact/touch DNA and wearer samples which will be approved for processing. These sample types present issues with respect to complex mixtures that require a great deal of time to interpret and present a low probability for developing useful DNA profiles.
- If in doubt about how to submit an appropriate request, detectives are encouraged to call or e-mail the Crime Lab Contact (CLC).

WHAT IS PROBATIVE EVIDENCE?

Probative evidence includes relevant and significant items that can directly establish a connection between the victim and suspect, place a suspect at the crime scene, and support or refute statements.

Examples include:

- Sexual assault kit
- Weapons
- Clothing
- Items from the suspect that may have the victim's biological material present
- Items from the victim that may have the suspect's biological material present
- Items/biological substances reportedly left at the crime scene by the suspect

Note: Based on the evidence included in the request and the screening and/or DNA results obtained, the Biology Unit may discontinue testing of other requested evidence. Examples include, but may not be limited to:

- If the DNA Submission Form includes a request for examining the suspect's shirt, pants, and shoes for possible blood, the Biology Unit will start by examining one piece of clothing. If possible blood is detected and is probative to the investigation (i.e. the victim's DNA was detected), processing of the additional clothing items will not be performed.

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- If the DNA Submission Form includes a request for examining a sexual assault kit and a pair of underwear, the more intimate item (the sexual assault kit) will be examined first. If probative results are obtained from the sexual assault kit, the underwear will not be examined.

DNA SUBMISSION FORM

A DNA Submission Form will now be required for each Biology submission.

- **Why** do I have to fill out a submission form?
 - You, as the investigating detective or officer, are the best source of background information about your case. The information you provide helps the Biology Unit process the evidence in the most effective way possible and determine if DNA profiles are eligible for CODIS (see the CODIS section below for more information).
- **Who** is responsible for filling out the form?
 - The detective or investigating officer
- **What** if I don't understand what the form is asking?
 - Clarification may be available on the FAQ list. If not, contact the CLC for further information.
- **Where** can I get a copy of the form?
 - The form can be accessed through the FWPD Portal >> Applications & Systems >> Crime Lab DNA Submission Form
- **When** should the form be filled out?
 - A form must be completed on every Biology case in which you need testing. The case will not be approved until a completed form has been received.
- **How** do I get my completed form to the Crime Lab for review?
 - The completed DNA Submission Form must be e-mailed to the CLC.

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CODIS

CODIS is a DNA database used to provide investigative leads. There are strict state and federal (FBI) guidelines regarding what types of DNA profiles may be entered into CODIS. Violation of FBI guidelines could result in the FWPB losing their CODIS access. The information provided on the DNA Submission Form helps the Biology Unit determine if the evidence meets the CODIS eligibility rules, namely:

- The evidence sample must be directly associated with the crime. The information provided on the DNA Submission Form should be clear on how the evidence is related to the offense.
- The detective must be *reasonably certain* the DNA came from the suspect and not an innocent individual.
- DNA profiles of innocent individuals (i.e. victims, witnesses, consensual partners) cannot be entered into CODIS.
- Complex mixtures and/or highly partial DNA profiles are often not eligible for CODIS.
- In certain circumstances, a reference sample is required before determining if a profile from an evidentiary item is CODIS eligible.
- If necessary, the CODIS Administrator may be contacted for specific questions regarding CODIS eligibility.

REFERENCE SAMPLES

- A reference sample is a "known" buccal swab or blood card collected from a specific individual, typically the victim or suspect.
- In order to provide more timely results, reference samples must be submitted for testing along with the evidentiary samples whenever possible. If you are unable to collect the appropriate reference sample(s), please indicate why on the DNA Submission Form.
- The name of the individual must be on the outer packaging of the reference sample (i.e. listed on the outside of the buccal swab envelope). Please ensure correct spelling of the individual's name (and documentation of if the individual is a 'Jr.', 'Sr.', etc).
- Buccal swab collection kits can be obtained from the Crime Lab.

SAMPLE SUBMISSION LIMITS

The type and number of samples selected for DNA testing will be based on the type of offense, case scenario, and evidence available for testing. Known samples (i.e. buccals, blood cards) from victims, suspects, etc. will not count against the number of items that may be submitted. For all offense types, only the most probative samples should be initially requested.

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Acceptable Sample Types:

Offense	Max # of Evidence Items*	Semen	Blood	Saliva	Wearer DNA	Touch DNA	Reference Samples
Homicide	7 (recommended)	✓	✓	✓	✓	?	✓
Sexual Assault (Adult)	SAK + 2 others (SAK examined first)	✓	✓	✓	✓	?	✓
CACU	SAK + 4 others (SAK examined first)	✓	✓	✓	✓	?	✓
Robbery	3	✗	✓	✓	✓	?	✓
Aggravated Assault	3	✗	✓	✓	✓	?	✓
Burglary & Property Crimes	1	✓	✓	✓	?	✗	✓
Paternity (criminal)	3	✗	✗	✗	✗	✗	✓ VIC, child, & alleged father samples are required
Other	2	?	✓	✓	?	?	✓

*this refers to evidentiary samples (not reference samples) requested in the initial submission. Based on the results of the initial submission, the Biology Unit may consider testing of additional items.

- ✓ = Acceptable sample based on offense type
 ✗ = Not acceptable sample based on offense type
 ? = Acceptable in limited situations and only as a last resort. Consult with the CLC if necessary.

Homicides:

- If the District Attorney's Office is seeking the death penalty, please ensure the Laboratory is notified prior to submitting a request so as to comply with provisions of Senate Bill 1292. E-mail documentation from the District Attorney's Office must be provided. These cases may be outsourced to the Texas Department of Public Safety for processing.

Sexual Assaults:

- Only an ACTIVE case (one in which an offense is believed to have occurred) will be examined by the Crime Lab. Please do not submit requests for inactive cases (one in which the investigator has determined that an offense did not occur).
- The initial examination will be limited to the SAK and penile swab (if collected), followed by the underwear, and/or condom (if applicable). In cases involving only digital penetration, swabs from the suspect's hands may be submitted in lieu of the penile swab.
- If the victim is uncooperative or the case has been no-billed, only the kit, panties, and/or condom will be processed to ensure compliance with Senate Bill 1636.

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Robbery:

- Contact/touch DNA from public surfaces (countertops, door handles, etc.) will not be processed by the Crime Lab.

Burglary:

- Latent prints collected at property crime scenes are a rapid and effective means to identify perpetrators. Please consider these types of analyses before DNA requests.

Weapons Law Violations:

- A reference sample from the suspect is required for all "felon in possession" cases. The case will not be approved without the suspect buccal sample for comparison.

CONTACT/TOUCH DNA

Contact/Touch evidence contains DNA that is left behind through touching an item. Contact DNA will only be accepted by the Biology Unit as a last resort and if there is a high likelihood of obtaining probative results that could provide an investigative lead for the detective.

Examples of contact DNA which will not be accepted include, but are not limited to:

1. Contact DNA from public areas (i.e. countertops, door knobs, cash register drawers)
2. Fired cartridge casings
3. Drug baggies
4. Contact DNA in burglaries and other property crimes

REQUESTS FOR ADDITIONAL TESTING

- An additional lab request can be made if meaningful results are not obtained through the initial round of testing. The guidelines listed above still apply.
- If there are questions about which additional items may be suitable for testing please contact the CLC prior to submitting another Biology request.
- If the District Attorney's Office requests additional processing once informative results have already been obtained, please contact the CLC prior to submitting a request for examination. These items may be outsourced to the Medical Examiner's Office at the expense of the District Attorney's Office.
- Additional testing will not be performed to merely disprove all possible scenarios.

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WHAT IS A "REASONABLY ASSUMED CONTRIBUTOR"?

- What does this mean and what are the implications of saying that there is a "reasonably assumed contributor"?
 - By saying, yes, this person (the victim, for example) is a "reasonably assumed contributor" you are acknowledging that the victim's DNA is expected to be present and that he/she SHOULD be a DNA contributor to the item of evidence based on where the evidence was collected from.
 - Typically, finding the DNA from a "reasonably assumed contributor" is not probative to the investigation because his/her DNA is expected to be found on the evidence. As such, the Biology Unit will not perform any statistics to give weight to the fact that the "reasonably assumed contributor's" DNA was detected.
 - If you need to PROVE the individual's DNA is present through lab processing, he/she should NOT be considered a "reasonably assumed contributor".
- What are the benefits of designating a "reasonably assumed contributor"?
 - Having a "reasonably assumed contributor" designated can greatly help the DNA analyst interpret mixtures which can often be complex and difficult to decipher.
 - In many instances, having a "reasonably assumed contributor" identified can help the DNA analyst develop a more complete profile for the other individual(s) present in the mixture. As a result, this may have a significant impact on the DNA statistics.
 - In order to apply information about a "reasonably assumed contributor" to an evidentiary sample, the person's reference sample must be provided!
- What are some typical examples of a "reasonably assumed contributor"?

Example of Evidence	Who is the "Reasonably Assumed Contributor"?	What are the implications?
Sexual assault kit	Victim and consensual sex partner (see the caveat below**)	Any DNA link between the evidence and the "reasonably assumed contributor" is not expected to be probative to the investigation. NO STATISTICS RELATED TO THE "REASONABLY ASSUMED CONTRIBUTOR" WILL BE ISSUED.
Suspect's fingernail clippings	Suspect	
Swab from victim's neck	Victim	
Shirt collected off of witness by CSSU	Witness	
Victim's panties collected by SANE	Victim	
Victim's wallet	Victim	
Steering wheel	Car owner and routine drivers	

There may be other instances when it is not clear to the Biology Unit if an individual should be considered a "reasonably assumed contributor". Since the answer to this question can impact

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the DNA interpretation, the CLC or DNA analyst will contact the detective or investigating officer for clarification.

- **** Additional Example: "I've got a sexual assault case in which the victim's boyfriend assaulted her and he is listed as the suspect. Is he a reasonably assumed contributor?"**
 - No. Even though the victim and her boyfriend may have had consensual sex prior to the offense, this is an example of when you likely still need to PROVE that the male DNA from the sexual assault kit is linked to the suspect. The Biology Unit would issue DNA statistics that could be presented in court.
- **Additional Example: "What if my suspect admitted to participating in the crime? Is he a reasonably assumed contributor?"**
 - If you need to PROVE the suspect's DNA is present (and have statistics to support a DNA "match"), the suspect should NOT be considered a "reasonably assumed contributor".

RUSH REQUESTS

The Laboratory understands the evolving nature of criminal investigations. However, fulfilling requests for short turnaround times is not possible without severe negative impacts to the timeliness of other case reports. The Laboratory requires sufficient time to perform the testing and review the results.

The following situations may qualify for rush testing:

1. Unknown offender is linked to a string of related offenses. DNA testing is necessary to put the perpetrator's profile into CODIS.
2. Unknown offender is linked to a violent offense and the detective believes he/she is a serious threat to the general public.

All rush requests must be fully justified and documented. A minimum of 30 days is required for rush processing. Please contact the CLC for questions on submitting a rush request.

DNA ANALYSIS FOR COURT

Notice must be given to the Laboratory at least 45 calendar days prior to the date the results are needed for trial. This will allow the Laboratory to perform the analyses in the most effective manner possible and minimize the negative impact to the timeliness of other case reports.

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LABORATORY CONTACT INFORMATION

Primary Crime Lab Contact (CLC):

- Sundaye Lopez
(817) 392-4502
Sundaye.Lopez@fortworthtexas.gov

Alternate Contact Information (Technical DNA or CODIS Questions):

- Biology Unit Technical Leader/Alternate CODIS Administrator:
Cassie Johnson, M.S.
(817) 392-4516
Cassie.Johnson@fortworthtexas.gov
- CODIS Administrator:
Uvonna Alexander, M.S.
(817) 392-3749
Uvonna.Alexander@fortworthtexas.gov

Forensic Division Manager:

- Michael Ward
(817) 392-4519
Michael.Ward@fortworthtexas.gov

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EXHIBIT D

Title	Unit	ID.Revision	Effective Date
POLICY-Evidence Consumption Policy	BIO	3164.2	11/22/2017



EVIDENCE CONSUMPTION POLICY - BIOLOGY UNIT

Qualified Biology Unit personnel routinely examine and screen physical evidence. Where appropriate, the examiner collects biological material that will subsequently be subjected to DNA testing. Whenever possible, the Biology Unit should retain a portion of the evidence sample. Therefore, only a portion of the evidence or stain (up to ~50%) will be utilized for testing. However, if the examiner believes consumption of the biological material is necessary to maximize the likelihood of obtaining a usable DNA profile, s/he must first obtain clear written permission to collect and consume from the client. Written permission may be provided through e-mail communication with the detective or on the completed DNA Submission Form. The recommendation to collect and consume all biological evidence should be based on the sample type, sample size, and the examiner's experience/training.

Guidelines for When to Request Permission to Collect and Consume Evidence

- Swabs from a particular item of evidence or stain are submitted for testing (i.e. swabs collected by the hospital or Crime Scene)
 - Permission to consume is required when using more than ~½ of the submitted swab(s).
- FWPD examiner selects a particular stain on an item to be tested
 - Permission to collect and consume is required when using more than ~½ of the stain.
- FWPD examiner performs evidence collection on a porous surface (i.e. collects swabbings or scrapings from an item of clothing or rope)
 - It is unlikely that all of the probative biological material is being removed during evidence collection. Therefore, the analyst can use all of the

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collected swabbings/scraping for DNA testing without requesting permission to consume.

- FWPD examiner performs evidence collection on a non-porous surface (i.e. collects swabs from a trigger or laminated ID card)
 - Due to the substrate, it is likely that most/all of the probative biological material is being removed during evidence collection. Therefore, the analyst must request permission to collect and consume if testing more than ~1/2 of the collected swabs is necessary.
- Work product (i.e. FWPD-generated DNA extract, dilution, PCR product, etc)
 - The lab should retain a portion of the DNA extract whenever possible. However, if consumption of a DNA extract or other work product is necessary, the analyst may proceed without requesting permission to consume.
- **NOTE: To collect and consume an entire sample during child evidence collection, or to collect and consume a sample for in-house DNA processing, permission must be obtained prior to collecting/aliquotting a sample for extraction.**

The situations described above encompass many, but not all, of the scenarios that may be encountered when processing biological evidence. When in doubt about whether permission to consume evidence is necessary, consult with the Forensic Supervisor for guidance and/or proceed with requesting permission to collect and consume from the detective.

QUALITY ASSURANCE

This document addresses the following standards as set forth by the “Quality Assurance Standards for Forensic DNA Testing Laboratories” document, effective 9-1-11:

- **7.2:** Where possible, the laboratory shall retain or return a portion of the evidence sample or extract.
- **7.3:** The laboratory shall have and follow a documented policy for the disposition of evidence that includes a policy on sample consumption.

EXHIBIT E

Title	Unit	ID.Revision	Effective Date
DOC-Case Notes	BIO	3166.2	03/02/2017



CASE NOTES

Biology Unit - Fort Worth Police Department Crime Laboratory

Refer to the FWPD Lab Policy 1457 (Technical Reviews and Document Control) for further information on case record documentation.

CASE FILE DOCUMENTATION

- The laboratory must maintain case notes and analytical documentation to support the conclusions drawn in laboratory reports.
- The documentation must be of sufficient quality that another qualified individual can interpret and evaluate the data.
- The records must clearly reflect the identity of the personnel responsible for performing the individual evidence examination or DNA processing steps.
- Where applicable, case record documentation to be retained in the case file (typically in Forensic Advantage, but in hard copy where applicable) includes, but is not limited to:
 1. Forms
 2. Records
 3. Copies of electronic messages relevant to the case
 4. Records of relevant communications (i.e. phone calls)
 5. Examination worksheets/notes
 6. Evidence transmittals
 7. Submission reports
 8. Sexual assault kit paperwork
 9. Photographs
 10. DNA batch paperwork (i.e. extraction, quantitation, dilution, amp, and load worksheets)

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11. All electropherograms related to the case, including known, evidentiary, and control samples.

12. Statistical analysis

- Should an error occur or if a change in the case record needs to be made, the examiner should cross out the mistake with a single line, initial and date the cross-out, and write in the correct information alongside it.
- Each page of the case file (record), including administrative documents, should contain the laboratory number and analyst's initials (either hand-written or the secure electronic equivalent).
- Individual entries in the object repository should include page numbers.

CONFIDENTIALITY

- All case files are considered confidential. Confidential information may only be released to authorized individuals, including FWPD personnel, the Tarrant County District Attorney's Office, vendor laboratories, or others approved by the Forensic Division Manager. The lab shall release personal identifiable information in accordance with applicable state and federal laws. Refer to the Crime Lab's Quality Management System and supporting policies (i.e. Crime Lab Information Management System) for information on case record security and confidentiality.

EVIDENCE EXAMINATION AND DNA PROCESSING NOTES

- Observations or calculations made during evidence examination or DNA processing must be recorded at the time they are made and be clearly identified to the task at hand. For example, one stain or swab should be screened at a time. The results should be recorded in FA or on the appropriate form before moving on to subsequent stains or swabs.
- Documentation of evidence examination and/or DNA processing should include permanent notes about the:
 1. Date(s) the evidence was examined and samples were collected (if applicable)
 - a. Note: If an item aliquotted for in-house DNA testing is retrieved from the pre-lab for extraction, the item(s) must be placed on the examiner's worksheet so that it is

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included on the final report. However, in this instance the evidence isn't being "examined", so an item description, number submitted, date, etc. are not required. Rather, the worksheet should indicate, for example: "No examination was performed. Sample tube retrieved from DNA pre-lab sample fridge prior to extraction. Item added to worksheet for reporting purposes only."

2. Unambiguous identification of the evidence (i.e. unique lab number and item number)
3. Conditions of the evidence and the packaging (e.g. sealed, unsealed, securely closed) upon receipt
4. Identifiers (e.g. markings) used by the investigating/submitted agency to designate each item and each layer of its container/packaging
5. Thorough description of the evidence being examined – the items listed below are examples only and meant to illustrate the types of information that may be considered when documenting evidence
 - a. For example, if a "blood" swab is received, is the stain concentrated at the tip of the swab, is the swab saturated with red-brown stain, is the swab a light red/pink color, etc?
 - b. For a knife, what style is it (i.e. pocket knife, butcher knife)?; what material is it (i.e. wooden handle, plastic handle)?; brand name?; how long is the blade, how long is the handle?; what color is the item?; overall condition?; is there staining present – where/what color?
 - c. For a gun, what style is it (i.e. pistol, rifle)?; what material is it (i.e. wooden, plastic, metal)?; brand name?; caliber?; what is the serial number?; overall condition?; what color is the item?; is there staining present – where/what color?; are there any textured areas?
 - d. For a bottle, is it open?; empty?; brand?; size?; overall condition?
 - e. For a shirt, who is the manufacturer?; size?; fabric composition?; overall condition of the item?; trace material (i.e. possible hairs, debris, fiber) noted?; is there any staining – where/what color?
6. Name/initials of the examiner

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7. Description of the examinations, testing procedures conducted, results of testing procedures, reagent QC results, and reagent lot numbers
8. Size and location of the stains/smears on the evidence, documented by notes, sketches, measurements and/or photographs. Many stains may be present on an item. It is only necessary to record the size of stains and cuttings collected for possible DNA testing.
9. Any alterations (i.e. cutting collected) done to evidence during collection.
10. Whenever necessary, photographs of evidence should be taken to document the size, shape and location of stains/smears or other trace evidence material on the items prior to removal or excision. If possible, a ruler should be placed beside the stains being photographed to indicate their size. Photographs should be kept with the case file documentation.
11. Any abnormalities or unintentional deviations from the standard operating procedure
12. All DNA processing worksheets (i.e. extraction, quant, dilution, amp, load, etc)
13. All electropherograms. If a sample requires reprocessing, the reason and proposed action should be noted on the electropherogram (i.e. pull-up, RL or overloaded, RA). If the data from a particular electropherogram will be used for reporting, the electropherogram should be marked as "use for report".
14. Once the examination of the evidence submitted is complete, ensure all relevant documentation is imported into the object repository of Forensic Advantage.
15. When a laboratory procedure (i.e. extraction, amp, load, etc) is completed by an individual other than the analyst signing the report, that individual must initial the associated document or worksheet.
16. The analyst signing the laboratory report must initial/approve all of the pages in the case record.
17. Items which are imported into the object repository of Forensic Advantage should include the laboratory number and name or initials of the person responsible for the document.

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OBJECT REPOSITORY

1. The case record object repository generally includes all documents related to the current case request. For example, case record #2 includes a request for a sexual assault kit examination and DNA testing. Items to be entered into the case record object repository include the SAK exam paperwork, the submission report, any emails with the detective generated while the request is still being processed, DNA worksheets, statistical analysis, CODIS entry worksheets, and CODIS hit documentation. An entire DNA case file is typically uploaded into the case record object repository as a single document rather than as the individual components. All objects must be marked as "approved".
2. The case object repository generally includes documents related to the case as a whole. For example, case record #2 (from above) has been completed (i.e. screening report released). Any further emails about outsourced cases (i.e. consensual partner information, outsourcing paperwork, outsourcing DNA reports/files, CODIS questions) should typically be entered in the case object repository.
 - a. It is recommended that all Biology Unit documents entered into the case object repository include a description which begins with the date (format: 07-02-11) to more readily identify a timeline of events or email communications.
 - b. All objects must be marked as "approved".

REPORTS

- A report should be written for all testing performed.
- Refer to the Biology Unit's Case Reports policy for further information.

REVIEWS

- The case must be submitted for technical and administrative review. Documentation of these reviews must be maintained.
- The case record is not considered complete until the technical and administrative reviews have been performed.
- Refer to the Biology Unit's Case Reviews policy for further information.

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PAPER CASE FILES

- For older case files which only exist in a hard copy format (i.e. paper files, not Forensic Advantage case records), organize the documentation as described below:
 1. Case Index
 2. Case Receipt Documentation
 3. Examination Documentation
 4. Report
 5. Technical and Administrative Review form
 6. Final documentation (e.g. correspondence, records of telephone conversations)
- Hard copies of documents to be included in paper case files should be labeled with the lab number, initials, and page numbers (if appropriate). Double-sided pages should be uniquely designated [such as “a” or “b” (i.e. 13a and 13b)].
- Pre-LIMS case files (i.e. paper files) are to be stored in the File Room. Analysts should not retain these files long term.

QUALITY ASSURANCE

This document addresses the following standards as set forth by the “Quality Assurance Standards for Forensic DNA Testing Laboratories” document, effective 9-1-11:

- **11.1: Taking and maintenance of case notes**

REFERENCES

1. Fort Worth Police Department Crime Lab’s Quality Management System and supporting policies (i.e. Crime Lab Information Management System)
2. ASCLD/LAB’s quality assurance standards
3. Biology Unit policies:
 - a. Case Reports (document 3165)
 - b. Case Reviews (document 3167)

EXHIBIT F

NOTES FROM MEETING
WEDNESDAY, JUNE 27, 2018

PLACE OF MEETING: Administration Main Area

THOSE IN ATTENDANCE: Michael S. Ward, Forensic Division Manager
Philip J. Aviles, Quality Assurance Coordinator
Sundaye Lopez, Sr. Forensic Scientist,
Crime Lab Person of Contact
Cassie Johnson, Forensic Science Supervisor
Biology Unit
Uvonna Alexander, Sr. Forensic Scientist
Trisa Crutcher, Sr. Forensic Scientist
Alisha Lagrini, Forensic Scientist
Amanda Schaffner, Forensic Scientist
Amanda Rickerd, Forensic Scientist
Penny Alvis, Administrative Technician

Michael Ward (MSW) opened the meeting stating that everybody at the lab was valuable, every position was valuable. He had applied for growth within the Lab with HR/personnel requesting that the positions be expanded in a tier format. This has not been approved because of budget restraints at this time.

MSW: He was hearing rumors that people were threatening to leave and if one did then others would follow. He stated he wanted everyone to stay but if anyone were to leave, the lab would still stay open. No one is indispensable. We need to move forward to what is the best for the lab and lay all personal feelings aside.

Uvonna Alexander (UA): Stated she felt that the Quality and Integrity of our work were the important things to remember. She felt our customer service was way down.

MSW: Asked the group - "Why do you come to work?" "What is our mission?"

Mission Statement for the PD: **DEPARTMENTAL MISSION STATEMENT** *(Revised 3/28/18)*
The Fort Worth Police Department exists to safeguard the lives and property of those we serve, to reduce the incidence and fear of crime, and to enhance public safety through partnering and building trust with our community. We strive to accomplish our mission by conducting ourselves with the highest ethical standards, respecting the sanctity of human life, and preserving the rights and dignity of each individual in our diverse community.

Mission Statement for the Crime Lab:

Amanda Rickerd (AR): The FWPDCCL supports the mission of the City of Fort Worth by providing scientific and technical assistance to the Fort Worth Police Department and its other customers through delivery of quality forensic services in a timely manner.

MSW: Why were reports not being sent out that were being requested for court or RUSH cases? Were the technical reviews invalid? The consensus was NO.

AR: Administrative errors could lead to Technical errors.

MSW: If there are no errors in the reports they need to be sent forward. They will be released.

There is a question if the detective was actually filling out the submission report form or was Sundaye. Does the detective realize they are approving automatically with the automatic ✓ on the submission form to consume all of the DNA? Bottom of DNA Submission Form:

Consumption of Evidence

Can the Biology Unit collect & consume all biological material, if needed, to increase the chances of obtaining interpretable DNA results? Yes No

Sundaye Lopez (SL): stated that she was assisting the detective to fill out this form. No documentation was placed in the case file (Object Repository) until the final "contract" with the detective was complete.

There was further discussion about whether the detective should initial the form and date the form. Current policy states the detective completes this form. This was not the original intent when a Crime Lab Liaison was assigned by Tom Stimpson. We are not breaking policy by Sundaye helping the detective; however this policy needs to be clarified so there is no confusion that the detective is giving Sundaye his permission of what he is requesting be tested.

TC: feels there is a problem with not having the detective complete the form or have an email stating he agrees to the form as completed. She felt that the policy was being violated.

MSW: informed the group that he had contacted Sgt. Loughman requesting any concerns that his detectives may have reference the consumption of DNA on any of their cases. Sgt. Loughman responded by saying no NEVER. There was never a problem or an instance where DNA was consumed that the detective had requested it not be. Michael stated, even if the DNA was consumed, if it helped to compile a profile, then wouldn't it be worth it?

Philip Aviles (PA): Stated it was a violation of policy as it is written now; however, this will be clarified to indicate that Sundaye will be allowed to fill out the form in consultation with the detective and written verification will be maintained as to this agreement. The form will remain defaulted to the Yes option of consuming all biological material.

PA: stated also that if there was a question on the analysts' part whether the evidence should be consumed or not, that it was the analysts' responsibility to contact the detective.

Cassie Johnson (CJ): stated the form should remain as is with the Yes option automatically marked as the detectives usually answered yes to this question. Again, if there is a question about this, then the analyst should contact the detective directly.

TC: stated they (analysts) did not know the detective was not filling out the form. Phil stated this has been the policy since 2016 when Sundaye was appointed as the Crime Lab Point of Contact. Why is there an issue now?

Amanda Schaffner (AS): stated we thought the detectives were filling out the form.

Alisha Lagrini (AL): says the form says it is OK to consume the sample, but does the detective know that it automatically says yes?

MSW: stated the policy would be clarified to say the form can be completed with Sundaye's assistance.

TC: wanted to know what they should say in court.

MSW: you say what you did. Policies or not – answer what you did and the truth about the evidence. We are not hiding anything.

TC: states that the DAs don't know what the form is.

MSW: the work was correct.

TC: Yes the work was correct and the quality was accurate.

MSW: Did we follow policy, did we follow procedure? The information is correct and the cases need to be released.

TC: They need to be confident at court that we are good with the quality of the report.

MSW: We need to make sure that our SOPs are correct and that we are following our own procedures.

TC: My sole issue was that we did not have confirmation (in writing) that the detectives had given us permission to consume the DNA and we were testifying to this.

MSW: Again – if the analyst has a concern then that analyst needs to find out from the detective if she has permission to consume.

PA: You have reassurance on the form by the yes being checked. Again – if you have a question about this or any other question of what you are testing – Call the detective.

AL: I don't like that the yes box is automatically marked to say we have permission to consume. How can we testify that the detective gave permission to consume when we don't know that?

TC: I believe it is an ethical question when I have the knowledge of something (that the detective did not fill out the form) and I testify that he did. When we make a mistake (with the previous cases) by not stating the detective did not complete the form and give permission that we should not inform the DA.

CJ: When the form was in the development stage, she, Uvonna, Tom Stimpson, and Sundaye met with Homicide it was agreed upon that the form would have the automatic

check for consumption of DNA. It was also the "understanding" that Sundaye would communicate with the detectives and assist their understanding of the form and complete and forward the form as necessary.

AR: Sundaye should not be filling out the forms. The detectives need to be made to fill out the form. She is not okay with this because they are not following procedure.

MSW: We will follow this to see how it goes and make sure there is no problems with Homicide.

PA: We have followed policy, merely because the form that the detective approves (upon submission through Property Connect) says the consumption of DNA is approved. The policy needs to be clarified so there is no misunderstanding.

TC: When we automatically have the detective okay the consumption of DNA, then that is undue influence and it is corrupt.

MSW: The detective sees the form when sending in the request for analysis. They don't always know what they need to have analyzed. This is why Sundaye discusses the case with them and explains why certain items need to be tested or not. They are discussing the requested testing before Sundaye completes the form as requested (verbally) by the detective. This needs to be documented in writing and placed in OR.

TC: When the detective submits the request in Property Connect and then it is changed by Sundaye, Property Connect does not show the original entry by the detective. Possibly a screen shot of the original entry should be made prior to change.

PA: Were the policies and procedures followed when the cases were technically reviewed. Were they approved by the Technical Reviewer?

MSW: So – were Technical policies followed?

PA: The cases were technically reviewed and Administratively reviewed in FA.

TC: If there were edits, they need to be documented/hand written. If edits are made in the submission of the case, then they all need to be handwritten and documented in the OR.

AL: So what do we do? Was policy violated? (Raised voice)

MSW: Do not raise your voice to me. No policy was violated.

AL: I apologize, I was not raising my voice to you; I was trying to complete my comments. (Several people are talking at once at this time).

PA: Prior to 2016 there was no form. Final approval of consumption was requested and was approved through email or not documented. We have not done anything wrong. We have no findings of doing wrong in the last two years.

CJ: As an example, we found that we were saying Identifier in our procedures instead of Globalfiler. No one realized it, but there was no effect with the outcome of the cases. The "terminology" was corrected.

AL: So what documentation do we need to include to address this issue in the cases from August 2016 to December 2016?

PA: Technically the report is correct. We need to do a non-conformance form stating "Administratively" the procedures need to be clarified.

TC: I have no reason to question Sundaye if she says the detective is approving the form. We need documentation.

CJ: When the form (DNA Submission form) is completed, does the detective know they have granted permission to consume? We need to have a way to ensure and document this.

AL: Could there be an electronic signature on the form for the detective?

UA: What do we do for now? If an email is placed in the OR and changes are documented from request, then that should satisfy the question.

PA: Analyst must be satisfied with the case prior to Technical Review approval. If there are ANY questions, then contact the detective.

TC: Until the policy changes, we need an email on everything.

PA: There have been no violations of ANAB rules.

MSW: Meet again to review policies. What's best for the Lab?

PA: To eliminate problems, contact the detective assigned the case. I will be updating the terminology in the Quality Manual.

MSW: We can't worry about what ifs. Identify the problem.

MSW: I have been told that there is nobody to talk to about these concerns. You have a Chain of Command. First contact is Cassie, next is me or Phil. You have a Deputy Chief.

PA: Don't make assumptions. Make good decisions, talk to detectives. Ask questions. These are internal concerns. We need to have internal communication.

PA: To **TC** – You are not doing anything wrong. You are correct for asking about the incident. We will be clarifying our policy and procedures.

MSW: You will be given copies of the memo from Cassie to Michael and Phil reference "Technical Review", a copy of the email from Sgt. Loughman to Michael Ward, copy of Mission Statement and Vision Statement.

MSW: I will be preparing a Memorandum of Expectations and you will be requested to sign that you did receive this Memorandum and follow the expectations.

Meeting closed at 1528 hours.

EXHIBIT G

6-27-18 1:30pm – 3:30pm Mandatory meeting with the following in attendance:

Michael Ward (Lab Director)	Penny Alvis (Admin)
Phil Aviles (Quality Manager)	Sundaye Lopez (Crime Lab Liaison)
Cassie Johnson (DNA unit supervisor/TL)	Uvonna Alexander (Sr. Forensic Scientist)
Trisa Crutcher (Sr. Forensic Scientist)	Alisha Lagrini (Forensic Scientist)
Amanda Schaffner (Forensic Scientist)	Amanda Rickerd (Forensic Scientist)

The meeting was led by Michael Ward (MW). MW started out by saying that everyone adds value, he looks around the table and sees Forensic Scientists and Senior Forensic Scientists. He wants everyone to succeed. He believes there should be a 3 or 4 tier system for promotions so that when someone starts working at the lab straight out of college they can see their entire career here and how it would unfold.

MW then indicated that he wanted to address some troubling rumors he had heard even though it might not be "PC". MW stated that he does not know each of our hearts or intentions or what our agenda is in situations. MW stated that he heard rumors that some people are threatening to leave. Some saying that they are sick of it here and want to quit. Someone said they will quit and others will follow. MW informed us that we should not over inflate ourselves. No one is more important than anyone else and everyone is replaceable. If Cassie, Michael and Phil were to be in a bus accident tonight, the lab would still be open tomorrow. MW stated several times that we are all replaceable.

MW said that he had heard other rumors that Trisa had ulterior motives and was only bringing up these concerns because she was unhappy regarding her recent nonconformance. And that if anyone else had deviated from policy like Sundaye had, they would have been written up. Trisa raised her hand. MW sternly said "I am not done talking. You will wait until I am finished and then I will address your concerns". Trisa put her hand down. MW said that he has been told that we think he gives Sundaye preferential treatment and at one point indicated that we were all attacking Sundaye's integrity. The group as a whole answered "no." MW said that we should always be motivated by "what is best for the lab?" and that he has spoken with all of us separately and prior to this meeting, but the conversation he enjoyed most was with Uvonna because she broke things down simply for him and he likes things to be simple. MW stated that Uvonna and he agreed Quality was Job #1 and that Integrity was very important. He stated that Uvonna listed Customer Service as on her list but lower, which he did not agree with. Uvonna raised her hand and stated that she needed to clarify because that is not what she said. Uvonna was able to clarify later.

MW asked us if we knew what our mission/vision statements are. Amanda Rickerd stated the city's mission statement. MW passed out a copy of the mission/vision statements to most of us and read them aloud. He said we are to be impartial and unbiased in our work, but that we support the Police Department. He then went on to discuss how the concerns we have brought forward are merely administrative errors. It was brought up that administrative errors have led to a technical error in that we consumed samples without properly documented permission.

MW stated that he had heard another rumor that we were complaining that this was not being resolved quickly enough. MW later indicated again that he is very troubled by these rumors that he has been told by several individuals.

MW went on to say he has been discussing with Sundaye ways to improve the Case Approval process.

MW stated that there is nothing wrong with the technical aspect of our files/reports. He stated that he has spoken with the medical examiner's office and the DA's office and they all agree that if our reports reflect valid scientific work then those reports must be released. He stated that if we do not release our reports then we will be relieved from our current casework assignment and he will initiate a disciplinary investigation that will be quick and take no time to decide termination. Amanda Rickerd asked him to repeat that, he repeated the previous statement. (Amanda Rickerd later asked twice for this to be emailed to her and Michael said he didn't think he needed to put it in writing and that HR told him this was what he can do. Amanda Rickerd stated that she felt he was oversimplifying the situation that no one was refusing to do anything.)

MW gave us copies of the IOC's that we will be allowed to put in our case files alerting the customers that there is a current investigation into policy violations. Trisa asked why permission to consume was not specifically addressed on the IOC. Cassie responded that because the IOC mentions the DNA Submission Form then that encompasses permission to consume. Trisa stated that the customers (D.A.'s office) will not understand that because they do not know what is on our DNA submission form.

MW stated that we aren't hiding anything. Alisha stated that if we aren't hiding anything, what is the harm in adding permission to consume to the IOC. MW asked Cassie if she was okay with adding it. Cassie agreed.

MW then read an email that he wrote to the Sergeant of Homicide and also read a portion of their reply. MW said the sergeant said that the majority of the detectives agreed that Sundaye does send them the form after she fills it out for them. MW said the customer is very happy with our work and we have never consumed when they didn't want us to. MW then said he doesn't see that there is a problem.

MW stated that if Sundaye fills out the form and emails it to the Det then the Det emails it back to us and says yes the form looks good, then this is acceptable. We agreed as a unit that it is still a policy violation, but that we would at least know that they agreed with permission to consume; however, we indicated that we rarely have email chains documenting such an exchange b/n Sundaye and Det's and that is a problem.

Phil and MW stated that if the form comes to us then it has been through Sundaye; the form is auto-filled as "yes" to permission to consume so if the detective doesn't like it then he should say so. They also indicated that there is no court concern here. Trisa stated that when she goes to court, she has an ethical obligation to bring awareness when she has knowledge that the form may not be getting filled out as per policy. Phil said it is the analyst's responsibility to determine when to consume samples. It was explained to Phil that we do ultimately determine when we can consume, but the problem is that we have been giving ourselves permission to do so.

The unit brought up that the question/concern we have is who gave the permission (to consume). MW and Phil responded that none of the clients have complained about us consuming. Trisa stated that the customers do not know that we are consuming samples because it is not stated on our reports. And if the customers don't know, how do they know if they are happy about it?

MW informed us that there was a verbal commitment to deviate from policy (for Sundaye to fill out the DNA Submission Forms for Homicide only) but nothing written. The verbal commitment was given by

prior lab director Tom Stimpson. Members of the Biology unit indicated that verbal agreements must be in writing per our policy. Phil agreed that the verbal permission to deviate is a violation of policy.

Amanda Rickerd asked MW if he knew that Sundaye was filling out the forms. MW answered yes he did know, but that he did not know it was a violation of policy. Sundaye stated that it was only for Homicide. Amanda Rickerd inquired as to why she (AR) was not given permission to fill out the forms for Homicide as she (AR) is helping Sundaye with the case approvals; that it is counterproductive to have 2 people working toward the same goal with polar opposite approaches; Sundaye filling out forms for detectives and AR being told by Cassie/MW to force the detectives to fill the forms out themselves including enforcing the form to be filled out for cases prior to implementation of the form policy. MW stated that he did this intentionally because he wanted to see the detectives' responses.

MW informed us that we do not understand the politics. Chief Barclay is about to retire and people are fighting over who is going to be over our division because they ultimately want to be over Homicide. And that we want to make sure that Homicide is happy. MW also informed us that the Police Dept can tell us how to focus our resources, to work more cases of one type than another, etc. Trisa said that we are supposed to be unbiased.

Trisa stated that there is no document giving Sundaye approval to fill out forms for detectives and Michael and Phil agreed that it is not written anywhere; our policies/SOPs clearly state the detectives must fill out the forms; because Sundaye fills them out without written permission to do so, that is a violation of our policies/SOPs. Phil agreed that it is a violation. Phil then said he had a hard time grasping why this hasn't been brought forward over the past 2 years. Trisa and Uvonna stated that we all had indications it might be happening and brought those concerns to Cassie. However, it wasn't until the recent cases where Trisa stumbled upon documentation that Sundaye is filling out the forms and is not documenting the changes made to the detective's requests. Once she saw this in proof, Trisa stated she had an obligation to bring this forward.

MW indicated he had seen no proof of policy violations. Trisa reminded him that she gave Cassie the case file examples the first day but Cassie had given them back the same day. Trisa stated she had sent MW an email this morning letting him know that she had case files for him however MW had not responded. Trisa briefly left the meeting and brought Michael the specific case examples and set them down in front of him.

Alisha tried to clarify what, if any, resolution had been made about dealing with the affected cases, some others started talking over her, as Alisha continued to speak over them, MW interrupted Alisha, raised his voice and reprimanded Alisha for raising her voice. Alisha apologized stating she did not mean to raise her voice.

Amanda Schaffner asked what the actual contract is. Property Connect request or DNA Submission Form. A clear answer was never given from management.

Uvonna clarified some statements that MW misrepresented earlier about their private conversation regarding her viewing customer service as less important than quality and integrity. Uvonna clarified that when quality and integrity are her priority, good customer service will follow. The unit was in agreement with this statement.

Uvonna asked if we can send out the IOC with the reports. Management answered in the affirmative. When asked, Cassie agreed that this should include serology reports because of the gap in time between when DNA reports go out.

Trisa addressed the rumors about her that MW stated earlier. She asked Michael if he remembered the conversation they had the previous Friday when he asked what her agenda was in all of this. Michael said that it was the quality and integrity of the case. Trisa agreed that is what she said and asked Michael why he was still talking about those rumors to her coworkers while she was absent the following Monday and Tuesday and why he was talking about them again today (Wednesday). She asked why those rumors were not put to bed when she had already addressed them face to face. Michael did not address this and then said there were rumors about the Biology Unit feeling like they had no one to go to and that maybe Cassie wasn't doing her job. Trisa asked the unit if any of us said any of the alleged statements; we all answered no. Trisa stated she had also never said those things.

Trisa then asked about Michael's source. MW refused to say, only to say that it was multiple people. Trisa asked if it was anyone in our unit, MW said no. Amanda Rickerd then asked "so it's hearsay?" to which MW stated "yes". Phil stated that the "personal stuff" should be left out.

Phil assured us we were not in violation of any ANAB standard or else he would shut down our lab himself. Trisa reminded Phil that our unit also follows FBI-QAS guidelines which requires us to follow our own written procedures for permission to consume. Phil joked that it was just the FBI and he doesn't really care what they have to say. Phil and MW then re-stated that we aren't violating anything and MW stated that if we were then we should be going to the TV stations and newspapers. Phil stated that we could talk to the DAs office if we wanted proof.

Phil said Trisa did the right thing bringing this concern to light. MW stated they always want us to bring them our concerns. Members of the unit stated that they were surprised to hear this. Trisa added that she hasn't felt like they wanted her to bring forward her concerns based on their actions and that she doesn't know if she feels comfortable bringing forward any quality issues in the future. Phil told Trisa she could always go to him if there is a quality issue. Trisa asked if he was sure because she received an email from Michael stating that she has to go to him with any more concerns. Trisa did not receive a response.

EXHIBIT H



Police Department
Inter-Office Correspondence


DATE: June 27, 2018

TO: Michael S. Ward, Forensic Division Manager
Phil Aviles, Quality Manager

FROM: *S.* Cassie Johnson, Biology Unit Technical Leader

SUBJECT: Technical Review

Laboratory management is currently investigating concerns about the completion of the DNA Submission Form, which includes permission to consume, and deviations from the case approval policy. In order to complete the technical review of a report in Forensic Advantage, the reviewer must answer, in the affirmative, that all the policies were followed. In light of this investigation, the examiners and technical reviewer(s) have expressed concerns as to whether or not all case approval policies were followed and whether or not the content of the DNA Submission Form, including permission to consume, was agreed upon by the customer. However, per accreditation requirements, the technical reviewers understand that the results of testing must be communicated to the customer in the form of a laboratory report. Per instruction of the Forensic Division Manager, if the content of the case record is technically reviewed and the technical reviewer has determined that the data and conclusions are reasonable, supported by examination records, within the constraints of scientific knowledge, and in compliance with laboratory processing guidelines, the technical review must be completed. Upon completion of this investigation, additional documentation communicating the outcome will be included in the laboratory case file(s).



Michael S. Ward
Forensic Division Manager

Date: 06/28/2018
 Approved
 Not Approved
 Comments Attached



Phil Aviles
Quality Manager

Date: 6/28/18
 Approved
 Not Approved
 Comments Attached

EXHIBIT I

CAUSE NO. 1494376D

THE STATE OF TEXAS

FILED
THOMAS A. WILDER, DIST. CLERK
TARRANT COUNTY, TEXAS

IN THE 396th JUDICIAL

VS.

AUG 20 2020

DISTRICT COURT OF

JAMES EARNEST FLOYD, ~~THE~~

BY

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DEPUTY

TARRANT COUNTY, TEXAS

FINDINGS ON DEFENDANT'S MOTION TO SUPPRESS

The Court has conducted hearings to determine the admissibility of the DNA evidence tested by the Fort Worth Police Department Crime Laboratory (FWPDCL) in light of certain information, whether that information constitutes *Brady*¹ material, and/or whether all DNA results should be suppressed.

On August 4, 2020, Defendant filed "Motion to Suppress Evidence Illegally Obtained" in which he seeks to suppress DNA evidence tested at the Fort Worth Police Department Crime Lab.

The Court reviewed numerous exhibits, disclosures and heard from a number of witnesses.

The Defendant has requested written Findings of Fact and Conclusions of Law. However, Defendant has further requested on the record to re-open evidence on these issues. The Court denied the request at that time, but if a proper written request is received, the Court could reconsider that ruling.

¹ *Brady v. Maryland*, 373 U.S. 83 (1963)

At this time, the Court is making these findings and asking for Trial Briefs to address the Court's questions.

Background/DNA Submission Form:

1. In 2016, as a result of a Lean Six Sigma study, the FWPDCL developed a DNA Submission Form in order to bring more efficiency to the FWPDCL by standardizing requests for DNA testing.²
2. Trisa Crutcher has been employed as a Forensic Scientist III with the FWPDCL for 9 years. In 2016, she helped develop that form.³
3. The Biology Unit Case Acceptance Policy was amended to require use of the newly-created DNA Submission Form for all biology submissions, effective January 4, 2017. The policy outlines why a submission form is required, stating, "You, as the investigating detective or officer, are the best source of background information about your case. The information you provide helps the Biology Unit process the evidence in the most effective way possible and determine if DNA profiles are eligible for CODIS." It clearly states who is responsible for filling out the form: "The detective or investigating officer."⁴

² Testimony of Trisa Crutcher.

³ Testimony of Trisa Crutcher.

⁴ DX 46.

4. In 2018, while conducting technical review on an unrelated case, Ms. Crutcher and several co-workers in the Biology Unit raised concerns about their ethical obligations in relation to what they felt was a potential violation of FWPDCL's own written policies regarding written permission to consume samples.⁵

Ethical Concerns and Guiding Principles for FWPDCL:

5. As part of the technical review process in FWPDCL, a technical reviewer is required to answer the following question: "have all lab policies been followed?"⁶
6. In June 2018, Ms. Crutcher and her co-workers stopped the case reviews they were working on, because they felt they did not have clear written permission to consume on some of their cases, and therefore would be a violation of their ethics to sign off on the reports.⁷
7. Ms. Crutcher's opinion was that it is unethical for her to sign off on the report without clear written permission to consume, as she did not feel certain that it was documented that all lab policies and procedures had been followed.⁸

⁵ See Testimony of Trisa Crutcher.

⁶ See Testimony of Trisa Crutcher.

⁷ See Testimony of Trisa Crutcher.

⁸ See Testimony of Trisa Crutcher.

8. Ms. Crutcher testified that she is guided by the following ethical guidelines and written policies of the FWPDCL:⁹
9. According to the FWPDCL Code of Ethics, “[t]he Laboratory and its employees abide by the ANAB¹⁰ Guiding Principles of Professional Responsibility for Forensic Service Providers and Forensic Personnel, the Texas Forensic Science Commission Code of Professional Responsibility¹¹, as well as the standards set forth by any applicable discipline-specific professional organizations.”¹²
10. ANAB’s Guiding Principles of Professional Responsibility for Forensic Service Providers and Forensic Personnel states that, “Ethical and professionally responsible forensic personnel . . . 5. Report to the appropriate legal or administrative authorities unethical, illegal, or scientifically questionable conduct of other forensic employees or managers...” and “6. Report conflicts between their ethical/professional responsibilities and applicable agency policy, law, regulation, or other legal authority, and attempt to resolve them.”¹³

⁹ See Testimony of Trisa Crutcher.

¹⁰ ANAB is a subsidiary of ANSI (American National Standards Institute). The ANSI National Accreditation Board (ANAB) is a non-governmental organization that provides accreditation services and training to public- and private-sector organizations.

¹¹ DX 34, Texas Administrative Code Sec. 651.219.

¹² See DX 33 & Testimony of Trisa Crutcher.

¹³ DX 31.

11. At the time, FWPB Crime Lab was accredited by the American Society of Crime Laboratory Directors (ASCLD)¹⁴, which has since merged with ANAB.¹⁵
12. The ASCLD/LAB Guiding Principles of Professional Responsibility were very similar, if not identical, to those of ANAB.¹⁶
13. According to the testimony of Philip Aviles, Quality Control Manager of FWPBCL, the FWPBCL follows the Guiding Principles of ANAB, as well as the Texas Forensic Science Commission Standards.¹⁷
14. Ms. Crutcher testified that she also felt bound by the FBI Quality Assurance Standards, which states that, “[t]he laboratory shall have and follow a documented policy for the disposition of evidence that includes a policy on sample consumption.”¹⁸
15. In accordance with these guiding principles, the FWPBCL’s own Biology Unit Evidence Consumption Policy, effective November 22, 2017, states: “Whenever possible, the Biology Unit should retain a portion of the evidence sample... However, if the examiner believes consumption of the biological material is necessary to maximize the likelihood of obtaining a usable DNA profile, s/he must first obtain clear written permission to collect and consume from the

¹⁴ See Testimony of Trisa Crutcher, Testimony of Philip Aviles.

¹⁵ www.anab.ansi.org

¹⁶ See DX 32.

¹⁷ Testimony of Philip Aviles, see also DX 34.

¹⁸ DX 40.

client. Written permission may be provided through e-mail communication with the detective or on the completed DNA Submission Form.”¹⁹

16. Mr. Aviles also testified that FWPDCCL’s Evidence Consumption Policy was designed to mirror the FBI Standards.²⁰

2018 Issue Raised and Investigation

17. On June 13, 2018, Ms. Crutcher sent an email to Michael Ward, FWPDCCL Director, documenting the concerns within the Biology Unit regarding the DNA Submission Form and whether written permission to consume was being properly obtained and documented.²¹

18. A meeting of concerned personnel and management occurred on June 27, 2018. Present were: Michael Ward (Lab Director), Phil Aviles (Quality Manager), Cassie Johnson (DNA unit supervisor/TL), Trisa Crutcher (Sr. Forensic Scientist), Amanda Schaffner (Forensic Scientist), Penny Alvis (Admin.), Sundaye Lopez (Crime Lab Liaison), Uvonna Alexander (Sr. Forensic Scientist), Alisha Lagrini (Forensic Scientist), and Amanda Rickerd (Forensic Scientist). Notes were taken by Penny Alvis.²²

¹⁹ DX 41.

²⁰ Testimony of Philip Aviles.

²¹ See DX 35.

²² DX 57.

19. Of primary concern was the fact that Crime Lab Contact (CLC) Sundaye Lopez had been filling out the DNA Submission Forms on behalf of Homicide detectives and in complex cases.²³
20. Both FWPDCCL written policy at that time and the DNA Submission Form itself required written permission to consume to be given only by the detective or investigating officer.
21. Since there was no document (at that time) giving Ms. Lopez authority to fill out forms on behalf of detectives, some members of the Biology Unit, along with FWPDCCL Quality Control Manager Phil Aviles agreed this was a policy violation.²⁴
22. Amanda Rickerd, now employed as a forensic scientist with University of North Texas Health Science Center (UNTHSC), worked at FWPDCCL from 2015-March 2020.²⁵
23. Ms. Rickerd testified that she was present at the meeting on June 27, 2018. She stated that Uvonna Alexander and Trisa Crutcher were the ones doing the tech reviews and raised the issue.²⁶

²³ DX 57.

²⁴ DX 57, see also, Testimony of Phil Aviles.

²⁵ Testimony of Amanda Rickerd.

²⁶ Testimony of Amanda Rickerd.

24. Ms. Rickerd felt at the time that there was a difference of opinion about this matter between management and the Biology Unit.²⁷

25. Ms. Rickerd's opinion is that this was a deviation from policy, but could easily have been acknowledged, corrected and addressed.²⁸

26. According to Ms. Rickerd's testimony, Michael Ward threatened to fire individuals if they did not proceed with their casework and issue reports as ordered. She testified that he deemed their concerns a "non-issue".²⁹

27. Similarly, Ms. Crutcher testified that Michael Ward "ordered" the employees not to mention their concerns on this issue to anyone, and that they "would be fired" if they did not complete the reports and "drop the issue".³⁰

28. Michael Ward characterized the concerns as an "administrative error."³¹

29. As a corrective action, however, on June 27, 2018, Michael Ward approved issuance of an IOC (Inter-Office Correspondence) to be included in each of the affected files that were in technical review at that time.³²

²⁷ Testimony of Amanda Rickerd.

²⁸ Testimony of Amanda Rickerd.

²⁹ Testimony of Amanda Rickerd. See also, State's Disclosure of Information: Amanda Rickerd 08/11/2020.

³⁰ See Testimony of Trisa Crutcher.

³¹ DX 57.

³² See DX 43.

30. Around that time, Trisa Crutcher sent the IOC to two Assistant Criminal District Attorneys on the two cases she had in tech review at that time.³³

31. According to Ms. Crutcher's testimony, she was instructed by Cassie Johnson and Michael Ward to only send the IOC to the DA's it applied to at the time.³⁴

32. Mr. Floyd's case was not in technical review at that time. Therefore, no IOC was included in his file even though the requests fell during this same time frame.³⁵

33. Apparently, due to Mr. Ward's reaction, several members of the Biology Unit decided to meet with FWPD Deputy Chief (DC) Kamper, who is Michael Ward's supervisor.

34. On July 3, 2018, Ms. Crutcher and co-workers met with FWPD Deputy Chief (DC) Kamper. Present were: Jennifer Zielinski, Uvonna Alexander, Amanda Schaffner, Amanda Rickerd, and Alisha Lagrini.³⁶

35. Sgt. Merle Green conducted an investigation in 2018 on behalf of DC Kamper. Sgt. Green determined there were no city policy violations and returned the matter to Michael Ward.³⁷

³³ Testimony of Trisa Crutcher.

³⁴ Testimony of Trisa Crutcher.

³⁵ Testimony of Trisa Crutcher.

³⁶ See DX 35.

³⁷ See CX 6.

36. Based upon the information reviewed by the Court, it appears that neither Sgt. Green nor FWPDCCL conducted an audit to determine which, if any, additional cases were affected; nor was there notification to any accrediting bodies.³⁸

37. Ms. Crutcher did not report her concerns to the Texas Forensic Science Commission or ANAB or ASCLD at that time.³⁹

38. However, she did document in a July 20, 2018 email to Phil Aviles, Michael Ward, and Cassie Johnson the specific ASCLD policies she felt were being violated.⁴⁰

39. From the evidence reviewed by the Court, it appears Michael Ward did take two actions in response to the concerns raised in the June 2018 meeting:

- A. the IOC for cases in tech reviewed referenced above; and
- B. he issued a seven-page Non-Conformance Report on July 30, 2018.⁴¹

40. According to the Non-Conformance Report, one of the actions to be taken was to amend the Biology Unit Case Acceptance Policy to reflect that the DNA Submission Form could be filled out with the assistance of lab personnel, including the CLC, as long as all supporting correspondence and documentation is saved in the file.⁴²

³⁸ See CX 6.

³⁹ Testimony of Trisa Crutcher.

⁴⁰ See DX 35.

⁴¹ DX 61.

⁴² DX 61.

41. According to Biology Unit Case Acceptance Policy effective August 29, 2018, the section regarding who is responsible for filling out the DNA Submission Form was changed to read: “The detective or investigating officer is responsible for filling out the form, but may receive assistance from lab personnel when necessary. If laboratory personnel complete the DNA Submission Form for a detective or investigating officer, the detective or investigating officer needs to sign or initial and date each page as a confirmation that all information is accurate. The approval process of the DNA Submission Form by Laboratory personnel may require a single line edit with date and initials. These edits will be accompanied by a supporting email where applicable.”⁴³

42. This clarification allowed the Crime Lab Contact (CLC), Sundaye Lopez, to fill out the paperwork and assist the detectives and investigators in deciding which evidence to test, and whether permission to consume should be granted.

DNA Submissions in this Case:

43. Sundaye Lopez is employed as a Forensic Scientist III and Crime Lab Contact at FWPDC. She has worked there 19 years, but the position of CLC was created in 2015.⁴⁴

⁴³ DX 47.

⁴⁴ See Testimony of Sundaye Lopez.

44. According to the meeting notes of the June 27, 2018 meeting, as well as the testimony of Sundaye Lopez, it is clear that prior Lab Director, Tom Stimpson, had given Sundaye Lopez verbal permission to assist detectives in filling out the DNA Submission Forms. The verbal permission was continued by Michael Ward.⁴⁵
45. Philip Aviles has held the position of FWPDCCL Quality Assurance Manager for 18 years. He testified that the FWPDCCL Evidence Consumption Policy dated November 22, 2017 is designed to mirror the FBI standards.⁴⁶
46. Mr. Aviles testified that there are no exceptions to the policy and it does not provide for verbal consent or permission.⁴⁷
47. Verbal amendments and clarifications are not specifically authorized in any of the policies reviewed by the Court.
48. Ms. Lopez testified that she did, in fact, collaborate with Homicide detectives in filling out the DNA Submission Forms, including the ones in this case.⁴⁸
49. The form has an “auto-fill” feature which automatically checks the “Yes” answer to the question of whether there is permission to consume.⁴⁹

⁴⁵ See DX 57 and Testimony of Sundaye Lopez.

⁴⁶ See DX 41 and Testimony of Philip Aviles.

⁴⁷ Testimony of Philip Aviles.

⁴⁸ See Testimony of Sundaye Lopez.

⁴⁹ Testimony of Sundaye Lopez.

50. Ms. Lopez denies that she gives permission to consume, “because it is automatically marked ‘yes’ in the program.”⁵⁰

51. If the examiner feels more specific information is needed, Ms. Lopez testified that it is incumbent upon them to obtain it.⁵¹

52. According to Ms. Lopez’s testimony, it is up to the examiner to determine whether there is clear written permission to consume.⁵²

53. Mr. Aviles agrees with that position.⁵³

54. It is unclear why or how an examiner would question permission to consume when the paperwork says “yes”, there is permission to consume. It is also unclear how the DNA Submission Form increases efficiency within the lab if each analyst must contact the detective or investigating officer on every single case to verify permission to consume.

55. Ms. Lopez testified that the change in policy in 2018 allowed her to make changes to the forms as long as she retains documentation to support those changes, and that each change is initialed and dated.⁵⁴

⁵⁰ Testimony of Sundaye Lopez.

⁵¹ See Testimony of Sundaye Lopez.

⁵² See Testimony of Sundaye Lopez.

⁵³ Testimony of Philip Aviles.

⁵⁴ See Testimony of Sundaye Lopez.

56. Ms. Lopez testified there are “no policy violations in this case that I’m aware of.”⁵⁵

57. The original DNA Submission Form in this case was filled out by the CLC in collaboration with Detective Jerry Cedillo.⁵⁶

58. Detective Jerry Cedillo and Detective Ernie Pate met with Ms. Lopez on or around June 2, 2017 to agree on what should be tested in this case.⁵⁷

59. Detective Cedillo testified there were five DNA Submission Forms in the case:

- 06-02-2017
- 02-22-2018
- 07-25-2018
- 09-30-2019
- 10-03-2019 ⁵⁸

60. Detective Cedillo testified that the first three forms were filled out by Ms. Lopez. He filled out the one dated 09-30-2019 and Ernie Pate filled out the one dated 10-03-2019.⁵⁹

⁵⁵ See Testimony of Sundaye Lopez.

⁵⁶ See Testimony of Sundaye Lopez, Testimony of Det. Jerry Cedillo, and CX 10.

⁵⁷ Testimony of Det. Jerry Cedillo

⁵⁸ Testimony of Det. Jerry Cedillo, CX 10.

⁵⁹ See Testimony of Det. Jerry Cedillo.

61. Detective Cedillo testified that all DNA Submission Forms in this case were filled out and submitted with his approval and consent.⁶⁰

62. Both the original DNA Submission Form and the second DNA Submission Form, dated June 2, 2017 and February 22, 2018, respectively, came in under the old policy, and prior to the June 27, 2018 FWPDCL personnel meeting, as well as the July 2, 2018 Non-Conformance Report and subsequent policy change.

Integrity of Results in this Case:

63. Amanda Rickerd testified that she performed evidence screening in this case. The evidence did not appear to be tampered with.⁶¹

64. Ms. Rickerd testified that her actions complied with proper testing procedures, and she has no knowledge that Trisa Crutcher violated procedures in testing in this case.⁶²

65. There were no concerns from Trisa Crutcher regarding the scientific validity of the work performed by her or Amanda Rickerd.⁶³

⁶⁰ See Testimony of Det. Jerry Cedillo.

⁶¹ Testimony of Amanda Rickerd.

⁶² Testimony of Amanda Rickerd.

⁶³ Testimony of Trisa Crutcher.

66. Ms. Crutcher testified that the items she reviewed were properly packaged and stored.⁶⁴

67. According to the testimony of Trisa Crutcher, she issued four reports in this case:

C. First Report dated 03-02-2018

D. Supplement A dated 05/15/2018

E. Supplement B dated 08-30-2018

F. Supplement C dated 11-26-2019⁶⁵

68. In this case, the permission to consume is shown on the DNA Submission Form as “yes”. Ms. Crutcher testified she does not know if that permission was given by the detective or by the CLC.⁶⁶

69. Her opinion is that if evidence is consumed without permission, it is likely to affect the results.⁶⁷

70. Ms. Crutcher testified that there was degradation in the samples in this case, but she cannot testify when the degradation occurred, or if it could be attributed to the delays in testing.⁶⁸

⁶⁴ Testimony of Trisa Crutcher.

⁶⁵ Testimony of Trisa Crutcher.

⁶⁶ Testimony of Trisa Crutcher.

⁶⁷ Testimony of Trisa Crutcher.

⁶⁸ Testimony of Trisa Crutcher.

Timeline of Notification of Concerns in this Case:

71. On March 26, 2020, there was a dispute between Michael Ward and Trisa Crutcher over an employment matter.⁶⁹

72. Thereafter, around April 8, 2020, Ms. Crutcher again renewed her complaints about the DNA Submission Form and permission to consume issue.⁷⁰

73. Trisa Crutcher contacted FWPd detectives to make a criminal complaint regarding the FWPdCL on April 30, 2020.⁷¹

74. Ms. Crutcher also expressed concerns regarding delays in testing in sexual assault cases, specifically Crimes Against Children Unit cases.⁷²

75. FWPd Special Investigations Unit (SIU) Detective Sherry Kelly conducted the CACU portion of the investigation and studied delays in cases and concluded the FWPdCL was doing an excellent job with CACU cases.⁷³

76. Seemingly frustrated with the lack of concern by FWPd, on or around May 19, 2020, Trisa Crutcher emailed Pauline Fitzgerald, an investigator with the Tarrant County District Attorney's Office to relay her concerns and to seek an investigation.⁷⁴

⁶⁹ See Court's Exhibit #4

⁷⁰ See DX 35.

⁷¹ See CX 6.

⁷² See CX 6.

⁷³ See CX 6.

⁷⁴ DX 29.

77. Ms. Fitzgerald is a master peace officer and has worked for the Tarrant County District Attorney's Office for 4 years. She is assigned as a Special Crimes investigator.⁷⁵

78. Ms. Fitzgerald stated that, upon receiving the email from Trisa Crutcher, she did not investigate, but instead forwarded it to her supervisor, Assistant Chief Investigator Maria Hinojosa.⁷⁶

79. Maria Hinojosa, Deputy Chief Investigator for the Tarrant County District Attorney's Office testified that she has been a Texas peace officer for almost 30 years, and also holds a master's peace officer license. She has worked for the Tarrant County District Attorney's Office for 8 years.⁷⁷

80. Ms. Hinojosa's email dated May 22, 2020 to Ms. Crutcher characterizes the allegations as "unsubstantiated", but indicates they will be "referred to the proper authorities".⁷⁸

81. Apparently, no such referral was made. Ms. Hinojosa testified that she did not report it to any investigating agency, as it was already under review by FWPD.⁷⁹

⁷⁵ Testimony of Pauline Fitzgerald.

⁷⁶ Testimony of Pauline Fitzgerald.

⁷⁷ Testimony of Maria Hinojosa.

⁷⁸ DX 30

⁷⁹ Testimony of Maria Hinojosa.

82. Ms. Hinojosa did, however, report it to her supervisor, Chief Investigator Tammie Hughes.⁸⁰

83. Tammie Hughes, Chief Investigator of the Tarrant County District Attorney's Office also holds a Master's peace officer license and has been employed by the Tarrant County District Attorney's Office since January 2, 2018.⁸¹

84. She testified that she does not recall the emails from Deputy Chief Hinojosa regarding the Trisa Crutcher allegations or what was done in response to them.⁸²

85. Ms. Hughes testified that she is not certain she can make a referral to the Forensic Science Commission, nor is she aware of whether the Tarrant County District Attorney's Office can investigate the offense of tampering with a governmental record (which is what is alleged by Ms. Crutcher).⁸³

86. The Tarrant County District Attorney's Office asserted work product privilege regarding their internal decision-making, so it is unknown what further action or communication, if any, was conducted.

87. In the meantime, adverse employment action was taken against Ms. Crutcher by Michael Ward on June 8, 2020.⁸⁴

⁸⁰ Testimony of Maria Hinojosa.

⁸¹ Testimony of Tammie Hughes.

⁸² Testimony of Tammie Hughes.

⁸³ Testimony of Tammie Hughes.

⁸⁴ See DX 35.

88. Investigations were conducted within FWPD and Ms. Crutcher returned to work on July 20, 2020.⁸⁵

89. In addition to reports to FWPD and the Tarrant County DA's Office, Ms. Crutcher has since independently made reports to outside entities including the Texas Forensic Science Commission, and the FBI.⁸⁶

90. Based upon information reviewed by the Court, it does not appear that FWPD or FWPDCL ever independently referred these matters to any outside agency, or to the Tarrant County District Attorney's Office.

91. The next formal Disclosure of Information by the DA's Office in this case in relation to the Trisa Crutcher matter was filed July 27, 2020, two days before testimony was scheduled to begin.

92. Ms. Callaghan maintains that the trial team for the prosecution had no knowledge that the DNA Submission Form issue was a concern in this case until the week of July 20, 2020, (maybe July 23 or 24) when it met with Ms. Crutcher for the first time.

93. Ms. Crutcher agreed, stating that she did not inform the prosecution team in this case sooner because she did not realize it was an issue in this specific case until looking through the documents in preparation for trial.⁸⁷

⁸⁵ See CX 6.

⁸⁶ Testimony of Trisa Crutcher.

⁸⁷ Testimony of Trisa Crutcher.

94. It is unknown why the trial team had not met with a FWPDCL witness prior to the week of July 20, 2020 in a case in which they had announced their intention to seek the death penalty three years earlier, and in which they were partially relying on DNA evidence to convict. The jury was selected and sworn on March 6, 2020, and testimony was originally scheduled to begin on March 23, 2020.

95. However, there are members of the Tarrant County District Attorney staff who possessed knowledge of general concerns in 2018, and also as early as May 19, 2020.

96. Additionally, on July 16, 2020 the Property Connect system within FWPD shows an email between Detective Jerry Cedillo and Dan Monte of the Tarrant County District Attorney's Office Disclosure Compliance Division. Within that email, Mr. Monte states that he is "assisting Lisa on this case" and "[t]his is regarding a potential issue with the DNA evidence."⁸⁸

⁸⁸ DX 55.

97. It appears that the trial team was informed of the general concerns of Ms. Crutcher at some point, as they issued a series of subpoenas on July 16, 2020 seeking the following to be produced on Monday, July 20, 2020: “ALL DOCUMENTS, RECORDINGS, TRANSCRIPTIONS, INVESTIGATIVE NOTES, DATA, EMAILS, REPORTS, COMPLAINTS, TEST RESULTS, AND ANY OTHER ITEMS PERTAINING TO AN INVESTIGATION OF TRISA CRUTCHER AND CRUTCHER'S COMPLAINTS RELATING TO THE FORT WORTH CRIME LAB, ITS EMPLOYEES, ACTIVITIES, AND PROCESSES FROM MARCH 2020 AND THEREAFTER.”⁸⁹

98. These subpoenas were issued for five individuals: Trisa Crutcher, Rene Kamper (FWPD), Phillip Aviles (FWPDCL), Michael Ward (FWPDCL) and Kevin Duvall (FWPD).

99. These are the records that were turned over to the Court for *in camera* review for *Brady* and admitted as CX 6.

100. The Court, as stated in its earlier *Brady* ruling, did not have the full context of the case, the testimony, or the allegations at the time of its original review, and was obviously incorrect in ruling there was nothing material to this case in the records.⁹⁰

⁸⁹ See District Clerk's file.

⁹⁰ See CX 9, Court's *Brady* Review & Findings Regarding Trisa Crutcher Records signed on August 5, 2020.

101. Ms. Crutcher has continued to produce items to the District Attorney's Office, including an email to Dan Monte on August 13, 2020 containing new specific policy violation allegations.⁹¹

Credibility of Allegations

102. There is no evidence before the Court that Ms. Crutcher or Ms. Rickerd have ever made false allegations, falsified reports, or that their work product and reliability of testing results are in question.

103. There is no evidence that Ms. Rickerd was not an employee in good standing with the FWPDC Crime Lab at the time she left their employment.

104. It appears other members of the Biology Unit who are not still employed by FWPDC, but were not called to testify, may share in some of the concerns of Ms. Crutcher.

105. However, it also appears that other employees of the FWPDC are of the opinion that there were no policy violations.

⁹¹ CX 17.

What Portions of this Information Are Admissible at Trial?

106.State agrees that under *Giglio*⁹², Defendant has the right to cross-examine lab personnel on the following topics:

- delays in testing in this case;
- how those delays could have led to degradation that occurred in this case;
- the fact that there was degradation of samples tested in this case;
- the potential violation of the lab's own policies by Sundaye Lopez filling out the first two DNA Submission Forms;
- lab policies and how those were potentially violated.

107.The State also pointed out that since this was a case in which the State's Notice to Seek the Death Penalty was filed on August 10, 2017,⁹³ the appropriate source for permission to consume was the prosecution and defense.

108.Ms. Lopez confirmed that permission to consume was received from ADA Michele Hartmann on May 16, 2018,⁹⁴ after Detective Cedillo deferred to Ms. Hartmann on that issue.⁹⁵

109.This information would clearly be admissible to rebut the Defendant's claims.

⁹² *Giglio v. United State*, 405 U.S. 150 (1972).

⁹³ DX 58,

⁹⁴ See DX 38, see also SX 574.

⁹⁵ SX 574.

Additional Concerns

110. During this series of hearings to determine whether the DNA evidence should be suppressed, and whether the State and its crime lab committed *Brady* violations by failing to turn over impeaching information, FWPDCCL continued to send information to the DA's office.

111. On Monday, August 10, 2020, after witnesses had been sworn and placed under the Rule, the DA Investigator on this case received an unsolicited email from an employee in the FWPDCCL who did not testify in these hearings. This individual wanted to provide her personal notes from an investigative interview conducted by Phil Aviles of Trisa Crutcher on May 21, 2020 on behalf of Human Resources. August 10 happens to be the day FWPDCCL employees Sundaye Lopez and Phil Aviles testified in this case. Yet, it seems this person inserted herself into the proceedings in an attempt to discredit the allegations of Ms. Crutcher.⁹⁶

112. In addition, on the morning of August 13, 2020, Ms. Callaghan received a phone call in the courtroom. Michael Ward was calling her. He had "heard" that the notes of the June 27, 2018 meeting that Ms. Crutcher had provided to the Court were not the official notes. So, he proceeded to forward the "official" notes of that meeting.⁹⁷

⁹⁶ CX12.

⁹⁷ CX 16.

113. Ms. Callaghan promptly provided both items to the defense under Art. 39.14 of the Texas Code of Criminal Procedure, and copies were admitted into the record of these hearings.

114. One would presume that scientists employed in a crime laboratory are familiar with the witness Rule and court proceedings. The role of a neutral professional is to be a witness, not an advocate, in a trial. A criminal trial, most seriously a capital murder case in which the State is seeking the death penalty, is not the proper forum for airing petty grievances among employees.

115. What these interjections accomplished is quite the opposite of their intention. One cannot help but lend more credibility to the claims of intimidation and retaliation going on in the FWPDCL after seeing this sequence of events unfold in the courtroom.

116. Not only that, this raises a question of whether someone violated the witness Rule, because how else would these two individuals who were not called to testify know the exact nature of the Court testimony or exhibits?

Duty to Investigate and Turn Over Impeaching Information:

117. Under *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972); *Kyles v. Whitley*, 514 U.S. 419 (1995) and their progeny, evidence favorable to an accused, including impeachment evidence may not be

suppressed by the prosecution, irrespective of the good faith or bad faith of the prosecutor.

118. A prosecutor has a duty to learn of any favorable evidence known to others acting on the government's behalf in the case, including the police. *Kyles v. Whitley*, 514 U.S. 419 (1995). “[A]ny favorable evidence known to the others acting on the government's behalf is imputed to the prosecution.” *Id.*

119. Information known to members of the “prosecution team” is considered to be in the possession of the prosecutor for *Brady* purposes even if the information is not actually known to the prosecutor handling the case. *Kyles v. Whitley*, 514 U.S. 419, 438 (1995).

120. Police and police department-owned crime lab personnel are deemed members of the prosecution team for purposes of *Brady*. See *Kyles v. Whitley, supra*.

121. A prosecutor will be deemed to be in possession of favorable material evidence that is “known only to police investigators and not to the prosecutor.” *Youngblood v. West Virginia* 547 U.S. 867, 869 (2006).

122. It is well-settled that individuals (i.e., police officers, lab technicians, etc.,) who participate in the actual investigation of the defendant are considered part of the prosecution team, and that information known to members of the prosecution team is deemed to be in the constructive possession of the prosecution for *Brady* purposes, regardless of whether the prosecutor is personally aware of the exculpatory information. *Youngblood v. West Virginia*,

547 U.S. 867, 870 (2006) [nondisclosure of note from prosecution witnesses impeaching testimony of witnesses at trial that was read by a state trooper who investigated the case, but not shared with prosecutor, could constitute Brady error]; *Kyles v. Whitley*, 514 U.S. 419, 438 (1995) [statement of an informant known to an officer investigating the case was in the constructive possession of the prosecution, even though information never communicated to the prosecuting attorney].

123. Moreover, the duty to disclose material exculpatory information in the constructive possession of the prosecutor applies to impeachment evidence, as the caselaw treats impeachment and exculpatory evidence the same under *Brady*. See *United States v. Bagley* 473 U.S. 667, 676 (1985). Rather, “[w]hen the ‘reliability of a given witness may well be determinative of guilt or innocence,’ nondisclosure of evidence affecting credibility falls within [the *Brady*] rule.” *Giglio v. United States*, 405 U.S. 150, 154 (1972), quoting *Napue v. Illinois*, 360 U.S. 264, 269 (1959).

124. For *Brady* purposes, the “prosecution” includes “not only the individual prosecutor handling the case, but also ... the prosecutor's entire office”. *Hall v. State*, 283 S.W.3d 137, 170 (Tex.Crim.App. 2009)

125. The caselaw seeks to avoid exactly what happened in this case. All of the *Brady* and *Giglio* information and the investigations in this case were in the exclusive possession of the FWPDCL and FWPD, and a Defendant would have

no way of knowing it existed if not for voluntary disclosure or discovery by an outside investigating agency, or by an inquiring by the prosecutors. When this concealed information did come to light at the insistence of the lab analyst, the Court was presented with over 3,000 pages of material days before testimony was to begin before the jury.

126. Under *Brady* and *Kyles*, this information should have long ago been provided to the defense.

Unresolved Questions of Law and/or Fact:

The Court has ruled on the Motion to Suppress; however, the Defendant has requested to be allowed to re-open the evidence and call additional witnesses. In light of that, the Court is requesting Trial Briefs to determine whether that is appropriate in light of the questions raised by the evidence thus far.

127. In 2018, was there systemic crime lab misconduct by FWPDCCL by not following written policy in regards to DNA submissions? At this point, has there been an investigation to determine how many cases were affected by this alleged policy violation?

128. Does the manner in which DNA Submissions were handled in this case constitute a violation of policy?

129.As stated in the Court's ruling on Defendant's Motion to Suppress DNA Evidence, a fact issue seems to exist of whether or not there was a policy violation occurring in 2018. However, the opinion of the individual analyst that there was a policy violation seems sufficient to require that it be turned over as impeachment information. Two additional witnesses agreed with that assessment in their testimony, and records indicate several additional former employees agree as well.

130.If there was in fact a policy violation of the nature alleged, is that serious enough to warrant notification to accrediting bodies such as Texas Forensic Science Commission, ANAB, or FBI?

131.During the time frames in 2018 and 2020 during which FWPDCL and FWPD were conducting investigations into these allegations, didn't the FWPDCL at a minimum have an obligation to report not only to the DA's office, but also to FWPDCL's accrediting bodies that there was an ongoing investigation into laboratory practices and procedures, even if they were confident those investigations would find no wrongdoing? Most recently, in April 2020, FWPD received a criminal complaint regarding the activities within the FWPDCL. That alone is *Brady* information, as it calls into question the credibility, reliability and motives of police actors.

132.The Court invites both sides to brief the issue of the extent to which the Defendant can elicit evidence to show that FWPDCCL and FWPD actions affected the integrity of laboratory results in this case.

133.Do the FWPDCCL and/or FWPD understand their duties to inform their prosecution teams of potentially mitigating evidence as well as impeachment information?


134.Why was there never an audit by either FWPDCCL or FWPD to discover which, if any, other cases could have been affected by the DNA Submission Form not having clear written permission to consume prior to the policy change? That way, an IOC could have been included in all affected files, including this one. The information would then have been produced in conjunction with DNA reports released to both sides in this case no later than November 2019.

135.When the IOC was turned over to two ADA's in June 2018 on unrelated cases, did that trigger a duty for the Tarrant County District Attorney's Office to investigate to determine whether there was a larger issue, or *Brady* material that could apply to more than those two specific cases? Did it trigger a duty to notify all members of the Tarrant County District Attorney's Office of this issue in the FWPDCCL in 2018?

136. Did the emails of Trisa Crutcher to DA investigators in May 2020 trigger these same inquiries? If so, why were the FWPD records not subpoenaed by the State until July 16, 2020? That would have provided two months for both sides to review the materials before testimony began, instead of several days.

THEREFORE, the Court is requesting TRIAL BRIEFS from both sides to address these legal and factual questions, including the appropriate remedy under the law and facts, and will thereafter set this matter for further hearing.


SIGNED this the 20th day of AUGUST, 2020.



ELIZABETH BERRY, JUDGE PRESIDING
by assignment

CERTIFICATE OF SERVICE

On this the 20th day of August 2020, I do certify that a true and correct copy of the above Preliminary Findings on Admissibility were electronically mailed to prosecutors Lisa Callaghan, Art Clayton, and D.J. Estes and to stand-by counsel Warren St. John, Brett Boone, and Miles Brissette.



ELIZABETH BERRY, JUDGE PRESIDING
by assignment

EXHIBIT J



P o l i c e D e p a r t m e n t
Memorandum of Expectations

DATE: **June 29, 2018**

FROM: **Michael S. Ward**
 Forensic Science Division Manager

1. All employees should be engaged in appropriate work-related activities during normal work hours.
2. Laboratory Management has prepared an IOC that technical reviewers, in the Biology Unit, can place in the Object Repository of appropriate cases to document an internal investigation regarding the Laboratory's adherence to its own case approval policy. In order to maintain complete transparency, this document should be proactively given to Tarrant County Criminal District Attorney's Office personnel if it is related to a case that is going to trial.
3. Laboratory Management applauds and encourages all employees to bring all potential deficiencies and issues to its attention immediately. Management further appreciates all constructive dialogue. There is a proper method and improper method for addressing concerns. Criticizing fellow employees and Laboratory customers, threatening not to fulfill one's work obligations and spreading unsubstantiated rumors is counterproductive and inappropriate in the workplace. Engaging in behavior that is inappropriate and/or disruptive in the workplace will not be tolerated.
4. Employees will be professional and polite to all Laboratory customers, to their peers, to their fellow Department employees and to their supervisors. Disrespectful, rude and unprofessional conduct, yelling, using profanity, using demeaning or abusive language, using derogatory or inflammatory language will not be tolerated.
5. Employees will follow all proper instructions given to them by their Forensic Supervisor, the Laboratory's Quality Assurance Coordinator, the Forensic Science Division Manager and their proper chain-of-command. Insubordination, failure or refusal to obey an order, and failure to perform work in a satisfactory manner will not be tolerated.

Failure to comply with the above expectations may lead to immediate disciplinary action.

EXHIBIT K

**Tarrant County Criminal District Attorney's Office
Laboratories and Medical Examiner's Office
Disclosure Compliance**

The United States Supreme Court has long held that evidence that could potentially assist in the defense of an individual accused of a crime *must* be disclosed to the defense. Failure to disclose can result in the reversal of a conviction and, for extreme violations of the rule, prosecution of violators. *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

The duty to disclose rests primarily with prosecuting attorneys but information known to law enforcement agencies – even if never disclosed by those agencies to the prosecution -- is still imputed to the prosecution. Timely disclosure of exculpatory, impeachment and mitigating information is also required under the “Michael Morton Act”, TEX. CODE CRIM. PROC. art. 39.14(h). Article 39.14 contains no materiality provision for disclosing exculpatory or impeachment evidence. Given that members of your Agency often testify in criminal cases as “expert” witnesses regarding evidentiary testing our office must be informed of anything that could possibly constitute impeachment evidence.

The goal of the Criminal District Attorney is to exercise due diligence in light of our responsibility under the Brady doctrine and Article 39.14 and ensure that all defendants receive a fair trial. Therefore, it is a critical inquiry whether an employee's conduct, personnel history or information from a personnel file might constitute exculpatory, impeachment or mitigating information in a particular criminal case.

We confidently rely on the professional practices of our Agency partners in notifying us about any conduct of employees which meets our legal obligations.

Laboratory/Medical Examiner Obligation to Notify

Each respective Laboratory or Medical Examiner's Office (“Agency”) should determine whether there are any such instances listed below about which the Tarrant County Criminal District Attorney's Office (“CDA”) should be made aware. In that regard, the Agency should examine current and future employee personnel files and current and future employee conduct and notify the CDA as soon as possible when:

- 1) an employee has a pending criminal complaint or indictment or is the subject of an ongoing criminal investigation for any crime other than a Class C misdemeanor traffic violation;
- 2) an employee has a disposed felony or misdemeanor, other than a Class C misdemeanor traffic violation, committed at any time that resulted in a final conviction, probation, deferred adjudication, or pretrial diversion;

- 3) an employee has a pending formal investigation, sustained finding, or conclusion by the Agency for any of the following:
 - a. misrepresentation or failure to disclose a material fact on the employee's application;
 - b. untruthfulness or deception regarding facts in a report, statement, hearing, or official proceeding; or
 - c. bias or prejudice to an individual, class, or group of persons;
 - d. tampering, concealing or intentional misuse of evidence, with the exception of legitimate manipulation in the normal scope of laboratory business.
- 4) an employee resigns, receives a demotion, or disciplinary action when an investigation is imminent or pending, involving any matter listed in subsection 1,2, 3 (a) – (d) above or in relation to 5, 6 or 7 below;
- 5) the Agency has information related to an expert witness's performance deficiencies that affect the integrity of the reported results.
- 6) an employee or the Agency has a pending formal investigation or conclusion that there was professional misconduct or professional negligence as defined by Rule 1.2 of the Texas Forensic Science Commission ("TFSC") Policies and Procedures and as required to be reported to the TFSC under Texas Code of Criminal Procedure 38.01(4)(a), or the applicable accrediting body for that Agency, or
- 7) an employee or the Agency has a reportable event required to be disclosed to the TFSC or the applicable accrediting body for the Agency. Any subsequent action by the TFSC or accrediting body, or any subsequently required root cause analysis, as well as the findings of those actions or analysis, should also be conveyed to the CDA for its consideration.

Compliance Procedure

Agency Process

- Furnish to the CDA discovery compliance attorney the employee's name, licensing identification number (if any), and a brief description of the finding and relevant related information.
- Notify whether the disclosure is classified as a "pending formal investigation" or "final" conclusion. Pending formal investigation or final conclusion is defined in a manner consistent with the Agency's individual rules and procedures.

- Update the CDA of any changes to classifications or if removal from the database is warranted after the completion of the investigation.
- Contact the CDA if in doubt about whether the conduct requires disclosure.

Criminal District Attorney Process

- Rely on the due process provided by the Agency through disciplinary or other internal proceedings and will not re-litigate findings.
- Categorize the disclosure as either “Pending” or “Final” as relayed by the Agency and notify the Agency of inclusion in the database. The Pending category will contain information submitted about pending formal investigations. If Pending allegations are sustained, the inclusion will be re-categorized as Final. If the allegations are not sustained, the case will be removed from the database.
- Update the Agency regarding any reclassification or removals.
- Classify any allegations that, if sustained would lead to a “Final” classification, but in which the employee resigns before the investigating body makes formal findings as “Final” and maintain this information in the database unless and until good cause is shown for its removal.
- Notify the Agency of information independently discovered by the CDA, which may warrant inclusion in the database. If a prosecutor initiates a claim of untruthfulness from conduct occurring during judicial proceedings, the individual prosecutor must also immediately report such incident to the prosecutor’s supervisor for the investigation and initiation of a charge of perjury against the employee.
- Each ACDA shall check the database and notify opposing counsel of inclusions. “Pending” notices should be made to the defense but not filed in the records of the court unless done under seal or with the appropriate requests to the trial court for inspection and orders.
- Disclosure information will be used to meet the State’s obligation under the law with respect to cases that we prosecute.
- Sponsorship of an employee in the database will be made on a case by case basis.

- Disclosure does not equal admissibility and, when appropriate, the CDA will object to the admissibility of the disclosed evidence through written motions and argument.
- Disclose upon employee written request his or her own inclusion in the database for any "Final" disclosure.
- Disclose a person's inclusion in the database to a potential employer agency with an executed waiver by applicant to the Agency.

For the purposes of 7) above a reportable event is one which 1) impacts the fundamental reliability of the overall laboratory/agency work product such that it poses a significant risk to processes, results, test/calibration items or judicial proceedings; or 2) does not impact the fundamental reliability of the overall laboratory/agency work product but does cast substantial doubt on the quality of the work product.

A reportable event does not include nonconformity of applications of standards, procedures or policies that are limited and appropriately addressed during quality assurance or control protocols and attendant conducted root cause analysis, provided that such nonconformity is contained and disclosed within the bench notes of any affected case(s).

EXHIBIT L

From: Lynn Garcia <Lynn.Garcia@fsc.texas.gov>
Date: Wednesday, August 5, 2020 at 10:06 AM
To: "Aviles, Phil J." <Philip.Aviles@fortworthtexas.gov>
Cc: "Ramirez, Charles E." <Charles.Ramirez@fortworthtexas.gov>, "Kamper, Sharon" <Sharon.Kamper@fortworthtexas.gov>, "Ward, Michael S." <Michael.Ward@fortworthtexas.gov>, Leigh Savage <Leigh.Savage@fsc.texas.gov>
Subject: Re: Preliminary Notification

Hi, Phil. Texas law requires the Commission to be copied on all communications with your accrediting body, even if they are not ultimately determined to constitute professional negligence or misconduct in forensic analysis. The only exception is for ministerial, non-substantive items. An example would be arranging logistics for an on site assessment.

ANAB is aware of this and that is why they also copy us on everything.

Thanks much,
Lynn

On Aug 5, 2020, at 9:46 AM, Aviles, Phil J. <Philip.Aviles@fortworthtexas.gov> wrote:

Greetings Lynn:

In reviewing the notification from yesterday, I see that you were copied on Ana Yoder's response to my initial notification. I have not submitted anything to FSC yet, as we have not been informed of the specific investigation process, or any potential resolution. Therefore, I don't have any additional information to share with the FSC at this time. Please be advised that as far as we know, this is an internal administrative investigation, initiated as a result of certain accusations that were made by an employee of the crime lab. As you now know, I have informed ANAB, in accordance with MA 3033, and I have notified our accreditation manager, Melissa Kennedy. In the event that additional information becomes available, I will update this notification immediately. At this point, I feel that a formal self-disclosure would not contain the necessary information required to completely describe the situation. However, if you think that it is necessary at this time, I will proceed with the official notification. I certainly will keep you informed of the progress as the information is provided to me. I will be available to discuss this further if necessary. Thank you for your attention.

Philip Aviles
Quality Manager
FWPD Crime Lab
817 392 4549

EXHIBIT M



March 26, 2021

Trisa Crutcher
404 High Desert Dr.
Fort Worth, TX 76131

Re: Notice of Pre-decision Meeting and Administrative Leave

Dear Ms. Crutcher,

This letter is to provide you with formal notification that the Police Department is seriously considering terminating your employment as a Forensic Scientist III with the City of Fort Worth Police Department for the reasons set out below. You will be given the opportunity to respond to these issues on April 1, 2021 at 10:00 a.m at 505 W Felix in Fort Worth Texas, 76115 at the Bob Bolen Public Safety Complex.

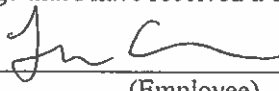
The Department is considering terminating your employment because of information from the Tarrant County District Attorney's Office ("DA's Office") that establishes you can no longer satisfactorily perform some of the essential functions of your job. Amongst other duties, a Forensic Scientist III is required to perform laboratory analyses on physical evidence and to testify as an expert witness in court regarding the cases he or she has worked on. On February 25, 2021 and March 4, 2021, the DA's Office informed the Fort Worth Police Department that "[t]he potential of calling Trisa Crutcher as a witness on behalf of the State at this point is problematic, due to the allegations that she has made against the Crime Lab." The DA's Office provided a State's Disclosure Notice and a State's Motion in Limine, which it has already filed in cases that you have worked on. The DA's Office has asserted that it intends to file these in every case for which you have completed work. The DA's Office also intends to review each case on which you have completed evidentiary analysis on a case-by-case basis in order to determine if it will request that the Crime Lab re-test evidence. There has already been at least one case that required re-testing, the cost of which the Fort Worth Police Department incurred.

Based on the fact that your ability to testify has been compromised and that evidence analyses you perform may need to be re-processed by another forensic scientist, you can no longer satisfactorily perform your job as a Forensic Scientist III. Therefore, the Police Department is seriously considering terminating your employment. You are hereby placed on paid administrative leave until the meeting scheduled for April 1, 2021. You are welcome to have a representative or attorney attend the meeting. Should you decide to have an attorney attend, please notify me no later than March 30, 2021.

Respectfully,


Assistant Chief Robert Allredge

I acknowledge that I have received a copy of this letter:

Signed: 
(Employee)

Date: 3/26/21

EXHIBIT N

UNT Center for Human Identification Quality Assurance Manual

Self-Disclosures and Notifications

Approved: Management

Policy 21-030

Rev. 0

Effective Date: 3-15-21

Policy Requirement & Purpose

1. Any laboratory that performs forensic analysis on behalf of the State of Texas “shall” “develop and follow a written forensic disclosure compliance policy for the purpose of ensuring the laboratory’s compliance with article 39.14 of the Texas Code of Criminal Procedure.” *Code of Professional Responsibility for Forensic Analysts, Forensic Technicians, and Crime Laboratory Management Subject to the Jurisdiction of the Texas Forensic Science Commission (“Code”), Tex. Admin. Code § 651.219(c)(7), Chapter 37, Part 15, [Texas Administrative Code \(state.tx.us\)](http://www.texas.gov/legis/code).*

Additionally, the Code requires that a laboratory provide “clear instructions for identifying and disclosing any exculpatory, impeachment, or mitigating document, item or information in the possession, custody or control of the laboratory” and address “how to inform potentially affected recipients of any non-conformances or breaches of law or ethical standards that may adversely affect either a current case or a previously issued report or testimony. *Tex. Admin. Code § 651.219(c)(8)*.”

2. This policy, together with the University of North Texas Health Science Center, Center for Human Identification’s (UNTCHI) *Quality Assurance Manual*, and, specifically, *Policy 06-011, Case Records, Reporting and Review*, sets forth current laboratory processes for providing records and complying with the above provisions of the Texas Administrative Code.

Notification Events, Parties and Process

1. UNTCHI’s duty to provide self-disclosures and/or notifications of quality events typically extends to its accrediting bodies (ANSI National Accreditation Board (“ANAB”), the Texas Forensic Science Commission (“TFSC”)) and to its submitting, investigating and/or prosecuting agencies.
2. Both ANAB and TFSC provide written guidance for self-disclosures.
3. Some prosecuting agencies provide written guidance for expected self-disclosures and/or notifications.

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4. Some self-disclosures or requested notifications may involve protected information, such as Personally Identifiable Information, HIPAA-protected information, other confidential or legally-protected information, and/or implicate the legal rights of employees. When competing legal issues or obligations exist, the laboratory will consult with the University of North Texas Health Science Center's Human Resources department and/or Office of General Counsel. In applicable instances, and without revealing identifying or protected information, it may also be necessary to consult with the general counsel for the TFSC. When competing legal rights are involved, UNTCHI will endeavor to balance disclosure obligations while protecting these interests and/or may require permissions, appropriate redactions, released pursuant to protective orders and/or withholding of documentation absent a court order.
5. ANAB: ANAB specifies the laboratory should inform it of "significant changes, events, and nonconformities relevant to its accreditation" and illustrates "relevant changes." ANAB states that "significant events" or a "significant nonconformity related to an accreditation requirement" include when "there is a reasonable expectation that knowledge of the event or nonconformity by interested parties external to the forensic service provider would call into question the quality of the forensic service provider's work or the integrity of its personnel." ANAB also recognizes that disclosure of all details may not be possible with initial notifications. See *ANSI National Accreditation Board, Accreditation Manual for Forensic Service Providers, MA 3033*, [MA 3033 \(qualtraxcloud.com\)](http://qualtraxcloud.com).
6. TFSC: TFSC guidance requires self-disclosures when a laboratory is notified of an accreditation probation or suspension, or in the event of a "significant irregularity in the laboratory" that "may rise to the level of professional negligence or misconduct." *Texas Forensic Science Commission Lab Disclosure Form and Guidelines for Laboratory Self-Disclosure*, [fsc-lab-disclosure-form-english.pdf \(txcourts.gov\)](http://txcourts.gov); See also *Texas Forensic Science Commission, Policies and Procedures (adopted January 31, 2020)*, [Microsoft Word - D Policies and Procedures 013120 Revisions 012720 Final Adopted.docx \(txcourts.gov\)](http://txcourts.gov); *Tex. Code Crim. Proc., art. 38.01 4(a)(2)*.
 - A. According to TFSC guidance, professional misconduct means:

"[T]he forensic analyst or crime laboratory through a material act or omission, deliberately failed to follow a standard of practice that an ordinary forensic analyst or crime laboratory would have followed, and the deliberate act or omission would substantially affect the integrity of the results of a forensic analysis. An act or omission was deliberate if the forensic analyst or crime laboratory was aware of and consciously disregarded an accepted standard of practice."
 - B. TFSC explains that "substantially affecting the integrity of the results," as referenced in (A) above, includes "acts or omissions that would call into question the integrity of the forensic analysis, the forensic analyst or analysts or the crime laboratory as a whole regardless of the ultimate outcome in the underlying criminal case." However, this

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definition does not necessarily require a criminal case be impacted or that a report be issued to a customer in error.

C. Professional negligence as defined by TFSC guidance means:

“[T]he forensic analyst or crime laboratory, through a material act or omission, negligently failed to follow the standard of practice that an ordinary forensic analyst or crime laboratory would have followed, and the negligent act or omission would substantially affect the integrity of the results of a forensic analysis. An act or omission was negligent if the forensic analyst or crime laboratory should have been but was not aware of an accepted standard of practice.”

D. Per the TFSC, “standard of practice” includes any activities engaged in by a “forensic analyst” and defined in Article 38.01 of the Texas Code of Criminal Procedure. *Tex. Code Crim. Proc., art. 38.01(2)(4)*, [CODE OF CRIMINAL PROCEDURE CHAPTER 38. EVIDENCE IN CRIMINAL ACTIONS \(texas.gov\)](#).

E. “Forensic analyst” is defined as a person who, on behalf of a crime laboratory accredited under Article 38.01 of the Texas Code of Criminal Procedure, “technically reviews or performs a forensic analysis or draws conclusions from or interprets a forensic analysis for a court or crime laboratory.” *Tex. Code Crim. Proc., art. 38.01 (4-a) (2)*.

F. “Crime laboratory” is defined as “a public or private laboratory or other entity that conducts forensic analysis” subject to Article 38.35, Texas Code of Criminal Procedure. *Tex. Code Crim. Proc., art. 38.35(1)*, [CODE OF CRIMINAL PROCEDURE CHAPTER 38. EVIDENCE IN CRIMINAL ACTIONS \(texas.gov\)](#)

G. “Forensic analysis” is defined as “a medical, chemical, toxicologic, ballistic, or other expert examination or test performed on physical evidence, including DNA evidence, for the purpose of determining the connection of the evidence to a criminal action.” It includes any “examination or test requested by a law enforcement agency, prosecutor, criminal suspect or defendant, or court” but specifically excludes some forms of analysis and exempts others. *Tex. Code Crim. Proc., art. 38.35(4)*.

H. The term “criminal action,” as referenced above, includes “an investigation, complaint, arrest, bail, bond, trial, appeal, punishment, or other matter related to conduct proscribed by a criminal offense.” *Tex. Code Crim. Proc., art. 38.35(2)*.

I. The TFSC clarifies that significant irregularities should be self-disclosed “regardless of the criminal case outcome” and “regardless of whether the quality controls in the laboratory caught the issue of concern before a final report was issued to the customer.”

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- J. TFSC further describes a significant irregularity as “facts that if true, would indicate the existence of negligence or misconduct such that the integrity of the forensic examination, the individual forensic examiner, or the laboratory as a whole would be called into question.”
7. UNTCHI makes self-disclosures and/or notifications to ANAB and TFSC within the timeframes, and in the manner, set forth by those respective written policies.
8. Examples of events, which may require self-disclosures and/or notifications to ANAB, TFSC and/or applicable prosecuting agencies, may include, but are not limited to:
- A. Sustained allegations of professional misconduct or professional negligence as defined by the TFSC;
 - B. Missing submitted, recovered or retained evidence. *See Policy 06-005, Evidence and Sample Control;*
 - C. Evidence destroyed without valid authorization. *See Policy 06-005, Evidence and Sample Control;*
 - D. Acts of tampering, concealing, or intentional misuse of evidence;
 - E. Significant instances of incorrect technical results and/or conclusions reported to the submitting, investigating or prosecuting agency or uploaded to SDIS or NDIS;
 - F. Unsatisfactory internal or external proficiency tests as defined by *Policy 06-012, Proficiency Testing;*
 - G. Permanently revoked authorization of a technologist or analyst to perform casework due to performance deficiency(s);
 - H. Complaints or self-disclosures received by the TFSC that result in the establishment of an investigative panel;
 - I. Formal determinations that a technologist’s or analyst’s performance deficiency(s) affected the integrity of the reported results;
 - J. Other events at the discretion of the laboratory director;
 - K. Other reasonable, well-defined events which are requested to be disclosed through specific, written guidance of prosecuting agencies;
 - L. Confirmed systemic errors identified by or reported to the laboratory.

The above listed examples establish a framework for notification assessments but cannot encompass all circumstances or variables that may mandate or negate notification. It may not be possible to anticipate and identify all issues, processes, or events that may occur in a laboratory setting. UNTCHI relies on its quality assurance and quality control systems; input from its accrediting bodies and prosecuting agencies; and the University of North Texas System’s rules, regulations, policies, and procedures to aid in assessing situations that warrant self-disclosures and/or notifications.

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Additionally, by virtue of its accreditation authority, the TFSC is informed of substantive ANAB communications and periodic assessments. This process functions as an additional safeguard relating to disclosure determinations in that it enables the TFSC to request further review or action regarding specific events as it deems appropriate.

9. Submitting, Investigating and Prosecuting Agencies: UNTCHI must rely on applicable prosecuting agencies to provide detailed specific requests concerning disclosure and notification processes. These agencies are also responsible for making, documenting, and communicating disclosures and notifications. Legal interpretation and notification are not within the laboratory's expertise, however, UNTCHI has adopted the following procedures to aid in its notifications to these agencies:
- A. Absent other written and specific prosecuting agency instruction, the laboratory notifies affected applicable submitting, investigating, and/or prosecuting agencies of specific quality events, such as the examples in (7) above, that involve the casework under the jurisdiction of the applicable agency. Notifications of these quality events are made as soon as practicable and in a timely manner. Generally, UNTCHI personnel attempt to contact by phone the affected applicable submitting, investigating, and/or prosecuting agencies regarding their specific casework-related quality event(s) no later than 72 hours after discovery. Notification(s) is documented and confirmed via email.
 - B. Other quality events that involve the applicable submitting, investigating and/or prosecuting agency's casework that are not determined by the laboratory to be category (7) events are retained in the case record and provided pursuant to any requested discovery in accordance with *Policy 06-011, Case Records, Reporting and Review*.
 - C. Events resulting in loss of evidence require notification and consultation with the applicable submitting, investigating, and/or prosecuting agencies prior to further processing, unless further processing delay could compromise the evidence or the ability to obtain results.
 - D. Laboratory personnel convey additional notification information as it becomes known and/or complete. Follow-up notifications routinely include any necessary amended or supplemental reports. Follow-up information typically includes the date the TFSC hears the self-disclosure and a copy of the corrective action or written summary of the quality event.
 - E. Additional customer questions regarding notifications are answered through written and/or documented verbal communication.

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- F. Customers are also notified of TFSC determination or actions following the TFSC's consideration of the self-disclosure.
- G. Some prosecuting agency customers have provided UNTCHI with specific, written guidance concerning expected notifications. See *Agency Disclosure Compliance Policy List*. [Placeholder "Z:\UNTCHI_MGMT\Shared\Disclosure Compliance Related\CDA Protocols & Disclosures\Agency Disclosure Compliance Policy List.docx".] UNTCHI strives to comply with any additional reasonable written requests it receives from those prosecuting agency customers. Some requested notifications not related to a specific customer's casework event may involve protected information, such as Personally Identifiable Information, HIPAA-protected information or other confidential or legally protected information, and may require permissions, appropriate redactions, or withholding of documentation absent a court order. See *Policy 06-011, Case Records, Reporting and Review*, for additional clarification. If a prosecuting agency provides specific written notification or disclosure guidance, as referenced herein, at the request of that agency, UNTCHI will also convey self-disclosures to ANAB and/or TFSC that do not specifically involve that prosecuting agency's casework. Notification information typically includes the date the TFSC hears the self-disclosure and a copy of the corrective action or written summary of the quality event. Additional questions from a prosecuting agency not related to that agency's casework event are answered through written or verbal communication, as permissible. Permission depends on the status of the investigation, root cause analysis, and the implicated submitting, investigating, and/or prosecuting agency's instructions considering any confidentiality restrictions, protected information, and/or required redactions. After TFSC's consideration of a self-disclosure, these agencies are also notified of TFSC determination or actions.
- H. UNTCHI complies with valid court orders regarding disclosures and notifications.
- I. UNTCHI notifies affected casework submitting, investigating, and/or prosecuting agencies of any orders or requested disclosures involving that agency's casework made under (8)(G) and (8)(H) above.
- J. UNTCHI disseminates information to the TFSC or released under (8)(G) and (8)(H) in a secure manner with the following language:

Please note that the requested information has been provided to you as another State agency and that redactions or determinations concerning applicable statutory provisions regarding release and confidentiality may not have been made. We request that you please contact us as well as other relevant agencies, as applicable, prior to any further or public dissemination or release. All, or parts, of the provided information may be exempted from public disclosure under the Texas Government

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Code and/or other statutory provisions, and we or our customer(s) may wish to assert exemptions and take further action prior to any disclosures.

- K. Some notifications and certain additional documentation cannot be provided without first consulting the University of North Texas Health Science Center's Human Resources department or Office of General Counsel.

Revision History – Policy 21-030

<i>Revised by</i>	<i>Revision Number</i>	<i>Revision Date</i>	<i>Comments</i>

Link to Crutcher Complaint and Related Documents:

<https://www.dropbox.com/home/Gestring%20Rule%2012>