Texas DNA Mixture Review Project
Final Report

January 2021

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EXHIBIT LIST

I. Introduction

Although entitled the "final report" of the Texas DNA Mixture Review Project, this report summarizes the first five years of the project, which is likely to continue in some form for the indefinite future. When the project officially began in March of 2016, stakeholders were determined to reach as many convicted persons as possible whose cases might be affected by the forensic issue at hand. Toward that end, it was decided that the letter that was drafted for prosecutors to use in their notification efforts should also be posted in prison law libraries throughout the state, along with a form to be completed and sent to the project to request review. The thinking was that any inmates who had not received notice from their convicting county might nonetheless learn of the problem and avail themselves of the project's services. As a result, although it is unlikely that any notice letters remain to be sent from prosecutors five years after the project's inception, requests for review still trickle into the project from inmates who have learned of the issue through the notice letter posted in their unit's library, or by word of mouth from other inmates. The project still receives 5-10 new cases weekly, and is committed to continuing its investigation into whether the forensic issue involving the CPI method [1] may have undermined those convictions.

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[1] The Texas Forensic Science Commission website provides the following helpful article explaining DNA mixture interpretation generally and CPI in particular:

Bieber, F.R., Buckleton, J.S., Budowle, B. *et al.* Evaluation of forensic DNA mixture evidence: protocol for evaluation, interpretation, and statistical calculations using the combined probability of inclusion. *BMC Genet* 17, 125 (2016) doi:10.1186/s12863-016-0429-7.

In 2015, when the criminal justice community in Texas first began to grapple with the CPI issue, the expectation was that many convictions, perhaps hundreds, had been fatally impacted by the problem. Preliminary figures from the Texas Department of Public Safety indicated that its laboratories alone had tested tens of thousands of cases involving DNA mixture evidence, and it was assumed that other forensic labs in Texas would add an equal number to that total. A plan was devised whereby training seminars for attorneys would be held across the state, in order to educate them about the CPI issue and to qualify them to be on a list of attorneys who could be appointed to represent wrongfully convicted persons in their post-conviction claims for relief. Indeed, there was a real concern that there would not be enough lawyers for the task, given the need for attorneys who were both experienced in post-conviction writ litigation and who had sufficient understanding of the forensic issue.

Crime laboratories provided prosecutors with lists of cases involving DNA mixture evidence, and prosecutors sent letters notifying convicted persons of the CPI issue and directing them to the project for help. Volunteers from the criminal defense community, *pro bono* lawyers from civil law firms, law students and others were recruited by the project and trained so that they could help review cases.

Five years and more than 5,000 case reviews later, only a handful of cases have been called into question, and as this report is issued, no convictions have been overturned due to the CPI problem. Why have thousands of DNA mixture case reviews failed to discover even one wrongful conviction? The likely answers, which may provide

some suggestions as to how to best approach future scenarios involving widespread systemic error, are addressed in detail in section VI.

However, no one should be disappointed in our conclusion that there have *not* been hundreds of wrongful convictions because of the CPI issue. Rather, there should be some relief in learning that after a thorough and accurate review of this systemic issue, it has been determined that the reality did not live up to our worst fears. There should also be some satisfaction in knowing that Texas has once again prioritized forensic compliance and thorough investigation of possible wrongful convictions. Moreover, as discussed in section VI, the main value of this project may ultimately be the lessons learned in responding to the next large-scale systemic problem.

II. Background: The Combined Probability of Inclusion (CPI) Issue and Creation of the Texas DNA Mixture Review Project

A. A forensic issue emerges in 2015

In May of 2015, the FBI notified crime laboratories across the country that the population database that it had used since 1999 to calculate DNA match statistics in criminal cases contained minor discrepancies. The FBI provided updated data to the laboratories. It was widely assumed among DNA experts that these minor discrepancies would not impact the outcome of any criminal cases and indeed, this appears to have been the case. For example, in an assessment performed by one Texas laboratory, after recalculating cases using the amended data, the case that saw the biggest statistical change went from a 1 in 260,900,000 expression of probability to a 1 in 225,300,000

expression of probability. [2] Nonetheless, many Texas laboratories offered to do a recalculation in any criminal case. As was expected, the population database adjustment did not yield significantly different results in any reported cases.

However, another, unrelated issue surfaced as these new calculations were performed. The issue involved DNA mixtures, which are biological samples originating from two or more donors. Specifically, the concern centered on the most commonly used method of calculating probability statistics in mixture cases, a method known as the Combined Probability of Inclusion (CPI). When the FBI notice regarding the population database issued in May of 2015, many labs had changed the way they were calculating DNA mixture interpretations, prompted in part by new mixture interpretation guidance issued in 2010 by the Scientific Working Group on DNA Analysis Methods (SWGDAM).

In some cases, when original CPI calculations were reanalyzed according to the revised protocol suggested by SWGDAM in 2010, the results changed. Although it was not expected that the new protocol would result in widespread differences from original probability results, there was nonetheless a concern that reanalysis in some cases might yield statistical results that were significantly different than what had been reported

[2] These "expressions of probability" refer to the odds that the DNA profile in question would appear randomly. A DNA report from a lab will typically describe such a finding by concluding, for example, that "the probability of selecting a person at random with this DNA profile is 1 in 225,300,000 (for a specific racial group)." Thus, if evidence from a sexual assault kit yields a DNA profile that appears at random in 1 of every 225,300,000 persons, and the suspect also has that DNA profile, then for all practical purposes there is a "match" between the suspect and the DNA from the biological evidence.

originally and which might serve to undermine the criminal conviction. New calculations might even exclude a suspect as a possible contributor to a DNA mixture where he had been included previously.

This concern was heightened by new DNA testing in a murder case in Galveston.[3] Initial DNA testing on a screwdriver used in a murder indicated that the defendant could not be excluded as a possible contributor of the DNA profile that was found, and that the probability of such profile appearing randomly was 1 in 290 million. Obviously, such evidence was highly incriminating. However, after reanalysis according to the revised protocol, the CPI results were only 1 in 38, meaning that the odds of the DNA profile in the evidence belonging to someone other than the defendant was only 1 in 38. In proving a defendant's guilt beyond a reasonable doubt, such dramatically different DNA results could obviously spell the difference between guilt and innocence. Depending on what other incriminating evidence existed in such a case, the reduced number could greatly undermine the State's case.

B. The System Responds

After the potential problem with CPI emerged, the Texas Department of Public Safety Crime Lab estimated that CPI had been used in their labs in approximately 25,000 cases over roughly 15 years. It was believed that various other crime laboratories in Texas had probably used the same method in an equal number of prosecutions. Thus

[3] The case involved German Perez-Vasquez, who was ultimately found guilty by a jury and sentenced to 68 years. He claimed self-defense, which would suggest that identity was not an issue in his case.

faced with what appeared to be a problem of potentially large magnitude, stakeholders[4] convened several times in Austin during the latter part of 2015 to formulate a response.

Among other initial suggestions was that when notifying inmates and other affected persons of the CPI issue, prosecutors could advise them to seek review of their case by asking their convicting court to appoint counsel, pursuant to the state's post-conviction DNA testing statute. [5] This was a less than perfect solution, however. Although the statute does provide for new testing where there exist "newer testing techniques that provide a reasonable likelihood of results that are more accurate and probative than the results of the previous test," the prospect of paying for court-appointed attorneys (most of whom would need training to familiarize themselves with the CPI issue) in thousands of post-conviction cases was clearly not an optimal solution.

It was finally agreed that a statewide retrospective case review group be established, funded through a grant from the Texas Indigent Defense Commission (TIDC). That group became known as the Texas DNA Mixture Review Project (hereafter "the project"). The director of the project, an assistant public defender in Harris County, was to be assisted in case reviews by contract attorneys paid by the

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[4] Stakeholders included representatives from the Texas Forensic Science Commission, the Texas District and County Attorney's Association, the Texas Criminal Defense Lawyers' Association, the Office of the Governor, Office of the Attorney General, the Texas Commission on Indigent Defense, various law school innocence clinics, forensic laboratories, the Center for the Judiciary, and the Criminal Justice Integrity Unit of the Texas Court of Criminal Appeals.

[5] Tex. Code Crim. Proc. Ann., art. 64.01, *et seq.*

TIDC grant, as well as volunteer attorneys and law students, all from throughout the state.

The project was charged with the task of reviewing any conviction upon request to determine whether DNA mixture evidence was used in the prosecution of the case and if so, whether CPI was used as the method of calculating the statistical probabilities. If CPI had been used, and the DNA mixture evidence played a material role in the conviction, then the project could request that the lab reanalyze the DNA mixture evidence. In those cases where reinterpretation of the DNA mixture evidence was then determined to be statistically significant, the review group would notify the convicting court of the results, and request that habeas counsel be provided to the convicted person (Exhibit A, Texas DNA Mixture Review Flowchart).

The CPI issue was widely publicized in the criminal justice community in Texas. The Texas Forensic Science Commission (TFSC) posted a detailed notice of the problem on its website. The Texas District and County Attorneys Association (TDCAA) sent notices to every elected prosecutor in the state. With the help of crime laboratories in their jurisdiction, participating prosecutors compiled lists of criminal cases that had involved DNA mixture evidence, and sent notice letters to persons whose convictions might be affected. The TFSC provided a letter for prosecutors to use in notifying anyone whose conviction may have involved CPI. The notice letter included a simple form that the inmate could complete and send to the project so that a review could be undertaken of the case (Exhibit B, "Defendant Notice Letter and

Form"). Additionally, copies of the notice letter and form were posted in prison law libraries throughout the state, in both English and Spanish.

Beginning in the early part of 2016, requests for review began arriving in the project's post office box in Houston. Although a large percentage of the more than 5,000 requests for review that have been received to date were in response to prosecutor's notice letters sent in 2016-2018, new requests still trickle in five years later, as newly-incarcerated inmates discover the library posting at their unit or hear about the project from other inmates. Some cases are still awaiting recalculation by various crime labs. Although the most recent extension of the grant from the Texas Indigent Defense Commission expired in March of 2020, law students and other volunteers will continue to review cases for the foreseeable future.

III. The Composition and Approach of the Texas DNA Mixture Review Project

A. Personnel

Since its inception, the Texas DNA Mixture Review Project has been staffed by a director, Bob Wicoff, who at the time the project began in March of 2016 was the chief of the appellate division of the Harris County Public Defender's Office. Wicoff took leave from his usual duties with that office to organize and direct the project full-time. Included in the financial support provided by the TIDC grant was money for a limited number of contract attorneys, who were paid $50.00 an hour. These lawyers reviewed cases and served as resources for the many volunteers who were recruited to review cases. The nine contract attorneys who worked for the project were located

throughout the state and worked on a rotating basis. The grant from TIDC also provided for administrative help, supplies, and travel expenses.

A critical component of the project has been volunteer help. The project has utilized law students, volunteers from the criminal defense community, retired attorneys, and *pro bono* attorneys from civil firms. In particular, the law firm of Latham & Watkins has sponsored two training sessions presented by the project's director. Those sessions were telecast to the firm's offices worldwide, and attorneys from the firm have subsequently provided approximately 300 detailed case reviews.

One of the most important takeaways from this project is that civil law firms are a valuable resource if a future need arises for any large-scale retrospective case review. In the case of Latham & Watkins, for example, the firm assigned three attorneys to each case. The project director or a contract attorney was designated as a resource if L&W *pro bono* attorneys had questions about the CPI issue, or about some aspect of criminal law or procedure. The civil attorneys were enthusiastic, their work product was excellent, and of course, the firm's services were provided for free. Although only Latham & Watkins was used on a firm-wide basis, individual attorneys from some other civil firms, such as Thompson & Knight, also provided *pro bono* help. If future large-scale retrospective case reviews become necessary, civil law firms should play an important role. Costs are reduced and the quality of work is of the highest quality.

B. The Review Process

As stated earlier, efforts were made to notify persons whose convictions may have been compromised by the CPI issue in two ways: 1) direct notification by each county's prosecutors; and 2) by posting notices in the libraries of prison units statewide. A simple form was made available which the convicted person could send to the project to request review of his case (Exhibit B).

The project maintains a post office box in Houston, where new requests for review are collected each day. When a new request is received, it is reviewed to determine whether it meets the fundamental prerequisites for review. If the case involved a conviction from Tarrant or Travis County, both of whom opted to conduct their own review, it was forwarded to that county's reviewing group. A letter was then sent to the inmate informing him that the project would not be reviewing his case, and providing him with contact information for the Tarrant or Travis County group.

Upon receiving a request for review from an inmate or other convicted person, the project sent that person an information sheet to be completed and returned, in order to obtain basic information about the conviction from the client (Exhibit C, "Information Sheet"). The convicted person was also required to sign a form acknowledging that he understood that the project's attorneys were representing him solely for the limited purpose of conducting the review of the CPI issue in the case (Exhibit D, "Authorization and Acknowledgement of Limited Representation"). This form was necessary because some prosecutors' offices would not release offense reports

to attorneys who did not formally represent the client. The form also made clear to the client that the review was limited to the CPI issue, and did not include representation on post-conviction writs of habeas corpus or other extraneous matters.

In conducting its review, the project relied on two general types of information, lab reports and criminal case records. Due to the large number of cases seeking review, the project found it necessary to quickly identify those cases that were not eligible for review. This was done in two ways.

First, a process was developed with the labs across the state to determine which cases had in fact used CPI. Lists of cases where review had been requested were regularly sent by the project to the Texas Department of Public Safety Crime Lab, the Houston Forensic Science Center, and other labs across the state. The lab would in turn provide the project with information concerning the type of DNA testing that had been done in the case in question (see, e.g., Exhibit E, "Texas Department of Public Safety CPI Evaluation Laboratory Report" and Exhibit F, "Response to Request for Preliminary Screening of DNA Test Results by Houston Forensic Science Center"). Cases were deemed ineligible for review if the lab reported that CPI had not been used, that no DNA testing of any kind had been done in the case, or that CPI had been used as to some items of evidence, but other, single-source calculations were also used in the case which may have rendered the CPI in the case irrelevant. [6]

[6] Where the lab reported that there was both CPI and single-source evidence tested, a review was undertaken to assess the role that each type of DNA testing played in the case. Often the single-source

At the same time that labs were thus helping the project limit its review to only those cases that could have been impacted by the problem, the project was also evaluating the underlying criminal cases to determine whether DNA evidence in the case could have been material to the conviction. Case facts were obtained by reviewing appellate opinions (in convictions resulting from a trial and then appealed), trial records, offense reports (in convictions from guilty pleas), online clerks' records, news reports, discussions with attorneys involved in the case and information from the client. As will be explained in detail below, preliminary materiality assessments prevented needless reanalysis by crime labs of DNA evidence that played only a minor role in the case.

IV. Preliminary Materiality Assessments

A. The project conducted a legal review, not a scientific one.

The project's focus was to determine whether the CPI issue could have compromised the conviction under review. That is, the project did not examine the scientific findings in every case where CPI was used. Although such an inquiry would undoubtedly be of interest to the forensic community, our focus as attorneys was only on the question of whether the use of CPI compromised the particular conviction under review.

Toward that end, the project utilized preliminary materiality reviews. In many cases, we ended our review without even learning whether CPI had been used in the

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evidence was significant enough that it outweighed the CPI-tested evidence. If there was any question as to the relative import of the single-source vs. CPI evidence, the case remained open.

case, because we concluded from reviewing the relevant case records and other information that under no conceivable circumstance could DNA evidence have been material to that conviction under prevailing legal standards. We adopted this approach for the following reasons:

- **Crime labs do not have the resources to reanalyze every case, whereas there are many volunteers who will do materiality reviews.** Although it would have been easier on our end to simply compile lengthy lists of cases to be sent to crime labs with requests that they reanalyze all of them, it would have been wasteful and pointless to do so in cases where no conceivable DNA result would change the outcome of the case. Crime labs, busy with pending cases and other responsibilities, cannot fairly be expected to expand their workforce to accommodate recalculation requests in hundreds of cases where the DNA evidence clearly played an insignificant role.

  Conversely, the project has been able to expand the number of persons doing materiality reviews, by utilizing volunteer attorneys, law students, and attorneys from civil firms. Thus, it made more sense to screen the large number of requests for review by doing preliminary materiality assessments rather than by sending every case to the lab for reanalysis.

- **Time considerations.** Given the number of persons who have sought review (more than 5,000 at the time of this report) it would take several more years to complete the project if every case was sent to the lab for reanalysis.

  Importantly, persons whose convictions may have been undermined by the CPI problem should not have to wait in line behind countless others whose conviction had little or nothing to do with DNA. There was some sense of urgency in trying to reach those cases that may have been compromised by the CPI problem. To refer every case involving CPI to the lab for reanalysis would unnecessarily delay justice for those persons who may have legitimate claims.

- **Erring on the side of caution.** Everyone who worked on the project was admonished that if they had any hesitation at all on the question

> of whether DNA evidence played a material role in the conviction, then they should assume that DNA *was* material and the review of that case should continue. Put another way, if the review of a case ended because we concluded that the DNA was immaterial, it means that, after consulting the guidelines described below, our case reviewer could not reasonably conceive of a scenario where changed DNA results could change the outcome of the case.
>
> Additionally, the director of the project and his staff have regularly reviewed cases that have been closed where the case reviewer found the DNA evidence to be immaterial. Only a handful of cases which had been closed as immaterial were revived, and those were subsequently closed due to ample other incriminating evidence. Additionally, another the rule was that any finding by a case reviewer that the DNA evidence could have been material meant that the case remained open.

B. The legal standards used in determining materiality

Whether evidence is material to a conviction will depend somewhat on the procedural remedy being sought.

1. Motion for Forensic DNA Testing under chapter 64, Texas Code of Criminal Procedure. If post-conviction DNA testing is granted through this statute, the materiality of the results is measured by article 64.04 of the Texas Code of Criminal Procedure:

> Art. 64.04. FINDING. After examining the results of testing under Article 64.03 and any comparison of a DNA profile under Article 64.035 the convicting court shall hold a hearing and make a finding as to whether, had the results been available during trial of the offense, it is reasonably probable that the person would not have been convicted.

This standard has been interpreted by one court as meaning that the person must show a reasonable probability that exculpatory DNA tests would "prove [his] innocence,"

but as explained below, the movant does not necessarily have to show that he would have been acquitted of all charges.

2. Article 11.073, Texas Code of Criminal Procedure ("Procedure Related to Certain Scientific Evidence"). For those cases where testing was not obtained through chapter 64, but through private testing or voluntary reanalysis by the lab, someone who has obtained new and arguably favorable DNA results would seek relief in an application for post-conviction writ of habeas corpus under Texas's "changed science" writ statute. Unlike chapter 64 proceedings, which do not result in the granting of a new trial, a post-conviction writ based on changed science can produce such a result. What must be proven under such statute is that:

> "...had the (changed) scientific evidence been presented at trial, on the preponderance of the evidence the person would not have been convicted."

This language has been interpreted as requiring the same burden of proof as required in chapter 64 proceedings:

> "Article 11.073 affords an avenue for relief under the same standard required for a favorable Chapter 64 finding...Both Chapter 64 and Article 11.073 are remedial statutes that concern scientific evidence, and the presence of identical standards of proof in both statutes suggests that the legislature contemplated that these statutes would sometimes work together." *Ex parte Kussmaul*, 548 S.W.3d 606 (Tex. Crim. App. 2018).

Although there may be strategic reasons to pursue one remedy over another, [7] whatever direction the convicted person takes with his new test results, he must basically show under either statute, by a preponderance of the evidence, that if the new DNA results had been available originally, he would not have been convicted.

However, "would not have been convicted" is not the same as "would have been acquitted." An applicant meets his burden under 11.073(b)(2), and should be awarded a new trial, if he is able to prove by a mere preponderance of the evidence that in light of the new or changed scientific evidence, he would not have been convicted *of the specific crime in question.* That is, the new scientific evidence may cast doubt on an element of the offense he was convicted of, while not calling into question the defendant's guilt of a greater or lesser offense. Perhaps both article 64.04 and article 11.073(b)(2) should have made clear that the movant need only prove that he "would not have been found guilty of the specific offense for which he was convicted." Simply, an outright acquittal is more than an applicant is required to prove under either 64.04 or 11.073(b)(2).

The Court of Criminal Appeals made this clear in *Ex parte Kussmaul*, 548 S.W.3d 606 (Tex. Crim. App. 2018). Kussmaul was convicted of capital murder, the specific allegation in his case being murder in the course of a sexual assault. His three co-defendants pled guilty to sexual assault. Later Y-STR results cast doubt on the scientific

[7] For example, filing a chapter 64 motion, which triggers the right to counsel under article 64.01(c), may be the only way an indigent person can procure a lawyer and obtain court-funded DNA testing. There is no right to counsel under article 11.073. However, if an inmate wrote the project for a review, and the project obtained reanalysis from the lab, the new DNA results could form the basis of an 11.073 wit. There would be no reason in that case to invoke chapter 64.

evidence pertaining to whether any of the four men had sexually assaulted the victim. The Court of Criminal Appeals held that because the new DNA results called into question the sexual assault component of their convictions, the applicants had met their burden under 11.073(b)(2) of proving by a preponderance of the evidence that they would not have been convicted of the specific crimes in question.

However, as to their separate actual innocence ground, which dealt with the question of "whether the additional, newly available (DNA) evidence, when compared to the evidence establishing guilt, moves these cases to the next level, that is, where no rational juror would have convicted Applicants" of anything at all, the Court found that the applicants had not met their burden. The Court pointed out that "actual innocence" only applied to "circumstances in which an accused did not, in fact, commit the charged offense or any of the lesser-included offenses." *Id.*, at 641. However, relief was granted on 11.073 grounds, since the new scientific evidence did cast doubt on the sexual assault component of their convictions. The Court pointed out that the four co-defendants could still be prosecuted for other charges stemming from the same incident, and even observed that Kussmaul, despite proving that he would not have been convicted of a sexual assault during a murder, could still face capital murder charges under a double-murder theory. *Id*, at 641.

Thus, in determining whether the DNA mixture evidence could have been material to a conviction, the project's approach has been to pose the following question in each case: is there any conceivable DNA result from retesting that would, by a

preponderance of evidence, have resulted in an acquittal or a conviction of another offense if it had been presented at trial?

3. False evidence. A third possible avenue for relief if a person has obtained exculpatory results through reanalysis of DNA mixture evidence would be to allege that the original CPI calculations amounted to the presentation of "false evidence." Evidence is "false" if, taken as a whole, it gives the factfinder a false impression. *Ex parte Chavez*, 371 S.W.3d 200 (Tex. Crim. App. 2012).

The unwitting presentation of false evidence has a different materiality standard than the knowing presentation of false evidence. Where the State has unknowingly used false evidence, a habeas applicant must prove by a preponderance of the evidence that there is a reasonable likelihood that it affected the judgment of the jury. *Ex parte Lalonde*, 570 S.W.3d 716 (Tex. Crim. App. 2019); *Ex parte Weinstein*, 421 S.W.3d 656, 659-665 (Tex. Crim. App. 2014).

The State's knowing use of false evidence is material and harmful unless the State proves beyond a reasonable doubt that it did not contribute to the conviction. *Ex parte Napper*, 322 S.W.3d 202, 241 (Tex. Crim. App. 2010). It is unlikely that it could be proven that past presentation of CPI statistics amounted to a knowing use of false testimony, as CPI was a universally accepted scientific method of calculating DNA mixture results.

This author is unaware of any appellate decisions which have spoken to whether a scientific method was "false" simply because later scientific methods were deemed to

be more precise or yielded a different result. This claim was made in the Richard Herod case from Galveston (see discussion, *infra*), but on November 6, 2019, the Court of Criminal Appeals dismissed Herod's writ without explanation.

4. Guilty pleas. If a person who was convicted pursuant to a guilty plea obtains exculpatory results through reanalysis of DNA mixture evidence, the analysis of the case is somewhat different. A guilty plea must be not only voluntary but also a knowing, intelligent act done with sufficient awareness of the relevant circumstances and likely consequences. Thus, if recalculation of DNA evidence were to exclude the defendant, a question arises as to whether he had sufficient awareness of the facts of his case for his plea to be a knowing one. For example, a defendant, hearing from his lawyer that he could not be excluded as a possible contributor to DNA mixture from a sexual assault kit, might plead guilty on that basis alone, whereas without such result, he would have chosen a jury trial.

Although the project's materiality guidelines were developed based on the above legal standards, case reviewers were told that they were not to assume the role of an appellate court, making tough calls as to whether the DNA evidence was material under one standard versus another. They were instead instructed to view materiality in a light most favorable to the client, irrespective of what an appellate court would likely do with the case. Put another way, case reviewers were instructed that any hesitation meant the case warranted further review.

Notwithstanding this cautious approach, many cases were closed because the DNA mixture evidence was found to be immaterial under any standard. For example, the following categories of cases were often closed because the DNA mixture evidence proved immaterial to the conviction:

- **Cases where identity was not an issue.** In cases where an offense was caught on videotape or the defendant was apprehended in the course of committing the crime, crime scene units often did DNA testing anyway. For example, one case involved the robbery of a convenience store…all clearly captured on the store's surveillance camera…and the store's countertop was then swabbed during the investigation which followed. Predictably, DNA mixture evidence was obtained from the counter, but it is hard to imagine how such evidence could be material. The defendant, whose appearance was distinctive, was clearly depicted on the videotape as the person committing the robbery, and was apprehended near the store with the stolen money.

- **Affirmative defenses.** Another category where identity was frequently not at issue were the many cases where the defendant admitted engaging in the conduct alleged, but claimed a legal defense for doing so (*e.g.*, consent in a sexual assault case, or self-defense in a murder or assault). We did not assume the DNA evidence to be immaterial if the defense was only raised for the first time at trial, since arguably, the defendant may have urged a defense at that point only in reaction to DNA test results that may have been based on faulty testing. However, if prior to any DNA testing being done, and without any complaint by the suspect that he was coerced, he readily admitted the criminal conduct to the police or to others, while claiming a legal defense for doing so, then any DNA testing that was done was not materially important. There were many sexual assault cases involving two-person mixtures where the defendant conceded the sexual activity but claimed that his actions were done with consent. In those cases, the DNA evidence was not material.

  There were a limited number of cases where DNA was relevant to a self-defense claim, such as where the presence of the victim's DNA on a weapon would support the defendant's claim that the victim handled the weapon. Review of those cases continued.

- **Cases where there was CPI, but also single-source results.** In many cases, DNA testing revealed both mixtures and single-source calculations. If the single-source results clearly rendered the mixture evidence immaterial, the case was closed. For example, in one case involving the burglary of an apartment followed by the sexual assault of the resident, although a DNA mixture was found on the point of entry to the apartment, single-source DNA linking the defendant was found in the sperm cell fraction of the complainant's vaginal swab. Any favorable outcome of reanalysis of the DNA mixture from the point of entry could not be material in light of the fact that the defendant could not be excluded as a contributor to the sperm fraction of the vaginal swab.

- **Cases where the DNA mixture evidence was not incriminating.** In a number of cases, the lab's original testing of the DNA mixture evidence produced results that were not incriminating. Due to the manner in which many prosecutors' offices compiled their lists of persons to be notified of the CPI problem, many convicted persons received notice even though the results of previous DNA testing in their case had not harmed them. Obviously there was no reason to request reanalysis in cases where the original results had not adversely impacted the case.

- **Cases involving substantial other incriminating evidence.** If the non-DNA facts of the case were overwhelming as to guilt, then the mixture evidence was not material. For example, in one case, a knit cap was found at the scene of a robbery committed by a lone assailant, whom the victim described as having distinctive gold caps on his front teeth. Test results would later reveal a DNA mixture on the cap. However, in the period immediately following the robbery, the suspect had been apprehended nearby in possession of the stolen items. He had gold caps on his front teeth and was identified by the victim without hesitation. Even if the suspect had been excluded as a contributor of DNA to the mixture on the knit cap, the other facts provide overwhelming evidence of guilt. The DNA evidence (which was not even introduced at trial) was deemed immaterial under these facts.

- **Cases where DNA provided corroborating evidence.** There were many cases where a defendant was convicted on the basis of accomplice testimony. If DNA mixture evidence provided the sole

corroborating evidence, it could be highly material. However, if it was one of many pieces of corroborating evidence, then reanalyzing it would not change the outcome.

V. Statistics and selected case studies

A. Statistics

The numbers that follow are fluid. New requests for review arrive each day as other cases are closed. Cases are periodically removed from the open case list if the convicted person has quit communicating with the project or failed to provide requested information. Additionally, the "Other inquiries/cases closed without opening file" category is a conservative estimate of the large number of inmates and others who have written the project about legal issues having nothing to do with the CPI issue, or who want information about how to obtain DNA testing for the first time. Although the project tries to respond, case files are not opened for these extraneous matters, although currently they do consume as much time as cases that are eligible for review, since most inquires require some minimal investigation to determine whether a file should be created. These numbers are provided here in order to understand the approximate overall response to the notification efforts. Finally, although reanalysis of numerous cases is still ongoing at various labs, Exhibit G provides results of reanalysis in 60 cases.

The following are approximate numbers through the end of 2020:

Case file opened and review completed:	3,040
Case file opened and later closed: no more contact:	430

Case file opened and recalculation/reanalysis requested:	154
Case file opened and currently awaiting review:	223
Case files opened:	3,847
Inquiries resolved without opening file: (too old, too recent, referred to Travis County or Tarrant County, inquiry re: non-DNA matter or seeking first-time DNA testing, etc.)	1,300
Total requests for review:	5,147

B. Selected case studies

1. Theodore Schmidt-Harris County Institute of Forensic Sciences (HCIFS)

In 2010, Theodore Schmidt was convicted of the 2009 capital murder of SP, whose body was found was in a ditch. Her wrists were bound together with duct tape. Duct tape was also wrapped in layers around her head and eyes. She had suffered a single gunshot wound to the back of her head.

SP's car was found in the parking lot of a department store where she had shopped the day before. Video footage from the store showed SP entering the store, followed a few minutes later by Schmidt. The video showed Schmidt repeatedly looking in the direction of the area of the store where SP was shopping. Schmidt then left the store and headed toward the area of the parking lot where SP's car would later be found. SP exited the store a few minutes after Schmidt, walking in the same direction. Evidence established that SP and Schmidt graduated from the same high school and that they both then attended Austin Community College. The State's theory in the case was that Schmidt harbored some kind of unrequited fascination with SP.

The State's case against Schmidt included circumstantial evidence and forensic evidence. In addition to the videotape mentioned above, it was established that Schmidt owned the same type of firearm that had been used to kill SP. Non-DNA forensic evidence was introduced as well. A state's expert testified that canine DNA testing revealed that dog hairs found inside Schmidt's apartment were identical to the DNA of SP's dog, which was probative of her having been inside Schmidt's apartment. Further, Schmidt's fingerprint was found on the sticky side of the duct tape that was used to bind the victim.

In addition to the above evidence, the Harris County Institute of Forensic Science tested numerous items of evidence that contained DNA mixtures. In several instances, the lab also did Y-STR testing of the same evidence.

The revised SWGDAM guidelines were approved in January of 2010. The initial testing done by HCIFS in the Schmidt case was in 2009, pre-SWGDAM, so the results presented at his trial in July of 2010 were under the lab's former protocol. However, the defense presented expert testimony using the new guidelines, and argued that the DNA probability results should be considerably lower than what the State suggested through its expert.

New results were provided by HCIFS in January of 2020. The reanalysis provided not only amended STR results, but also likelihood ratio results utilizing STRmix, a probabilistic genotyping software. The chart below shows the HCIFS's initial 2009 test results, which were presented at Schmidt's trial, as well as the 2020 reanalysis.

Item tested:	DNA test results presented in 2010 trial by HCIFS:	DNA results provided in 2020 by HCIFS:
Paper stuck to duct tape binding victim's wrists	**STR result:** Schmidt could not be excluded as possible minor contributor: **Random match probability:** 1 in 509,100 **Y-STR result:** Insufficient male DNA to develop a profile	**2020 reanalysis:** Inconclusive **Y-STR reanalysis:** "Mixture of at least two" male profiles; otherwise inconclusive
Duct tape binding victim's wrist	**Y-STR result:** Schmidt excluded through Y-STR	**2020 Y-STR reanalysis:** Inconclusive as to whether 2 or more than 2 male contributors

Item tested:	DNA test results presented in 2010 trial by HCIFS:	DNA results provided in 2020 by HCIFS:
Victim's left breast	**STR result:** Schmidt could not be excluded. **Random match probability:** 1 in 7,415 **Y-STR testing:** Inconclusive	**2020 reanalysis:** Inconclusive **Likelihood ratio result:** Assuming CW as a contributor, "the DNA mixture is approximately 62 more times likely to have originated from (CW) and (Schmidt) than to have originated from (CW) and another individual." **IFS verbal scale:** "Limited support" for proposition that Schmidt is a contributor. **DPS verbal scale:** "a likelihood ratio between 0.01 and 1000 may indicate adventitious support for an incorrect position." **Y-STR reanalysis:** No comparisons possible; could not be determined whether Y-STR DNA results are from one or more than one profile

Item tested:	DNA test results presented in 2010 trial by HCIFS:	DNA results provided in 2020 by HCIFS:
Swab from toilet in master bathroom of Schmidt's apartment	**STR result:** Victim could not be excluded. **Random match probability:** 1 in 345,300	**Recalculation result:** Victim could not be excluded. **Random match probability:** 1 in 9
Scrapings from victim's fingernails	**STR result:** Schmidt excluded **Y-STR testing:** Schmidt could not be excluded: **Random match probability:** 1 in 13	**2020 reanalysis:** **STR:** Schmidt excluded **Y-STR reanalysis:** Schmidt could not be excluded: **Random match probability:** 1 in 1,489

Item tested:	DNA test results presented in 2010 trial by HCIFS:	DNA results provided in 2020 by HCIFS:
Outside area of duct tape wrapped around victim's head	**Original STR result:** Schmidt excluded. (unknown contributors detected)	**2020 STR recalculation:.** Schmidt excluded
Inside area of duct tape wrapped around victim's head	Schmidt excluded Unknown contributor detected	**Likelihood ratio result:** Victimcanno be excluded Schmidt excluded

Although the new DNA results do not actually exclude Schmidt from items from which he previously could not be excluded, the inconclusive findings are obviously significant. Presumably if the prosecutor in the Schmidt case been told by his expert pre-trial that as to three items of physical evidence, the results were "inconclusive" with regard to whether Schmidt was a contributor to the DNA mixture on those items, and that the probability of the complainant's DNA being on a fourth item was only 1 in 9, then those pieces of forensic evidence would likely not have been presented at trial. In any case, they would not move the needle toward guilt.

Obviously, other incriminating evidence in the case remains unaffected. However, because the changed DNA results could be material to the conviction in the

case under article 11.073, the project concluded that Schmidt had legitimate grounds for a post-conviction writ. An application for post-conviction writ of habeas corpus has been filed. [8]

2. Derrell Hampton-Smith County-DPS (Garland)

On December 19, 2012, the complainant and his sister were at a park in Tyler, Texas playing basketball. A group of men approached them and one of them shot a gun in the air. The men ordered the complainant and his sister to lie on the ground, and proceeded to search their pockets for jewelry, cell phones, and other items. The men ordered the complainant to take his clothes off and he complied. Then they ordered the complainant's sister to remove her clothes. She refused and one of the men put a gun to her head. The complainant lunged at the man with the gun and a shot went off. The men ran off. The complainant was shot, and as a result became paralyzed.

Police came to suspect Derrell Hampton and two other men of committing the robbery. Police recovered the shorts that the complainant was wearing. The shorts were submitted for DNA testing to the Texas DPS lab in Garland.

November 3, 2014 test results: The initial CPI results from the right front pocket of the complainant's shorts revealed that Derrell Hampton could not be excluded as a contributor to the profile, and that "the probability of selecting an

[8] A separate ground in Schmidt's writ application complains of DNA testing of another sort. The State presented canine DNA testing from an expert whose lab was not accredited.

unrelated person at random who could be a contributor to this profile is approximately…1 in 22,480 for Blacks." (Hampton is African-American).

DNA testing was also done on the back right interior pocket of the complainant's shorts. Again, Derrell Hampton could not be excluded as a possible contributor to the profile. The lab concluded: "the probability of selecting an unrelated person at random who could be a contributor to this profile is approximately…1 in 87,950 for Blacks."

As to a third pocket, the lab again concluded that Derrell Hampton could not be excluded as a possible contributor to the profile, and concluded that "the probability of selecting an unrelated person at random who could be a contributor to this profile is approximately…1 in 2.67 million for Blacks."

Use of initial DNA results at trial: At trial, Hampton was convicted on the basis of accomplice testimony when one of the other assailants testified that Hampton was the one who shot the complainant. In Texas, in order to convict someone on the basis of such accomplice testimony, there must be some other evidence, in addition to the accomplice testimony, which tends to connect the defendant to the offense. The DNA results constituted the corroborative evidence that was used to convict Hampton and give him a life sentence.

May 17, 2016 report: New test results, utilizing probabilistic genotyping software, yielded different results on the mixtures from the complainant's pockets. As to the complainant's right front pocket, the new results concluded that "Based on the likelihood ratio results, it is inconclusive whether…Derrell Hampton…is a contributor

to this profile." Thus, the result as to Hampton had gone from "cannot be excluded," with a 1 in 22,480 probability of the profile appearing at random among African Americans, to inconclusive.

As to the complainant's right front pocket, the new results concluded that "Based on the likelihood ratio results, it is inconclusive whether...Derrell Hampton...is a contributor to this profile." Thus, the result as to Hampton had gone from "cannot be excluded," with a 1 in 87,950 probability as to the profile appearing at random among African Americans, to inconclusive.

Unfortunately for Hampton, as to the third pocket, which had previously been calculated as a 1 in 2.67 million probability for African Americans, the new results were even more incriminating. Hampton could not be excluded, and the lab concluded: "Obtaining this mixture is 5.27 trillion times more likely if the DNA came from Derrell Hampton and three unknown individuals than if the DNA came from four unrelated, unknown individuals."

Thus, the likelihood ratio result on the third pocket confirmed that Hampton's DNA profile was in the complainant's shorts pocket, and provides the evidence necessary to corroborate the accomplice testimony in the case. Although the case was not referred to the convicting court for appointment of habeas counsel, Hampton and his trial attorney were sent the new test results.

3. Richard Herod-Galveston County-DPS (Houston)

In June of 2012, Richard Herod was convicted following a jury trial of aggravated sexual assault and aggravated robbery stemming from a home invasion that took place on January 7, 2010. A white undershirt was used by one of the assailants to blindfold one of the two complainants. In a report issued May 11, 2011, the Houston DPS lab concluded that Herod could not be excluded as a possible contributor to a mixed DNA profile, at 7 of 15 STR locations, and that "the probability of selecting an unrelated person at random who could be a contributor to this DNA profile is approximately 1 in 87 for Caucasians."

A supplemental report was issued in 2017, utilizing the new probabilistic genotyping software. The 2017 report concluded that Herod was excluded as a possible source of DNA on the white shirt. Based on the new findings, the project notified the district court in Galveston, which appointed habeas counsel for Herod. A post-conviction writ of habeas corpus was filed based on the new findings that excluded Herod from the white shirt.

As part of the habeas proceedings, the defense presented the affidavit of Dr. Bruce Budowle of the UNT Health Science Center. Budowle concluded, from reviewing the electropherogram and other data in the case, that in her initial analysis, the DPS scientist had likely engaged in "suspect driven" analysis of the data, *i.e.*, that she had conducted her evaluation with the assumption that the DNA profiles of Herod and the two complainants were present. By so doing, observed Budowle, the analyst

concluded that there was an additional allele at one locus, suggesting a fourth DNA contributor to the mixture. While conceding the inherent difficulty in estimating the number of contributors to many DNA mixtures, Budowle concluded that the data reflected a three-person mixture, not a four-person mixture. However, Budowle observed that under either interpretation, Herod should have been excluded. He also noted that in its 2017 reanalysis, DPS had properly assumed three contributors to the mixture, not four.

This case represents what Dr. Budowle characterized as a "common misunderstanding of the application of the CPI methodology by many practitioners in the field, not only in Texas but nationwide," namely, the evaluation of DNA mixtures while guided by the reference samples in the case. The better practice for an analyst using CPI, observed Budowle, is to "perform an *a priori* evaluation of the data before comparing it with a known reference profile."

Herod's habeas action was dismissed by the Texas Court of Criminal Appeals on November 6, 2019. [9] The case is now pending in federal district court.

[9] The Court of Criminal Appeals dismissed Herod's writ on the ground that he had previously filed a writ challenging the same conviction, which had been denied. Although a previous denial does typically preclude a subsequent writ under Texas Code of Criminal Procedure art. 11.07, sec. 4, Herod's new habeas application relied in part on art. 11.073 (the "changed science" writ section), which permits a subsequent filing that is based on new scientific results. The Court did not explain its decision to dismiss Herod's writ.

4. Ronald Kerry Clark –Houston Forensic Science Center

This case involved the 2009 robbery of a couple at knifepoint inside their apartment. Both complainants were legally blind, and so their visual identification of the assailant was very compromised. However, one of the complainants claimed that he had met the suspect a few days before the robbery, at the apartment complex swimming pool, and that the man had introduced himself as "Ronald Kerry Clark." According to the complainant, it was the same man who then robbed him and his wife at knifepoint four days later. Clark was charged with two aggravated robberies.

According to the initial lab report from 2010, DNA testing revealed that "a mixture of DNA from at least two individuals, at least one of whom is male, was obtained from a knife. Ronald Clark cannot be excluded as a possible contributor to this DNA mixture. The probability that a randomly chosen unrelated individual would be included as a possible contributor to this DNA mixture is approximately…1 in 11 thousand for African Americans." (Clark is African-American).

An amended report was issued on August 26, 2015, just five days before Clark's case was set for trial. As to the same portion of the knife that yielded the above results, the new report from 2015 concluded as follows: "A mixture of DNA from at least three individuals, at least one of whom is male, was obtained from this item…Ronald Clark is excluded as a possible contributor to the major component of this DNA mixture."

The State offered Clark a deal whereby if he pleaded guilty, he would be sentenced to the minimum possible punishment for the two aggravated robberies, five

years confinement on each case, the sentences to run concurrently. At that point, Clark had been in custody for four years and two months. He agreed to the plea bargain and was sentenced to five years confinement on August 31, 2015 with credit for time served.

The project has communicated its concerns about this case to the Conviction Integrity Unit of the Harris County District Attorney's Office, and has asked the Houston Forensic Science Center whether the profile of the unknown male contributor to the knife can be submitted to CODIS. Although contact information provided by Clark is no longer valid, ongoing attempts are being made to locate him. If Clark is found and wants counsel appointed to represent him in habeas proceedings, the project will take all steps to insure he is appointed counsel.

VI. Challenges encountered and suggestions for conducting future retrospective case reviews.

A. Why were so many fewer cases materially affected than initially expected?

As stated in the Introduction, the expected impact of the CPI problem did not materialize. There are four main reasons for this unexpected result: 1) the number of cases that utilized CPI in calculating DNA mixture evidence was not as large as first assumed; 2) the notification process was inconsistent; 3) the evidence containing the DNA mixture was typically not material to the conviction; and 4) the original CPI calculations were almost always confirmed through reanalysis (new testing of evidence) or recalculation (recalculation of previous test resuls).

1. The actual number of cases involving CPI was lower than initially assumed.

As the CPI issue first gained widespread attention among the criminal justice community in Texas, the number of cases that might be impacted was thought to be in the tens of thousands. In September of 2015, the Texas Department of Public Safety issued an initial list of nearly 25,000 cases that were "potentially impacted by this protocol change." An equal number were expected to come from the state's other crime labs. This created a potential body of cases so large that it was widely assumed that even if only a very small percentage of them involved wrongful convictions, the number would surely be in the hundreds. Expectations were high. At one of the initial stakeholder meetings held in December of 2015 at the Court of Criminal Appeals, a criminal defense attorney from Houston projected that "we're easily looking at four to five hundred exonerations." [10]

However, in a well-intentioned effort to account for everyone whose case might be affected by the CPI problem, the labs erred greatly on the side of inclusion in creating their initial lists of cases, and prosecutors, relying on these lists, erred on the side of quick and widespread notification. Over time, it became apparent that the initial list of

[10] A common observation was that even if only a very low percentage of people on such a large list were actually innocent, the resulting number of exonerations would be in the hundreds. Although it is undoubtedly true that some persons who requested review might be actually innocent, the project's focus was necessarily narrow: whether the use of CPI undermined the conviction under review. The project's mandate was not to investigate all possible post-conviction claims, nor were there resources to do so. That said, the project did refer many clients to innocence projects where our limited investigation suggested that further investigation was warranted. The project also provided many inmates the necessary paperwork to seek initial post-conviction DNA testing.

"potentially-affected" cases would invariably shrink because of one of the following factors:

1. Initial lists often included cases which also had **non-mixture DNA evidence** (for which CPI would not have been used);
2. Initial lists included cases involving DNA mixture analysis, but which **had not resulted in a match** to a suspect;
3. Initial lists included cases involving DNA analysis that had resulted in a match, but **did not result in an arrest;**
4. Initial lists included cases involving DNA mixture analysis that had resulted in an arrest, **but did not result in a conviction;**
5. Even cases which involved DNA mixture analysis and resulted in a conviction often **did not involve CPI**, but instead used RMP to calculate the major component in a major-minor mixture.

The following explanation from Gerald Doyle, former chief of the Harris County District Attorney's Office Conviction Integrity Unit, regarding his office's experience with one lab (HFSC), illustrates the threshold problem prosecutors statewide faced in determining which cases warranted notification letters:

> "HFSC (the Houston Forensic Science Center) initially provided multiple lists of lab reports totaling over **20,000 lab reports** involving DNA evidence that were associated with approximately 155,064 total offense reports. The initial lists did not specify which of the lab reports used CPI. The HCDAO (the D.A.'s Office) worked with HFSC to narrow the lists by eliminating duplicate offense reports. After narrowing the lists, the HCDAO identified about **3,728** cases from the lists that involved DNA evidence in which CPI may have been used. The HCDAO sent notice to the **2,864** defendants who were convicted in those cases in March of 2017.

Doyle also reported that as to HCIFS (Harris County Institute of Forensic Science), that lab was able to identify **3,830** cases where CPI was used. The HCDAO determined that **736** defendants had been convicted in these cases.

Doyle reported that DPS (which handles relatively few cases in Harris County) identified **178** lab reports involving DNA mixtures which may have involved CPI. The HCDAO determined that **58** persons were convicted.

Thus, it is easy to see how expectations are heightened upon hearing that a lab has an initial list of 20,000 lab reports involving DNA mixture evidence. However, when that list is ultimately culled to only 2,864 defendants whose convictions *may* have involved CPI, expectations are tempered. Moreover, many of the mixture cases on the "maybe CPI" list from HFSC turned out not to involve CPI at all, but a different DNA mixture calculation, RMP (random match probability), which has not been called into question.

2. The notification process was problematic: participation by prosecutors in notifying affected persons was inconsistent, and the response rate was low.

The Texas District and County Attorney's Association (TDCAA) has been actively involved in the response to the CPI issue since it emerged in 2015. After the Texas Forensic Science Commission notified them of the forensic issue, TDCAA notified every elected prosecutor in the state, providing them with a letter to utilize in notifying persons whose cases might be affected, along with a form that the person could complete to request a review from the project. The assistance of TDCAA leadership and individual prosecutors across Texas has been essential to this review, mainly in providing offense reports that were necessary in evaluating the materiality of the mixture evidence in guilty plea cases.

However, despite repeated reminders to its members by TDCAA, as well as numerous appearances by review team members and forensic experts at continuing legal education conferences throughout Texas, at the time of this report, as the review process is concluding its fifth year, as many as half of the state's prosecutors have not issued any notification of the problem to affected persons. This response may be attributable in part to there being no eligible cases in some rural counties, leaving those prosecutors with nothing to disclose. Alternatively, some may still be unaware of the issue, may have concluded that they have no legal obligation to notify anyone, or simply do not want to devote resources to the effort. In any case, the obvious effect of not sending a notification is that a number of convicted persons remain unaware of the problem, and do not request a review of their case.

Additionally, even the best attempts at notification often miss their mark. Notification to convicted persons always poses daunting logistical challenges, especially in cases that were finalized years ago. Affected persons may no longer be incarcerated or may have died. Finding an accurate current address to send the notice letter is often a guess, with the result that notice letters are frequently sent to the address reported by that person years earlier, during his criminal case. Even if the letter does somehow reach its intended recipient, many convicted persons may choose to avoid or even discard a letter from the same agency that had prosecuted them, reasoning that it can't be good

news. [11] Some prosecutors' offices sent notification of the CPI issue to the last attorney of record for the convicted person, but the unfortunate reality is that many attorneys, believing that their obligations have ended once their client's case has been concluded, view such a notification letter as something that is no longer their problem. At the same time, many convicted persons, seeing that a copy of the letter had been sent to their last attorney of record, might assume that the matter is being investigated.

Thus, the number of persons requesting review from the project was considerably lower than the number who were eligible, because some prosecutors chose not to participate in notification, notification efforts that were undertaken were only modestly successful due to the inherent difficulties of the notification process, and many defendants who were notified simply chose not to respond.

To consider the Harris County example, 3,658 notice letters were sent to persons whose cases might have been affected by the CPI issue. To date, the project has been contacted by approximately 1,300 persons seeking review from their Harris County convictions. Of that number, more than 300 requests were from inmates whose inquiry was prompted by the notice letter posted at their prison unit, not in response to the letter from the district attorney's office, meaning that the notification effort by the district attorney's office resulted in an overall response rate of a little more than 25%.

[11] On occasion, it became necessary for a project attorney to locate someone who had not yet contacted the project. More than once the project was told that the person had earlier received a letter from the prosecutor's office, but had discarded it without reading it.

Since cases were only reviewed if requested by the convicted person, the project's numbers depended greatly on the extent to which notification was undertaken and the success of those efforts. Unfortunately, the most zealous notification efforts typically result in a lower response than hoped. That has certainly been the case here. Despite the laudable efforts of many prosecutors throughout the state, notification was particularly challenging in this instance, primarily because the convictions involving CPI stretched as far back as 1998.

3. Multiple factors rendered cases ineligible for further review.

The above factors greatly reduced the number of persons who even received notification. However, even after the project received a request for review, many cases were summarily closed because the project determined that they were ineligible.

a) The convicted person sought to obtain initial DNA testing. Another immediate disqualifier involved situations where the person had not had DNA testing in his case, and was seeking the project's help in obtaining initial DNA testing. This request was often made by inmates who wrote the project as a result of seeing the prison posting. Most of these inmates had not received a notification letter from the prosecutor in their convicting county for the good reason that there had been no DNA testing in their case. Obviously, since the project's mandate was only to review cases that had already had DNA testing, requests for initial post-conviction DNA testing were also closed without further action, although instructions were regularly provided to inmates concerning how to request DNA testing under Chapter 64 of the Code of

Criminal Procedure, along with a sample motion to be utilized in seeking appointment of counsel.

b) Information provided by the lab disqualified the case. Many reviews ended without further review where the project obtained preliminary information from the lab indicating that the case did not qualify. The project devised a system whereby lists of case were submitted to DPS, HFSC and other labs, and the lab would respond with a letter or by checking a box on a form that was drafted for the purpose. *See* Exhibits E and F. In this way, it was determined that no review of the case would continue in the following situations:

- **CPI analysis was not used in the case or there was no association to the defendant or the victim.** In response to lists submitted by the project to DPS labs around the state, the project was then provided with initial screening reports. DPS reported that 41% of the cases submitted to it either did not utilize CPI, had not undergone any DNA analysis at all, or had found no associations to the defendant or the victim. HFSC concluding that 66% of its cases fell into the above categories. These figures underscore the difficulty that all labs had in compiling initial lists of cases worthy of notification, as most of the cases comprising these statistics did not result from prison postings (where an inmate might misguidedly request review of a case without DNA), but involved cases where notifications had been sent by prosecutors, so that it might be presumed that there was some screening as to eligibility.

- **CPI was used in calculating the mixture statistics on some evidence in the case, but single-source calculations on other evidence made recalculation unnecessary.** In many other cases, the lab reported that although CPI was used in calculating a DNA mixture, single-source calculations on other evidence suggested that recalculation might not be necessary. This occurred frequently in sexual assault cases where, for example, a mixture might be tested from the complainant's fingernails or from a stain from the complainant's underwear, but the sperm cell fraction from a vaginal swab or from a separate stain in the underwear indicated single-source DNA which was calculated using random match probability (RMP). In many cases the single-source evidence rendered the mixture evidence irrelevant. Thus, since even an exclusion of the defendant from the mixture evidence in these cases could not overcome the single-source evidence, the case was closed without further review. These cases accounted for 14% of the HFSC cases, and 19% of the DPS cases.

4. Even where CPI was used, the DNA mixture was often immaterial to the conviction.

As explained at pages 21-23, even where the lab reported that CPI was used to calculate the DNA mixture evidence in the case, that evidence was frequently immaterial under any legal standard that would apply in a post-conviction review.

B. Suggestions for conducting future retrospective reviews

The CPI issue is but one example of a "systemic irregularity" [12] or "mass error," [13] where the discovery of an error in one criminal case uncovers a unique problem that is common to entire group of cases. It may involve misguided expert testimony, as was seen in some hair microscopy or bite mark convictions, corrupt scientists (like Annie Dookhan, a chemist at the state drug lab in Massachusetts whose misconduct compromised thousands of drug convictions) or simply changed science, such as the CPI issue in these cases. The discovery of such systemic error is typically followed by some kind of retrospective case review like this one, to determine whether any wrongful convictions have resulted from the problem.

The best way to conduct such retrospective case reviews depends in part on the type of problem that has emerged, how widespread it is, and what role it played in obtaining criminal convictions. The following suggestions are derived from this author's experience with numerous retrospective case reviews over the past 15 years, including this one. [14]

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[12] Sandra Guerra Thompson & Robert Wicoff, *Outbreaks of Injustice: Responding to Systemic Irregularities in the Criminal Justice System, in* WRONGFUL CONVICTIONS AND THE DNA REVOLUTION: TWENTY-FIVE YEARS OF FREEING THE INNOCENT (Daniel Medwed ed.)(2017).

[13] Jennifer E. Laurin, *The Massachusetts Lab Scandals: Confronting the New Normal of Mass Error in Criminal Justice*, (October 10, 2017), https://theappeal.org/the-massachusetts-lab-scandals-confronting-the-new-normal-of-mass-error-in-criminal-justice-5b3e4687bb7c.

[14] *E.g.*, investigation into the Houston Police Department Crime Lab in 2007-2010, the Jonathan Salvador/DPS cases in 2012-2013, investigative panels of the Texas Forensic Science Commission regarding improper expert testimony regarding bite mark and hair microscopy evidence, and a current case review involving possible misconduct by an undercover Houston Police Department Officer.

The usual reaction to the discovery of a systemic problem is to declare that if there is even one wrongfully convicted person in prison, then no expense should be spared and every potentially affected case must be reviewed. No one takes wrongful convictions lightly. However, resources are not infinite. The question thus becomes how best to conduct an investigation or retrospective case review in a way that is cost-efficient, while at the same time providing a high degree of confidence in the accuracy of the results.

Obviously, if a systemic problem is discovered that could only have affected a limited number of cases, then there is no reason for the group assigned to the review not to examine every one of them. For example, in 2017, the Texas Forensic Science Commission's Bite Mark Comparison Case Review Team identified 36 Texas convictions that involved bite mark testimony, a number small enough to allow the team to examine each conviction as thoroughly as existing case materials allowed.

However, the Texas DNA Mixture Review Project has already received requests for review from more than 5,000 convicted persons, and new requests arrive daily. The decision to offer a review to anyone who requested it seemed to be motivated by two widely-shared assumptions: 1) that DNA mixture evidence likely played a pivotal role in many criminal prosecutions, and 2) that there would likely be dramatic changes in probability statistics upon reanalysis of the DNA probability statistics. In addition, many prosecutors were aware of a pending disciplinary action against the Fort Bend District Attorney's Office for its alleged failure to timely notify an inmate of a different

forensic issue that had gained attention, and TCDAA (the Texas District & County Attorneys Association) supported immediate and widespread notification. [15] The result was that stakeholders understandably believed the CPI problem to be serious and widespread, and many prosecutors, concerned about their *Brady* obligations, quickly set out to notify anyone whose case may have been touched by the issue.

To the extent the above assumptions fueled such an unprecedented response, however, it now seems they may have been exaggerated. It is now clear, for example, that the role that DNA mixture evidence plays in criminal prosecutions is generally less pivotal than that of single-source DNA evidence. Whereas scores of exonerations have resulted from the latter type of DNA testing, conducted on "intimate samples" like semen or blood, most of the convictions that were reviewed by the project involved highly sensitive DNA analysis of samples from surfaces like countertops, steering wheels, knit caps and doorknobs. DNA evidence is now used widely in many types of investigations where DNA evidence had not historically played a role, like burglaries, robberies and even DWI cases. [16]

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[15] *Comm'n for Lawyer Discipline v. Hanna*, 513 S.W.3d 175, 178 (Tex. App.-Houston [14th Dist.] 2016, no pet.). The basis of the complaint by the Commission for Lawyer Discipline was that the prosecutor's office in Fort Bend had delayed for 11 months their notification to an inmate that his conviction might be affected by the Jonathan Salvador-DPS lab misconduct. The appellate court held that the prosecutors had no post-conviction notification duty under Texas Disciplinary Rule of Professional Conduct 3.09(d). This case was pending when the CPI issue surfaced. As to prosecutors' *Brady* obligation post-conviction, the Michael Morton Act, which took effect on January 1, 2014, did impose that duty on prosecutors, for convictions occurring after such date.

[16] A former chief of the Harris County District Attorney's Office Conviction Integrity Unit has described the recent tendency to conduct widespread DNA testing at every crime scene as "swabathons."

A second assumption that may have contributed to the decision to review any conviction upon request was the expectation that reanalysis of previous CPI testing was likely to result in wide swings in statistical conclusions. This has not happened. Although some cases have, upon reanalysis, yielded "inconclusive" results where the original results could not exclude a contributor, only one or two cases have gone from "could not be excluded" to an exclusion, and those cases come with caveats. [17] During the course of the project, the author of this report, finding almost universal confirmation of original results through reanalysis, has inquired of numerous lab analysts if they were surprised. No one has expressed surprise that the original CPI results have seen near-universal confirmation.

Although there is obvious relief that the CPI issue did not undermine as many convictions as initially feared, a legitimate question arises as to whether the scope and cost of a retrospective case review might be mitigated when the next mass error reveals itself. Is there a better approach to identifying affected cases? Were too many notifications sent? Two different approaches to conducting retrospective case reviews provide valuable lessons.

1. The Texas Forensic Science Commission Hair Microscopy Review. In 2014, the Texas Forensic Science Commission, concerned that hair microscopy experts

[17] *See* discussion of Herod case from Galveston, at pages 33-34. As for the Ronald Kerry Clark case, at page 35, although the statistics in his case went from 1 in 11,000 to an exclusion, it is unclear that the part of the knife tested during the reanalysis was precisely the same area from which Clark could not be excluded originally.

might have testified in a manner that did not accurately explain the limitations of their science, decided that a retrospective review of cases involving hair microscopy testimony was in order. However, rather than committing itself to a review of every conviction that had involved such testimony, the Commission decided to review a representative sample of cases:

> "The Commission approved a sub-sampling approach to case identification that allows for the generation of a significant number of cases without adding to any existing laboratory backlogs. The Commission requested that each laboratory provide the first 10 cases from every decade for which the laboratory performed microscopic hair comparisons. The Commission received over 600 cases from the laboratories in response to the sub-sampling request. After reviewing the first round of cases, the Commission may decide to identify additional cases if recommended by the hair review team. However, any additional work would require deliberation and approval by the full Commission, including an allocation of additional funds for that purpose." [18]

The review team, which consisted of commission members, defense attorneys, prosecutors and forensic analysts, met regularly to examine the testimony of hair microscopy experts from the sub-sampling of cases chosen for review. [19] Although a number of cases were identified where the expert was found to have failed to explain the limitations of the science, it also became clear through the review that only rarely was that testimony even arguably material to the conviction. In those cases where the expert testimony exceeded the appropriate limits, and the review team agreed that there

[18] See "Statement Regarding Texas Hair Microscopy Review, Texas Forensic Science Commission" https://www.txcourts.gov/media/1440418/statement-re-texas-hair-microscopy-review.pdf

[19] The undersigned was a member of the review team.

was a possibility that the testimony was material, the Commission contacted the convicting court, which in some cases appointed habeas counsel.

Because the Commission chose to review a sub-sampling of cases, rather than to commit to a review of every conviction that included hair microscopy testimony, it became quickly clear to the review team that the problem under review had affected a relatively low percentage of cases, and was also generally immaterial to the conviction. It is worth considering this sub-sampling approach in the event of another retrospective case review. Aside from the obvious economic benefit of doing a preliminary sub-sampling of cases, such an approach can also help identify the types of cases that are more likely to suffer from the identified problem, and avoids large-scale notification to convicted persons whose cases are clearly not going to benefit. Obviously, the initial sub-sampling would not preclude a more comprehensive review of cases if initial findings suggest it.

2. The Tarrant County approach. Tarrant County chose not to participate in the statewide review of DNA mixture cases, and instead created its own review process. In Tarrant County, as in other counties, the process began with the crime labs providing a list of all DNA cases to the prosecutor's office, which then identified which of those cases had resulted in a conviction. At this juncture, most prosecutor's offices statewide began the notification process, sending notifications to anyone on the list whose case had ended in a conviction.

Tarrant County followed a different approach. Once the Tarrant County District Attorney's Office culled their list to those mixture cases that had resulted in a conviction, they then provided each crime lab a list of convictions where that lab had provided analysis. The labs determined which cases had involved CPI, and those smaller lists were then returned to the district attorney's office, which sent notifications to inmates or other convicted persons. The notification letter included a form that could be returned to request counsel. An attorney was appointed to anyone who returned the form requesting counsel. If the attorney who was appointed to the case then requested it, the district attorney's office asked for an amended report from the lab in question. In some cases, even absent such a request by the attorney, the district attorney's office sought an amended report from the lab after notifying counsel. In all death penalty cases, an amended report was requested from the lab.

An obvious advantage to Tarrant County's approach is that *Brady* notices were sent only to people whose case might actually be affected by the CPI problem, rather than to those whose case was never touched by the issue at all. There is no doubt that the overreaching approach to notification followed by most prosecutors stemmed from a concern that speed was of the essence, that notification could not wait for a methodical search through "possibly-affected" cases to identify the "definitely-affected" cases. Understandably, no prosecutor wanted to be viewed as sitting on his or her hands with regard to a serious forensic problem, in the event someone in prison was found to deserve a new trial due to the CPI issue.

However, in addition to this latter approach resulting in untold hours of unnecessary work for prosecutors, attorneys and lab analysts working on the subsequent review of cases, as well as creating delays in reaching anyone whose conviction may in fact have been undermined by CPI, there is also a human cost: many inmates and others desperate to escape the effects of their convictions were given false hope that there might be some problem with their conviction, when the forensic method in question was not even used in their case.

3. An independent review group is an effective way of conducting large-scale retrospective case reviews, especially where forensic issues are involved. If a large-scale retrospective case review is deemed necessary, there are several advantages, both in terms of the quality of the review and of decreased cost, in delegating the task to a review group such as this one. In late 2015, when stakeholders first met to discuss how to respond to the CPI issue, some in attendance voiced two related concerns stemming from the fact that any conclusions made by the Project would have no legal effect:

1) First, was it appropriate that a determination of whether the DNA in a case was material, or whether a case was otherwise eligible for reanalysis by a lab, would be made by a group of lawyers whose conclusions were simply non-binding opinions?

2) Second, given the fact that the findings of the project had no legal effect, wouldn't any person whose case was negatively resolved by the project simply seek a second opinion in a setting that did have legal authority, by requesting counsel from the convicting court under Chapter 64 of the Code of Criminal Procedure, or by filing a post-conviction writ?

It is true that the project's findings have no legal effect whatsoever. As explained by the project in its initial letter to each person seeking review, and again if the case review was completed without further action: "our conclusion has no legal effect. It is merely our finding as an investigative body. You are free to pursue any legal option that you had before hearing from us." The question was a fair one: is the formation of an extrajudicial review group like this an appropriate response to situations involving mass error, where a serious issue is discovered which threatens to undermine many convictions?

However, when considering the alternative, which was to advise each person whose case may have been affected to apply for a court-appointed attorney if they wanted a review of their case, it becomes clear that T.I.D.C's creation of this project was a more effective and cost-efficient approach. Indeed, in future situations involving mass error, the formation of a retrospective case review group such as this enjoys many advantages over the appointment of a private attorney to each case:

- Through training and repeated exposure to lab reports and access to forensic experts, the project's attorneys became very knowledgeable about the forensic issues involved in the review. Whereas the appointment of each new court-appointed attorney would require training in the forensic issue involved, the project's attorneys became fairly knowledgeable about the scientific issues that were involved;

- Recognized as a state-supported review group, the project availed itself of motivated volunteer lawyers, from both the criminal justice community and the *pro bono* sections of civil firms, as well as law students and retired attorneys, to assist in the project. The project trained these volunteers,

assisted them along the way, and often provided second opinions about the resolution of each case;

- The project worked with crime laboratories around the state to develop procedures whereby the labs did initial searches of cases to determine whether the forensic issue was present in the case, thereby preventing time needlessly spent on cases that had received notification in error. Through this procedure, no time was spent evaluating a case unless the lab first reported that the case qualified for review. Moreover, attorneys were not assigned to cases that were then found to be ineligible for review;
- The project established a streamlined protocol with conviction integrity units and other prosecutors for producing offense reports for the purpose of reviewing the effect of the CPI problem in guilty plea cases;

- The project established a procedure with appellate courts and district clerks throughout the state to procure trial transcripts and other court records that were necessary to conduct case reviews;

- The repeated contact that was necessary between lab personnel, prosecutors and project attorneys resulted in a working relationship that greatly facilitated case reviews;

- The Texas Forensic Science Commission, which often receives formal requests for case reviews from inmates and other persons regarding DNA issues in their case, has periodically referred inmates to the project for help;

- Having now reviewed over 5,000 cases in response to requests for review, the project has cost a fraction of what would have been spent if attorneys had been appointed on a case-by-case basis to anyone seeking review.

Finally, with few exceptions, in those cases where the project has concluded that the review of a case review should end without referral to the court for appointment of habeas counsel, the client has not requested counsel from the convicting court under Chapter 64 of the Code of Criminal Procedure, or taken further steps seeking review. Hopefully it is because the project has tried to provide each client with a full

explanation, often in the form of a multi-page memorandum, explaining the reasons that the project has concluded that the case does not qualify for further review.

Which approach is best suited for a retrospective case review, or whether a combined approach may be called for, will depend on the nature and the scope of the next systemic issue that surfaces. However, the most important lesson derived from this retrospective case review may be that it is important to take whatever time is necessary to identify those cases that may actually be affected by a perceived problem, eliminate the remainder, and notify only those persons whose convictions may have been affected. Related to this, although the decision to post notices of the CPI problem in prison law libraries (a decision initially supported by this author) was done with the best of intentions, namely, to casting the widest notification net possible, the result has been that most of the correspondence currently received by the project has nothing to do with the CPI issue.

With the help of volunteers from throughout the state, the project will continue its review as long as requests are received. Recalculations are ongoing in several labs and several cases we have reviewed are now in litigation. Significant developments will be reported to the Texas Indigent Defense Commission and the Texas Forensic Science Commission as they arise.

Bob Wicoff
Director, Texas DNA Mixture Review Project
January 28, 2021

EXHIBIT A

Texas DNA Mixture Review Project Flowchart

DNA Review receives letter or form from defendant and enters his information on master list

Some cases forwarded to counties undertaking their own review (e.g., Tarrant and Travis). For cases being handled by DNA Review:

Reply letter sent to defendant, explaining procedure, with Authorization and form for him to return, providing relevant information about case

PROCEDURE UPON RECEIVING AUTHORIZATION FORM

Send request to lab to see if relevant CPI issued in case

If initial lab report reveals that case involved CPI, determine whether case was a trial or a guilty plea and proceed; if case did not involve CPA, close out with letter to client and DA

If guilty plea:

Obtain relevant information from DA and client to determine whether DNA was critical factor in entry of guilty plea

If NOT, review ends: Client and DA are notified that we have ended our review

If DNA could have been material to either entry of plea or result of trial, request recalculation from DA

If jury trial:

Obtain trial record, appellate opinion & other materials: ask whether, if defendant been excluded upon proper calculation, the result of the trial would likely have been different

If NO, review ends: Client and DA are notified that we have ended our review

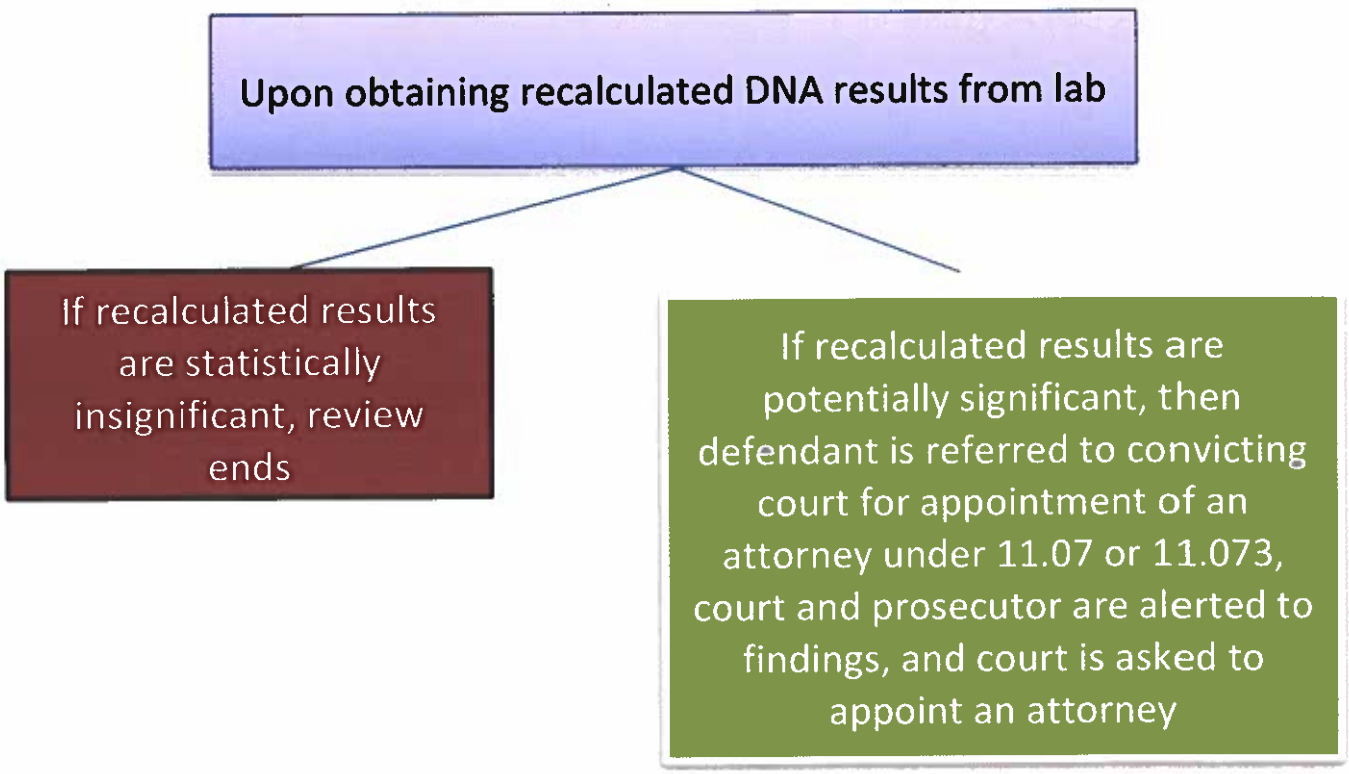
Upon obtaining recalculated DNA results from lab
If recalculated results are statistically insignificant, review ends
If recalculated results are potentially significant, then defendant is referred to convicting court for appointment of an attorney under 11.07 or 11.073, court and prosecutor are alerted to findings, and court is asked to appoint an attorney

EXHIBIT B

Defendant Notice Letter and Form

DA COUNTY LETTERHEAD

October __, 2015

John Defendant
123 Main Street
Ourtown, Texas 71234

Re: *The State of Texas vs. John Defendant*; Cause number 123456

You were prosecuted in the above-styled case for an offense that included the analysis of DNA mixture evidence by a Texas crime laboratory. A DNA mixture refers to evidence that includes DNA from more than one person. When a DNA mixture is analyzed, the laboratory report often includes a statistic informing the judge or jury how probable it is that a random person who is unrelated to you could be included in the DNA mixture.

DNA evidence has become more complicated over the last 5-10 years, and forensic scientists have recently become aware that a common statistical method they used may not always have taken into account certain important scientific limitations.

The Texas Forensic Science Commission is in the process of working with prosecutors, defense attorneys and laboratories to determine which cases may have problems.

If you would like your case recalculated on the DNA mixture issue, please fill out the attached form and send it to the address provided. Do not send the form to our office as it will only delay the processing of your request. ***If your contact information changes at any point after submitting the attached form, please provide your new contact information as soon as possible.***

Sincerely,

District Attorney

I, _____, understand from the letter sent to me that there may be an issue with the statistics used to report the DNA mixture analysis conducted in my case.

I also understand that re-analysis of the DNA mixture statistic(s) in my case may be warranted.

By my initials below, and by my signature, I am expressing my desire that:

_____ No review of my case be undertaken;

OR

_____ That the defense team determine whether there may be an issue in my case and provide me with follow-up information based on their analysis;

OR

_____ That all documents and information related to my case be provided to my retained lawyer, whose name and phone number are as follows:

ATTORNEY NAME: _____

ATTORNEY PHONE: _____

Signed the ___ day of _____, 2015.

_____

Printed name Signature

_____

Address

_____

Phone number

_____

E-mail address

SEND THIS FORM TO:
DNA REVIEW
PO BOX 283
HOUSTON, TEXAS 77001

If your contact information changes at any point after submitting this form, please provide your new contact information ASAP by sending it to the address listed here.

EXHIBIT C

Client Information Sheet

INFORMATION SHEET

Please fill out the form as best you can and return to:

DNA Review
P. O. Box 283
Houston, Texas 77001

Feel free to add separate sheets to end of form, if necessary.

Name TDCJ # (if applicable) Date of birth

Address Email address

Phone number(s)

Offense convicted of/cause number:_____

County of conviction/court number: _____

Date judgment entered: _____

Did you have a trial or did you enter a guilty plea? _____

Did the judge or the jury assess your punishment? _____

Did you appeal? If yes, what court of appeals did you appeal to? _____

Please list the court of appeals number, if known _____

Did you file a PDR? If yes, state the number and result _____

Did you file a post-conviction writ? If so, please list the number(s), if known _____

Attorney's name at trial level: _____

Attorney's name on appeal: _____

If DNA testing was done in your case, please explain what kind of evidence was tested:

_____

_____

_____

How was DNA used to convict you? What did the prosecutors claim that it proved?

_____

_____

_____

_____

_____

_____

Aside from the DNA evidence, what other evidence (even you feel it was false) was used to obtain the conviction in your case? Please be concise (for example: testimony of co-defendant, confession, eyewitness testimony of complainant, other scientific testing).

_____

_____

_____

_____

_____

Do you have copies of any of the following documents from your case? If yes, please circle.

1. Trial record
2. Documents from court's file
3. Any appellate records
4. Post-conviction writs
5. Media clippings
6. Other (describe)_____

_____

Have you ever contacted State Counsel for Offenders about your case? If so, please provide the name of the person you contacted at SCFO regarding your case.

_____

_____

Please provide any other information that you feel might be helpful to us in determining the role that DNA played in your case:

_____

_____

_____

_____

_____

_____

Name: Date:

_____

EXHIBIT D

Authorization and Acknowledgement of Limited Representation

AUTHORIZATION AND
ACKNOWLEDGEMENT OF LIMITED REPRESENTATION

I REQUEST THAT BOB WICOFF, ATTORNEY AT LAW, OR ANY OTHER ATTORNEY WHO REVIEWS MY CASE ON BEHALF OF THE DNA REVIEW PROJECT, REPRESENT ME FOR THE LIMITED PURPOSE OF DETERMINING WHETHER THE DNA RESULTS THAT WERE USED IN MY CASE WERE PROPERLY CALCULATED, OR WHETHER NEW CALCULATION OF THOSE RESULTS COULD MAKE A DIFFERENCE IN MY CRIMINAL CASE. I UNDERSTAND THAT THERE IS NO COST FOR SUCH LIMITED LEGAL REPRESENTATION.

BY SIGNING THIS AUTHORIZATION, I UNDERSTAND AND AGREE THAT SUCH REPRESENTATION IS LIMITED TO THE REVIEW DESCRIBED ABOVE. ONCE BOB WICOFF OR SUCH OTHER ATTORNEY HAS CONCLUDED THEIR DNA REVIEW (DESCRIBED IN THE FOREGOING LETTER), THEIR LEGAL REPRESENTATION WILL END.

I UNDERSTAND AND AGREE THAT NEITHER BOB WICOFF NOR ANY OTHER ATTORNEY WHO REVIEWS MY CASE ON BEHALF OF THE DNA REVIEW PROJECT WILL INVESTIGATE ANY OTHER ISSUES THAT MAY EXIST IN MY CASE (SUCH AS INEFFECTIVE ASSISTANCE OF COUNSEL, PROSECUTORIAL MISCONDUCT, OR NON-DNA RELATED CLAIMS OF ACTUAL INNOCENCE).

NEITHER BOB WICOFF NOR ANY OTHER ATTORNEY WHO REVIEWS MY CASE ON BEHALF OF THE DNA REVIEW PROJECT WILL BE RESPONSIBLE FOR FILING ANY MOTIONS OR POST-CONVICTION WRITS, OR FOR REPRESENTING ME IN ANY COURT, UNLESS FIRST APPOINTED BY A COURT FOR THAT PURPOSE.

BY SIGNING THIS AUTHORIZATION, I UNDERSTAND THAT ANY DEADLINES THAT CURRENTLY APPLY TO MY CRIMINAL CASE (INCLUDING, BUT NOT LIMITED TO, ANY AEDPA DEADLINES FOR FILING A POST-CONVICTION WRIT OF HABEAS CORPUS), MAY CONTINUE TO RUN WHILE THIS DNA REVIEW IS BEING CONDUCTED. DUE TO THE NUMBER OF CASES BEING INVESTIGATED BY THE DNA REVIEW, NEITHER BOB WICOFF NOR ANY OTHER ATTORNEY WHO REVIEWS MY CASE ON BEHALF OF THE DNA REVIEW PROJECT, CAN GUARANTEE THAT THE DNA REVIEW IN MY CASE WILL BE COMPLETED IN TIME TO MEET ANY DEADLINES THAT CURRENTLY APPLY TO MY CASE.

FULLY UNDERSTANDING THE LIMITED NATURE OF THE LEGAL REPRESENTATION BEING OFFERED BY BOB WICOFF OR ANY OTHER ATTORNEY WHO REVIEWS MY CASE ON BEHALF OF THE DNA REVIEW PROJECT, I REQUEST THAT SUCH REVIEW BE UNDERTAKEN ON MY BEHALF.

SIGNED ON _____(DATE).

_____

NAME (PRINTED) SIGNATURE

EXHIBIT E

Sample Texas Department of Public Safety
CPI Evaluation Laboratory Report

TEXAS DEPARTMENT OF PUBLIC SAFETY

CRIME LABORATORY
1404 Lubbock Business Park Boulevard Suite 200
Lubbock, TX 79403
Voice 806-740-8900 Fax 806-740-8918
LubbockCrimeLab@dps.texas.gov

Laboratory Case Number: LUB

CPI Evaluation Laboratory Report

Issue Date: December 08, 2016

Lynn Garcia
Texas Forensic Science Commission
1700 N Congress Ave Ste 445
Austin, TX 78701

Agency Case Information: **Police Department - 140000049**

Related Agency Information: Texas Forensic Science Commission

Offense Information: Sexual Assault - - Lubbock County

Suspect(s):

Requested Analysis:

The Texas Forensic Science Commission issued a communication on 08/21/2015 to members of the Texas Criminal Justice Community regarding the use of the Combined Probability of Inclusion/Exclusion (referred to as CPI or CPE). Communication was received by the laboratory on or about 8/19/2016 requesting an evaluation of this case for the use of CPI. The evaluation is reported below.

Evaluation Interpretation:

This case was evaluated in accordance with the Criteria for the Evaluation of DNA Mixture Interpretation document issued by the Texas Forensic Science Commission on 10/15/2015.

Based on the evaluation, this case may benefit from reinterpretation.

This report has been electronically prepared and approved by:

Amber Miller
Forensic Scientist
Texas DPS Lubbock Crime Laboratory

This report has been issued via email to:

Lynn Garcia (lynn.garcia@fsc.texas.gov)
Valerie Manriquez (Valerie.Manriquez@pdo.hctx.net)
Bob Wicoff (Bob.Wicoff@pdo.hctx.net)
Jacqueline Yii (Jacqueline.Yii@pdo.hctx.net)

EXHIBIT F

Sample Response to Request for Preliminary Screening of
DNA Test Results by Houston Forensic Science Center

Response to Request for Preliminary Screening of DNA Test Results
By Houston Forensic Science Center

HOUSTON FORENSIC
SCIENCE CENTER
1301 Fannin, Suite 170
Houston, Texas 77002
(713) 929-6760

Defendant:

Cause Number:

HFSC Lab Number:

Law Enforcement Agency Case Number:

☐ 1. This case may benefit from reinterpretation.

☐ 2. This case may benefit from retesting (re-extraction and/or re-amplification).

☑ 3. Although CPI was used, other positive associations with single-source calculations were made.

Item of Evidence	Individual to Whom This Item was Positively Associated
Item 1.8.1 - Portion of labia minora swabs (SF)	
Item 1.7.1 - Portion of sanitary pad (SF)	
Item 1.9.1 - Portion of labia majora swabs (SF)	

☐ 4. CPI was not used for statistical analysis in this case, therefore reinterpretation may not be necessary.

☐ 5. SWGDAM-compliant CPI was used for statistical analysis in this case, therefore reinterpretation may not be necessary.

☐ 6. No positive associations were made to "the defendant or victim," therefore reinterpretation may not be necessary.

☐ 7. No DNA analysis was performed in this case, therefore no reinterpretation is necessary.

☐ 8. Other:

Total # of DNA Reports Issued in this Case	Date(s) or OLO Supplement Number(s) of DNA Reports Issued in This Case
DNA (2) DNA (4)	August 22, 2012 September 13, 2013

Ashley Henry Digitally signed by Ashley Henry Date: 2018.07.13 05:57:34 -05'00'

07/13/2018

EXHIBIT G

Reanalysis & Recalculation Results in 60 Cases

Results of Reanalysis and Recalculation in 60 Cases

NAME	COUNTY	DATE/OFFENSE/ SENTENCE	LAB	ORIGINAL CPI RESULTS	REANALYSIS/ RECALCULATION RESULTS	NOTES
ALANIZ, Leroy	Ector	1991 Capital Murder LWOP	DPS-LUB	Cold case from 1991. Project lawyer requested recal because DNA was pivotal and DPS reported case might benefit from reinterpretation.	2018 3-person mixture 29.7 trillion times more likely if DNA came from Alaniz and 2 unknown suspects than if from 3 unknown individuals	Case closed without further action
AMEZQUITA, Jorge	Harris	2008 Capital Murder Life w/o Parole	HCIFS	2008 Item 1: 1 in 14.9 quadrillion Item 2: 1 in 6.381 billion Item 3: 1 in 194,300 Item 4: 1 in 38,510	2018 Item 1: 1 in 78.86 quadrillion Item 2: 1 in 103.7 million Item 3: 1 in 24,850,000 Item 4: inconclusive	Case closed without further action
BAKER, Randy	Harris	2012 Burg. Veh. 8 years	HCIFS	2012 Item: STR testing 1 in 3	2020 3-person mixture is 32 trillion times more likely if DNA came from Def. and 2 unknown individuals thn if from 3 unrelated, unknowns	Case closed without further action
BRANCH, Wesley	McLennan	2010 Sex. Assault/ Indecency 20 years	DPS-Waco	Project lawyer requested reanalysis due to facts of the case and based on lab's representation that case may benefit from reinterpretation	2016 3-person mixture from sperm fraction is 82.3 duodecillion times more likely if DNA came from CW, CW's BF and def. than if from CW and 2 unknown individuals	Case closed without futher action
BURNS, Justin	Montgomery	2012 Continuous sexual abuse Life	DPS-HOU	Project lawyer requested reanalysis due to facts of the case and based on lab's representation that case may benefit from reinterpretation	2016 2-person mixture from sperm fraction from anal swab is 7.86 quintillion times more likely if DNA came from CW and def. than if from CW and an unknown individual	Case closed without futher action
BUSE, Troy	Harris	2009 Burg. w/intent to commit sex. ass. 20 years	HCIFS	Project lawyer requested reanalysis due to facts of the case and based on lab's representation that case may benefit from reinterpretation	2017 Item 1: inconclusive Item 2: 1 in 100,900 Item 3: 1 in 1.487 million Item 4: inconclusive Item 5: 1 in 78 quadrillion	Case closed without further action
CAMPBELL, Patrick	Galveston	2010 Agg.Robbery 50 years	DPS-HOU	Project lawyer requested reanalysis due to facts of the case and based on lab's representation that case may benefit from reinterpretation	2017 Item 1: 3-person mixture is 20.3 quintillion times more likely if DNA came from def. and two unknown individuals than if from 3 unknown individuals Item 2: 3-person mixture is 20.3 quintillion times more likely if DNA came from def. and two unknown individuals than if from 3 unknown individuals	Case closed without further action

COLLIER, Denzel J.	Montgomery	2010 Murder Life	DPS-HOU	Project lawyer requested reanalysis due to facts of the case and based on lab's representation that case may benefit from reinterpretation	2018 3-person mixture profile is 11.1 quintillion times more likely if DNA came from def. and two unknown individuals than if from 3 unrelated, unknown individuals	Case closed without further action
COOKS, Michael	Harris	2006 Agg.Sex.Ass.-Child 20 years	HCIFS	2006 CW's DNA not found on outside of condom, despite claim she was sexually assaulted for 10-20 minutes	2018: New STR testing CW's DNA now found on NS fraction of condom, but only 1 in 8 statistical probability; Def's DNA on condom in very large numbers, as before, but this had been expected.	Project attorney requested recal to see if inexplicable absence of CW's DNA on outside of condom would change upon reanalysis. Although new results did reveal her DNA, it was in such low numbers as to be insignificant. However, **case closed without further action** because plea was entered with understanding that no DNA from CW had been found. New results did not exclude def., or provide any new exculpatory information.
CULLINS, Larry	Polk	2006 Agg.Sex.Ass. 20 years	DPS-HOU	2006 Item: 1 in 1.037 billion	2020 Item: 3-person mixture 50.4 octillion times more likely if DNA came from Cullins, CW and unknown suspect than if from Cullins and 2 unknown individuals	Closed without further action
CUMBOW, Robert	Polk	2009 Agg.Sex.Ass. 30 years	DPS-HOU	Project lawyer requested reanalysis due to facts of the case and based on lab's representation that case may benefit from reinterpretation	2018 Item 1: 2-person mixture profile is 174 quadrillion times more likely if from CW and an unknown individual than if from two unrelated, unknown individuals;	Closed without further action
DAINS, Jesse	Harris	2013 Agg.Sex.Ass. 35 years	HCIFS	2013 Item 1: 1 in 18,860	2017 Item 1: 1 in 106,300	Closed without further action (BW: recal. was probably unnecessary as sexual activity conceded by def. and CW)
DANIEL, Jared	Harris	2005 Capital Murder LWOP	HCIFS	2006 Item 1: 1 in 49,380 Item 2: 1 in 216 Item 3: 1 in 180,900	2019 Item 1: 1 in 29,330 Item 2: insuff.data Item 3: 1 in 2,641	Closed without further action.

Results of Reanalysis and Recalculation in 60 Cases

DAVIS, Kesley	Harris	2012 Murder 99 years	HCIFS	2012 Item 1: 1 in 18,530 Item 2: 1 in 40 Item 3: 1 in 107 Item 4: 1 in 2	2018 (New STR) Item 1: 1 in 422.8 TR. Item 2: inconclusive Item 3: 1 in 10,530 Item 4: inconclusive	Closed without further action.
DELACRUZ, Anthony (Case 1)	Taylor	2009 Burglary 50 years	DPS-LUB	2010 Item 1: 1 in 16.85 billion Item 2: 1 in 2,093 Item 3: 1 in 7,022	2017 Item 1: 2-person mixture profile is 173 sextillion times more likely if from Def. and an unknown individual than if from two unrelated, unknown individuals; Item 2: 4-person mixture profile is 66.8 quintillion times more likely if from Def. and 3 unknown individuals than if from four unrelated, unknown individuals; Item 3: 4-person mixture profile is 475 quintillion times more likely if from Def. and 3 unknown individuals than if from four unrelated, unknown individuals	Closed without further action.
DELACRUZ, Anthony (Case 2)	Fisher	2009 Sexual Assault 50 years	DPS-LUB	2010 Item: 1 in 102.1 quintillion	2017 Item: 2-person mixture profile is 1.74 octillion times more likely if from Def. and an unknown individual than if from two unrelated, unknown individuals	Closed without further action.
DEMPS, Richard	Lubbock	2005 Sexual Assault Life	DPS-LUB	Requested reanalysis due to facts of the case and lab's suggestion that case may benefit from recalculation	2018 Item: 2-person mixture profile is 544 octillion times more likely if from Def. and CW than if from CW and one unrelated, unknown individual.	Closed without further action
DUNN, Robert	Harris	2009 Sexual assault Life	HFSC	Requested reanalysis due to facts of the case and lab's suggestion that case may benefit from recalculation	2021 Vaginal swab from CW: 2-person mixture profile is 12.7 quintillion times more likely if from CW and Def than if from CW and an unrelated, unknown individual	Closed without further action.
ELLIS, Eugene	Harris	1993 Agg.Sex.Ass. Life	DPS-HOU	1993 Insufficient DNA for testing	2018 Profile is 370,000 times more likely if from def. & two unknowns than if from three unrelated unknowns	Closed without further action.

Results of Reanalysis and Recalculation in 60 Cases

ESTRADA, Gina	Lubbock	2009 Agg.Sex.Ass.-child 15 years	DPS-LUB	Requested reanalysis due to facts of the case	2019 Item 1: profile is 66,000 times more likely if from def., CW and two unknowns than if from CW and three unrelated unknowns Item 2: profile is 24.1 quintillion times more likely if from def., CW and one unknown than if from CW and two unrelated unknowns	Closed without further action.
ESTRADA, Paul	Karnes	2004 Indecency w/child 10 years	CORPUS	Requested reanalysis due to facts of the case	2016 Item tested is 97.2 million times more likely if from def. and CW than if from CW and an unknown individual	Closed without further action.
FREEMAN, Jonathan	Harris	Agg. robbery 2009 25 years	HCIFS	2009: Item 1: 1 in 257 Item 2: 1 in 279 Item 3: 1 in 26,390	2018: (New STR testing) Item 1: no comparisons possible Item 2: no comparisons possible Item 3: no comparisons possible	Referred to dist. court for appointment of habeas counsel
GIPSON, Michael	Harris	2002 Aggravated Robbery 35 years	HCIFS	2002 Item 1: 1 in 20,380 Item 2: 1 in 46,860	2019 Item 1: inconclusive Item 2: profile is 46 billion times more likely if from def. & one unknown than if from two unrelated, unknowns	Closed without further action.
HAMPTON, Derrell	Smith	2012 Engaging in Organized Criminal Activity Life	DPS-GAR	see full discussion in body of report	see full discussion in body of report	Results sent to def's attorney
HAYES, Devonte	Harris	2012 Agg.rob. 30 years	HCIFS	2012 Item 1: 1 in 542,600 Item 2: 1 in 2,230 Item 3: 1 in 107 Item 4: 1 in 10 Item 5: 1 in 54	2018 Item 1: 1 in 201.8 Tr. Item 2: inconclusive Item 3: 1 in 10,530 Item 4: inconclusive Item 5: inconclusive	Closed without further action.
HEROD, John	Denton	2011 Burg. Hab 10 years	DPS-GAR	2012 Def. could not be excluded from mixture on door frame of burglarized house	2016 Profile is 14.5 quintillion times more likely if from def. & one unknown than if from two unrelated, unknowns	Closed without further action.
HEROD, Richard	Galveston	2010 Agg.Sex.Ass. Agg. Robbery 99 years	DPS-HOU	2011 Def. could not be excluded from T-shirt. Probability of selecting an unrelated person at random with this DNA profile is 1 in 87.	2017 Prob.gen. results: Def. excluded from T-shirt	Referred to dist. court for appointment of habeas counsel
HIDROGO, Rocky	Comanche	2008 Capital murder LWOP	DPS-LUB	Requested reanalysis due to facts of the case	2018 Likelihood ratio result: Profile is 60.7 million times more likely if from defendant and 2 unknown individuals than if from 3 unrelated, unknown individuals.	Closed without further action.

Results of Reanalysis and Recalculation in 60 Cases

				2012	2019	Closed without
JACKSON, James	Harris	2012 Agg.Sex.Ass. 60 years	HCIFS	STR testing reveals 3-person mixture, from which defendant cannot be excluded. 1 in 118,900 African-Americans	Asssuming CW as a donor, mixture is 55 trillion times more likely if from CW, def. & one unknown than if from CW and two unrelated, unknowns	further action.
KENNERSON, Joseph	Harris	2013 Agg.Sex.Ass.Child 12 years	HCIFS	Requested reanalysis due to facts of the case	2017)(SF items) Item 1: Def. cannot be excluded, 1 in 274,500,000 for African-Americans; Item 2: Def. cannot be excluded, 1 in 1.625 quadrillion for African-Americans; Item 3: Def. cannot be excluded, 1 in 66.74 quintillion for African-Americans;	Closed without further action
LEE, Edward Clinton	Burleson	2012 Capital Murder LWOP	DPS-AUS	Requested reanalysis due to facts of the case	2019 Item 1 (Def. penis swab): Assuming Def. as a donor, mixture profile is 3.18 octillion times more likely if the DNA came from def. and CW than if DNA came from def. and 1 unknown, unrelated individual; Item 2: 3-person mixture. Assuming 2 CWs as donors, mixture is 12.6 septillion times more likely if DNA came from 2 CWs and def. than if from 2 CWs and an unknown individual	Closed without further action
LOPEZ, Jesus	Brown	2013 Continuous Sexual Abuse LWOP	DPS-AUSTI	2013 Item 1: Neither Def. nor CW can be excluded, 1 in 2.372 million for Hispanics; Item 2: Neither Def. nor CW can be excluded, 1 in 10.92 million for Hispanics;	2017 Item 1 (Def. penis swab): Assuming Def. as a donor, CW could not be excluded, w/ probability an unrelated person being source is 1 in 1.858 quintillion for Hispanics;	Closed without further action
MANNING, Harold	Harris	2004 Capital Murder LWOP	HCIFS	2004 Item 1: 1 in 41 Item 2: 1 in 818	2018 Item 1: inconclusive Item 2: inconclusive	Referred to dist. court for appointment of habeas counsel
MASON, Trent	Harris	2012 Capital murder Life w/o parole	HCIFS	2009 Def. could not be excluded from glove No stats	2017 No conclusions could be drawn because stain on glove contained 4-person mixture	Closed without further action (case was inappropriate for recal. due to substantial other incriminating evidence)

McGRANOR, Anthony	Williamson	2001 Sexual assault 35 years	DPS-AUS	2002 (Project attorney requested recal based on DPS notice that "case may benefit from reinterpretation" so recal requested w/o stats)	2019 SF of vaginal swab is 2-person mixture. Assumng CW is donor, def. could not be excluded. 1 in 61.2 quadrillion	Closed without further action.
MOLER, Jerwoody	Walker	2010 Murder Life	DPS-HOU	2016 (Project attorney requested recal based on DPS notice that "case may benefit from reinterpretation" so recal requested w/o stats)	2019 Def. could not be excluded from glove found under CW's body; profile was 1 in 14.3 sextillion times more likely if from def. and one unknown than if from two unrelated, unknowns	Closed without further action.
MOORE, Zachary	Harris	2013 Burglary of a vehicle 2 years	HCIFS	(Project attorney requested recal based on case facts, so recal requested w/o prior report	2017: New STR testing Def cannot be excluded as possible major contributor to 2-person mixture on car door, w/ 1 in 1.2 trillion (case 1) and to 3-person mixture on steering wheel w/ 1 in 244 quintillion (case 2).	Closed without further action.
MORGAN, Tedrick	Randall	2012 Burg.Hab/others 25 years	DPS-LUB	2014 (Project attorney requested recal based on DPS notice that "case may benefit from reinterpretation" so preliminary lab results unavailable)	2017 3-person mixture. Profile is 34.3 quintillion times more likely if from def. & two unknowns than if from three unrelated, unknowns	Closed without further action.
NORRIS, Andre	Lubbock	2011 Burglary 35 years	DPS-LUB	2011 Cap: 1 in 50.05 million	2018 Cap: 11.7 quintillion times more likely if from defendant and 3 unknowns than if from 4 unknowns	Closed without further action
ROBIN, Christopher	Jefferson	2007 Murder 56 years	DPS-HOU	2008 Defendant could not be excluded from mixture Item 1: 1 in 6049 Item 2: 1 in 18	2018 Item 1: 3,770 times more likely if from defendant and CW Item 2: 3.91 billion times more likely if from defendant and CW	Closed without further action
ROCHA, Natalie	McLennan	2007 Murder 99 years	DPS-Waco	Project attorney concluded from opinion that DNA evidence was material	2016 DNA profiles on item tested were 82.1 septillion times more likely if from defendant, complainant and an unknown person than if from 3 unrelated, uknown persons	Closed without further action.
RODRIGUEZ, Pilar	Harris	2011 Murder 40 years	HFSC	Recal. requested by project attorney on basis of HFSC reporting that "case may benefit from recalculation."	2018 Defendant could not be excluded from plastic wrap (used to tie up the victim). Stats were 1 in 43 quadrillion for Hispanics.	Closed without further action.

				2009	2019	Closed without
ROMAN, Alberto	Harris	2002 Burglary w/int to commit sexual assault 10 years	IFS	Item 1: 1 in 1,518,000 Item 2: 1 in 8,291,000	Item 1: 1 in 5 Item 2: 1 in 3,366	further action. Despite significant difference upon recal. on 2 items, a 3rd item, a different part of item 2 that had not previously been tested, was 1 trillion times more likely if from def.
RUBIO, Alexander	Taylor	2009 Sex.Ass.-Child 16 years	DPS-LUB	2010 Item: 1 in 290.4 million	2017 Likelihood ratio: Profile obtained is 1.22 sextillion times more likely if from CW and defendant than if from CW and unknown ind.	Closed without further action.
SANTIAGO, Jose J.	Harris	2008 Aggravated Robbery 37 years	HCIFS	Requested reanalysis due to facts of the case	2020 Black glove tested. Likelihood ratio revealed a mixture from 3 individuals. Mixture was 861 trillion times more likely to have originated from this defendant and 2 other individuals than from 3 unknowns, providing "very strong support" that Santiago was a contributor to the DNA.	Closed without further action.
SCHMIDT, Theodore	Harris	2006 Capital Murder LWOP	HCIFS	see full discussion in body of report	see full discussion in body of report	Habeas corpus application to be filed
SCOTT, Joseph	Bell	2015 Agg.Sex.Ass. 35 years	DPS-Waco	2015 1 in 14.72 quintillion	2020 likelihood ratio: 200 quadrillion times more likely if from def. and CW	Closed without further action.
SHEEDY, JASON	Harris	2003 Agg.Sex.Ass.Child 60 years	HCIFS	Requested reanalysis due to facts of the case	2020 likelihood ratio on mixture from CW's panties is 543 million times more likely if from CW and defendant than from CW and unknown individual	Notified private counsel of results
SIMS, Lorenzo	Harris	2006 Agg.Sex.Ass. 30 years	HFSC	2006 Item: 1 in 23.2 Million	2019 Item (STR): 1 in 2.6 octillion	Closed without further action.
SMITH, Charlie	Montgomery	2011 Engaging in Organized Criminal Activity Life	DPS-HOU	2011 Item: 1 in 2.635 trillion	2020 Item: 1 in 81.1 quintillion	Closed without further action.

				2010	2017	Closed without
SMITH, Isaac	Harris	2010 Capital murder LWOP	HCIFS	Item 1: 1 in 69 Item 2: 1 in 2,988 Item 3: 1 in 12,360 Item 4: 1 in 12.36 quintillion	Item 1 STR: inconclusive Item 1 Y-STR: 1 in 2,623 Item 2 STR: inconclusive Item 2 Y-STR: 1 in 479 Item 3 STR: inconclusive Item 3 Y-STR: inconclusive Item 4 STR: 1 in 12.23 quintillion	further action.
STEVENS, Robert	Galveston	2008 Capital murder LWOP	DPS-HOU	Requested reanalysis due to facts of the case	2020 Item (ski mask): Probability of obtaining this 2-person mixture if DNA came from def. and co-def. is 72.2 nonillion times greater than the probability of obtaining this profile if the DNA came from two unrelated, unknown persons. Item (hoodie): Item 1: mixture profile is 132 duodecillion times more likely if from def., co-def. and an unknown person than if from three unrelated unknowns	Closed without further action.
SZADA, Joseph	Harris	2008 Agg.Sex.Ass.Child 40 years	HCIFS	2008 SF on clothing Def. could not be excluded 1 in 59,350,000	2016 Inconclusive 2017 (GlobalFiler) 1 in 698.3 trillion	Closed without further action.
TEMPLE, John	Harris	2012 Att. Indeceny w/ child 2 years	HFSC	2012 2-person mixture from CW's ear Def. could not be excluded 1 in 67 million	2019 Def. could not be excluded 1 in 27 trillion	Closed without further action.
THOMPSON, Johnnie	Harris	2010 Sexual assault 8 years	HCIFS	(Project attorney requested recal based on case facts, so recal requested w/o prior report)	2017 New STR testing. Def cannot be excluded as possible major contributor to 2-person mixture on CW's labia swabs: 1 in 11.37 trillion .	Closed without further action.
TOLLIVER, Justin	Galveston	2008 Murder 18 years	DPS-HOU	(Project attorney requested recal based on case facts, so recal requested w/o prior report)	2018 likelihood ratio: 3.94 billion times more likely if from def., CW and one unknown	Closed without further action.
VILLARREAL, Jose	Taylor	2008 Agg.Sex.Ass. 50 years	DPS-LUB	2008 Item: 1 in 164.6 Million	2019 Item: Mixture profile was 10.7 sextillion times more likely to have originated from defendant and CW than from CW and unknown contributor	Closed without further action

				Project attorney requested recal based on case facts, so recal requested w/o prior report	2019 Item 1: 2-person mix from SF of underwear stain. New STR. Assuming CW is donor, def. cannot be excluded as contributor to mixture; probability of selecting a random contributor is 1 in 16.92 quintillion for African-Americans;	Closed without further action
WALLACE, Freddie	Brazos	2005 Sexual Assault Life	DPS-AUS			
WILKERSON, Terry	Montgomery	2006 Capital Murder LWOP	DPS-HOU	2006 Item 1: 1 in 18 Item 2: 1 in 1.4 trillion Item 3: 1 in 6.6 billion Item 4: 1 in 110 trillion Item 5: 1 in 25 Item 6: 1 in 77 Item 7: 1 in 1.2 billion	2020 Prob.gen.: Item 1: def. excluded Item 2: 99 quadrillion times more likely if from def. Item 3: 140 trillion times more likely if from def. Item 4: 143 nonillion times more likely if from def. Item 5: inconclusive Item 6: inconclusive Item 7: 5.85 decillion times more likely if from def.	Closed without action. Collette Richnow's co-defendant. Despite mixed results on reanalysis, def. could not be excluded, in very high numbers, on several pieces of damaging material evidence.
WILLIS, Jonathan	Galveston	2010 Agg.Sex.Ass. 99 years	DPS-HOU	2010 Vag.swab (SF): 1 in 187.7 million Panties (EF): 1 in 14.54 million Panties (SF): 1 in 1.617 million	2017 Prob.gen.: Vag.swab (SF): 1.64 quintillion times more likely if from def. Panties (EF): 406 billion times more likely if from def. Panties (SF): 1.52 quintiiion times more likely if from def.	Closed without further action.