



Rosemary Lehmborg ★ **Travis County District Attorney**

P.O. Box 1748 • Austin, Texas 78767 • Telephone: 512-854-9795 • Fax: 512-854-9534

January 11, 2016

«Defendant» TDCJ# «TDCJ_Number_»
«TDCJ_Unit» Unit
«Unit_Street_Address»
«Unit_City_State_Zip»

Re: *Brady* notice pertaining to State of Texas vs. «Defendant»
Cause No. «Cause_No» in the «Court» District Court of Travis County, Texas
«Agency_Name» Offense Report No. «Agency_Case_Number»
«Agency_Name» Lab No. «Lab_Number»

To «Defendant»:

I am writing to notify you that the above criminal case *might possibly* be impacted by recent scientific developments relating to DNA evidence. In particular, please be advised of the following information:

- (a) During the DNA analysis of one or more samples relating to this case, the lab appears to have used the FBI's 1999 and 2001 STR Population Database, which was recently found to contain minor discrepancies; and/or
- (b) During the DNA analysis of one or more DNA mixtures relating to this case, the lab appears to have used a protocol (or set of procedures) that was adopted by the lab prior to recent scientific developments relating to the interpretation of DNA mixtures.

Additional information concerning these issues is addressed in a notice issued by the Texas Forensic Science Commission on August 27, 2015. A copy of that notice is enclosed.

The lab might be able to re-calculate the DNA results in this case, using the lab's current protocol. If you wish to request re-calculation of those DNA results, you may do so by contacting the Capital Area Private Defender Service ("CAPDS"). For your convenience, a letter from CAPDS is enclosed, along with a request form that CAPDS has prepared for this purpose.

Please do not send any request form to the District Attorney's Office. Doing so will delay your request.

Other options might be available to you. Please note that the District Attorney's Office represents the State of Texas in this case and cannot give you legal advice. The District Attorney's Office does not, by providing this notice, make any express or implied representations as to the legal impact of the information in this notice or in the enclosures.


Assistant District Attorney



Rosemary Lehmborg ★ **Travis County District Attorney**

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January 11, 2016

«Defendant» TDCJ# «TDCJ_Number_»
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Referente a: Aviso requerido por el caso *Brady* en la acción del Estado de Texas en contra de. «Defendant»
Causa(s) nro. «Cause_No» que se está tramitando ante el Juzgado del distrito nro. «Court» del Condado de Travis, Texas
«Agency_Name» Informe nro. «Agency_Case_Number»
«Agency_Name» Número interno del laboratorio «Lab_Number»

Estimado/a «Defendant»:

Por medio de la presente le informo que *es posible* que unos nuevos descubrimientos científicos con respecto al uso de pruebas de ADN pudieran afectar el caso penal indicado anteriormente. Para ser más preciso, es posible que:

- (a) al analizarse la ADN en una o más de las muestras obtenidas en este caso, se utilizaron las bases de datos de población STR del 1999 o del 2001 del FBI que ahora se ha determinado podrían contener unas anomalías menores o
- (b) en este caso, al analizarse una o más muestras de ADN mezclados (donde hay más de una fuente de ADN), el protocolo (procesos a cumplirse) utilizado por el laboratorio no tomaba en cuentas las más recientes recomendaciones científicas sobre la interpretación de estas muestras mezcladas.

El 27 de agosto del 2015, la Comisión de Ciencias Forenses de Texas publicó un aviso que detalla más afondo estos temas. Aquí anexo. encontrará una copia de este aviso.

Existe la posibilidad que el laboratorio pueda utilizar los nuevos protocolos para recalculer las determinaciones hechas en el caso suyo con respecto a la presencia de ADN. Si desea solicitar dicha recalculation, deberá comunicarse con el Servicio de Defensores Particulares de la zona Capitalina [*Capital Area Private Defender Service* o *CAPDS* por las siglas en inglés]. Aquí encontrará incluida una carta preparada por *CAPDS* que incluye el formulario de solicitud que se deberá utilizar. Esperamos que esto le agilice el proceso.

Le rogamos que no envíe la solicitud a esta Fiscalía porque eso sólo demorará el procesamiento.

Pueda que Vd. tenga a su disposición otras opciones legales pero ya que esta Fiscalía representa los intereses de la sociedad del Estado de Texas, nos es prohibido asesorarle sobre ellos. También debe quedar claro que al proporcionarle esta información, esta Fiscalía no hace ninguna manifestación, ya sea implícita o explícita, sobre el impacto legal que ésta pudiera tener en el caso penal aquí indicado.


Fiscal de district auxiliar



THE CAPITAL AREA PRIVATE DEFENDER SERVICE

January 11, 2016

«Defendant» TDCJ# «TDCJ_Number_»
«TDCJ_Unit» Unit
«Unit_Street_Address»
«Unit_City_State_Zip»

Re: *The State of Texas vs. «Defendant»*; Cause number «Cause_No»

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. Your case may or may not be affected.

If your contact information changes at any point after submitting the attached form, please provide your new contact information as soon as possible.

The Capital Area Private Defender Service (CAPDS) is a non-profit defense organization that manages court-appointed attorneys in Travis County. We are NOT your lawyer and cannot represent you. However, if you were convicted in Travis County you may request the re-calculation of your case through us using the enclosed form. Please do not include any information about your case other than what is in the form. Any information you provide WILL NOT BE confidential.

Sincerely,
Capital Area Private Defender Service

vea el reverso para español



THE CAPITAL AREA PRIVATE DEFENDER SERVICE

January 11, 2016

«Defendant» TDCJ# «TDCJ_Number_»
«TDCJ_Unit» Unit
«Unit_Street_Address»
«Unit_City_State_Zip»

Re: *The State of Texas vs. «Defendant»*; Cause number «Cause_No»

Si usted fue enjuiciado por un delito en el que las pruebas utilizadas en su contra hayan incluido un análisis de componentes de ADN realizado por un laboratorio criminalística de Texas, sírvase leer esta notificación. Un análisis de componentes de ADN se refiere a pruebas que incluyen el ADN de más de una persona. Cuando éste se analiza, el informe del laboratorio a menudo incluye una estadística que informa al fiscal, juez, o jurado sobre la probabilidad que una persona aleatoria en la población, sin estar emparentada o relacionada con usted, pudiera ser incluida en los componentes de ADN.

La prueba de ADN se ha vuelto más compleja en los últimos 5 a 10 años y, recientemente, los científicos forenses han tomado conciencia que el método estadístico común utilizado no siempre pudiera haber tomado en cuenta ciertas limitaciones científicas de importancia.

La Comisión Científica Forense de Texas está colaborando con fiscales, abogados defensores y laboratorios criminalística, para determinar qué casos pudieran haber sido afectados.

Si usted desea que en su caso se calcule de nuevo el análisis de componentes de ADN, sírvase llenar y enviar el formulario adjunto a la dirección indicada. Su caso puede o no puede ser afectado.

El Área Capital Servicio de Defensor Privado (CAPDS) es una organización de defensa sin fines de lucro que gestiona los abogados de oficio en el Condado de Travis. NO somos su abogado y no podemos representarlo. Sin embargo, si usted fue declarado culpable en el Condado de Travis usted puede solicitar el nuevo cálculo de su caso a través de nosotros utilizando el formulario adjunto. Por favor no incluya ninguna información sobre su caso que no sea lo que está en la forma. Cualquier información que usted proporcione NO SERÁ confidencial.

Sinceramente,

El Área Capital Servicio de Defensor Privado

«Defendant» TDCJ# «TDCJ_Number_»
«TDCJ_Unit» Unit
«Unit_Street_Address»
«Unit_City_State_Zip»

Cause No. «Cause_No»

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 _____, 2016.

Printed name

Signature

Address

Phone number

E-mail address

SEND THIS FORM TO:
CAPDS-DNA REVIEW
507 W. 11th Street
Austin, Texas 78701

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.

vea el reverso para español

«Defendant» TDCJ# «TDCJ_Number_»
«TDCJ_Unit» Unit
«Unit_Street_Address»
«Unit_City_State_Zip»

Cause No. «Cause_No»

Yo _____ comprendo, a través de la notificación adjunta, que el método estadístico para reportar el análisis de componentes de ADN utilizado en mi caso pudiera haber sido afectado.

Yo también comprendo que el calcular de nuevo el método estadístico de componentes de ADN utilizado en mi caso, pudiera ser justificado.

Con mis iniciales y mi firma a continuación, estoy solicitando que:

_____ No se revise mi caso.

_____ El comité de revisión nombrado por la Comisión Científica Forense de Texas determine si mi caso pudo haber sido afectado y me provean los resultados de su indagación.

O BIEN,

_____ Se proporcionen todos los documentos e información relacionados con mi caso a mi abogado actual, cuyo nombre y número telefónico son los siguientes:

NOMBRE DEL ABOGADO: _____

NÚMERO TELEFÓNICO: _____

Firmado el día _____ de _____, 2016.

Nombre en letra de molde Firma

Fecha de Nacimiento

Dirección de la cárcel

Número de TDCJ

Condado en donde fue condenado

**ENVIE ESTE FORMULARIO A:
CAPDS-DNA REVIEW
507 W. 11TH ST.
AUSTIN, TEXAS 78701**

Si en cualquier momento después de haber enviado este formulario cambian los datos para comunicarnos con usted, sírvase proporcionar sus nuevos datos lo antes posible a la dirección anterior.



TEXAS FORENSIC
SCIENCE COMMISSION

Justice Through Science

1700 North Congress Ave., Suite 445
Austin, Texas 78701

August 21, 2015

Members of the Texas Criminal Justice Community:

This letter provides notification to the community regarding an issue of potential concern to judges, criminal prosecutors, criminal defense lawyers, victims and defendants in the Texas criminal justice system. The concerns involve the interpretation of DNA results where multiple contributors may be present, commonly referred to as DNA mixture interpretation. The attached document details the origin and scope of the concerns.

While the Commission assesses the issues described in the attached document, we recommend any prosecutor, defendant or defense attorney with a currently pending case involving a DNA mixture in which the results could impact the conviction consider requesting confirmation that Combined Probability of Inclusion/Exclusion (referred to as "CPI" or "CPE") was calculated by the laboratory using current and proper mixture interpretation protocols. If the laboratory is unable to confirm the use of currently accepted protocols for the results provided, counsel should consider requesting a re-calculation of CPI/CPE.

The extent to which any closed criminal cases may require re-analysis will be a subject of Commission review and subsequent notification to the stakeholder community.

If you have any questions regarding these issues, please contact the Commission's general counsel, Lynn Garcia, at 512-936-0649 or lynn.garcia@fsc.texas.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Vincent J.M. Di Maio".

Vincent J.M. Di Maio, MD
Presiding Officer

Unintended Catalyst: the Effects of 1999 and 2001 FBI STR Population Data Corrections on an Evaluation of DNA Mixture Interpretation in Texas

1. FBI Data Corrections: What Do They Mean?

In May 2015, the Federal Bureau of Investigation (“FBI”) notified all CODIS laboratories it had identified minor discrepancies in its 1999 and 2001 STR Population Database. Laboratories across the country have used this database since 1999 to calculate DNA match statistics in criminal cases and other types of human identification. The FBI attributed the discrepancies to two main causes: (a) human error, typically due to manual data editing and recording; and (b) technological limitations (*e.g.*, insufficient resolution for distinguishing microvariants using polyacrylamide gel electrophoresis), both of which were known limitations of the technology. The FBI has provided corrected allele frequency data to all CODIS laboratories.

In May and June 2015, Texas laboratories notified stakeholders (including prosecutors, the criminal defense bar and the Texas Forensic Science Commission) that the FBI allele frequency data discrepancies were corrected. The immediate and obvious question for the criminal justice community was whether these discrepancies could have impacted the outcome of any criminal cases. The widely accepted consensus among forensic DNA experts is the database corrections have *no impact* on the threshold question of whether a victim or defendant was *included or excluded* in any result. The next questions were whether and to what extent the probabilities associated with any particular inclusion changed because of the database errors.

The FBI conducted empirical testing to assess the statistical impact of the corrected data. This testing concluded the difference between profile probabilities using the original data and the corrected data is less than a two-fold difference in a full and partial profile. Testing performed by Texas laboratories also supports the conclusion the difference is less than two-fold. For example, in an assessment performed by one Texas laboratory, the maximum factor was determined to be 1.2 fold. In other words, after recalculating cases using the amended data, the case with the *most substantially affected* Combined Probability of Inclusion/Exclusion (“CPI”)¹ statistical calculation (evaluated for a mixed sample) changed from a 1 in 260,900,000 expression of probability to a 1 in 225,300,000 expression of probability.

Amended allele frequency tables are publicly available for anyone to compare the calculations made using the previously published data and the amended allele frequencies, though expert assistance may be required to ensure effective use of the tables.²

2. The Impact of FBI Database Errors on DNA Mixture Interpretation Using CPI

As part of their ongoing commitment to accuracy, integrity and transparency, many Texas laboratories offered to issue amended reports to any stakeholder requesting a report using the corrected FBI allele frequency data. Some prosecutors have submitted such requests to laboratories, particularly for pending criminal cases. As expected, the FBI corrected data have not had an impact exceeding the

¹ The Combined Probability of Inclusion/Exclusion is commonly referred to as either “CPI” or “CPE.” They are referred to jointly in this document as “CPI” for ease of reference.

² <https://www.fbi.gov/about-us/lab/biometric-analysis/codis/amended-fbi-str-final-6-16-15.pdf>

two-fold difference discussed above. However, because analysts must issue *signed amended reports* with the new corrected data, they may only issue such reports if they believe *the analyses and conclusions in the report comply with laboratory standard operating procedures*. For cases involving DNA mixtures, many laboratories have changed their interpretation protocols and related procedures using CPI. To reiterate, changes in mixture interpretation protocols are unrelated to the FBI allele frequency data corrections discussed above. However, when issuing new reports requested because of the FBI data corrections, the laboratory's use of current mixture protocols may lead to different results if the laboratory had a different protocol in place when the report was originally issued. Changes in mixture interpretation have occurred primarily over the last 5-10 years and were prompted by several factors, including but not limited to mixture interpretation guidance issued in 2010 by the Scientific Working Group on DNA Analysis ("SWGDM").

The forensic DNA community has been aware of substantial variance in mixture interpretation among laboratories since at least 2005 when the National Institute of Standards and Technology ("NIST") first described the issue in an international study called MIX05. Though NIST did not expressly flag which interpretation approaches were considered scientifically acceptable and which were not as a result of the study, it has made significant efforts to improve the integrity and reliability of DNA mixture interpretation through various national training initiatives. These efforts have ultimately worked their way into revised standard operating procedures at laboratories, including laboratories in Texas. Based on the MIX05 study, we know there is variation among laboratories in Texas and nationwide, including differences in standards for calculation of CPI that could be considered scientifically acceptable. However, we also know based on a recent audit of the Department of Forensic Sciences ("DFS") in Washington, DC that some of the "variation" simply does not fall within the range of scientifically acceptable interpretation. This finding does not mean laboratories or individual analysts did anything wrong intentionally or even knew the approaches fell outside the bounds of scientific acceptability, but rather the community has progressed over time in its ability to understand and implement this complex area of DNA interpretation appropriately.

While in many cases the changed protocols may have no effect, it is also possible changes to results may be considered material by the criminal justice system, either in terms of revisions to the population statistics associated with the case or to the determination of inclusion, exclusion or an inconclusive result. The potential range of interpretive issues has yet to be assessed, but the potential impact on criminal cases raises concerns for both scientists and lawyers. We therefore recommend any prosecutor, defendant or defense attorney with a currently pending case involving a DNA mixture in which the results could impact the conviction consider requesting confirmation that CPI was calculated by the laboratory using current and proper mixture interpretation protocols. If the laboratory is unable to confirm the use of currently accepted protocols for the results provided, counsel should consider requesting a re-analysis of CPI.

The Texas Forensic Science Commission is currently in the process of assembling a panel of experts and criminal justice stakeholders to determine what *guidance and support* may be provided to assist Texas laboratories in addressing the challenging area of DNA mixture interpretation. In particular, a distinction must be made between acceptable variance in laboratory interpretation policies and protocols and those approaches that do not meet scientifically acceptable standards. An emphasis on statewide collaboration and stakeholder involvement will be critical if Texas is to continue to lead the nation in tackling challenging forensic problems such as those inherent in DNA mixture interpretation.