



OFFICE OF THE DISTRICT ATTORNEY

SECOND JUDICIAL DISTRICT
STATE OF NEW MEXICO

KARI E. BRANDENBURG
DISTRICT ATTORNEY

December 29, 2016

Damon P. Martinez, United States Attorney
United States Attorney's Office
P.O. Box 607
Albuquerque, NM 87103

Dr. James D. Ginger, PhD.
C/O United States Attorney's Office
P. O. Box 607
Albuquerque, NM 87103

Edward Harness, Executive Director
Civilian Police Oversight Agency
P.O. Box 1293
Albuquerque, NM 87103

I regret the need to write this letter, but believe failure to do so would be a dereliction of my responsibilities to the people I have been elected to serve. I have had the honor to serve as the Bernalillo County District Attorney for the past sixteen years. A lot has happened in that time. There have been rough spots in the road and challenges that any elected official has to face. However, the past few years have presented issues that are far beyond what one could reasonably expect.

As you know, the Albuquerque Police Department (APD) has been under a Settlement Agreement with the Department of Justice for the past two years. Reasons for this are too numerous to recount here, but most are obvious. One of the major areas of concern are the number of officer involved shootings and instances of unreasonable use of force by APD. In all fairness, our office has been part of that controversy, as we declined to criminally prosecute any officer involved in an officer involved shooting until January 2015.

When we made the decision in October 2014 to prosecute the officers in the Boyd shooting, a firestorm ensued that called into question the integrity of the entire Bernalillo County criminal justice system. Suddenly, I became a "suspect" in a case involving my son and there was an effort to remove me from office. I am told such efforts were orchestrated from top-level officials, including Mayor Berry, in an attempt to discredit any prosecution of an APD officer. As you know, within six months, the Attorney General issued an opinion that there was no evidence I was involved in any criminal wrong doing and called the entire episode "political" as a result of our

moving forward to prosecute the officers in the Boyd shooting. I referred the matter to your office to investigate, believing it constituted public corruption. I was debriefed by the FBI and gave them all the information I had regarding the false allegations made against me.

The national media was quick to pick up on what was happening and articles in the New Yorker and Rolling Stone magazine appeared, depicting Albuquerque as a corrupt and lawless city. Other articles appeared in the Los Angeles Times and BuzzFeed, reporting much the same. Unfortunately, our local media, with a financial and political interest in protecting the status quo, remained silent.

Since the Settlement Agreement was reached between APD and the Department of Justice, we have seen little progress. Please refer to the independent monitor's reports for more specific information. In his most recent report, James Ginger, noted the behind the scene reality was that APD has "almost no appetite for correcting behavior that violates existing policy." Further, it was pointed out that investigations looking into use of force by officers appears "...preconditioned to rationalize or explain away officer conduct." Throughout the monitoring process, APD has failed to comply and meet agreed upon standards and measures. In fact, their performance can accurately be characterized as grossly noncompliant.

In addition to failing to meet their obligations under the Settlement Agreement, other issues have arisen, calling into question the integrity of APD, and thus all agencies in the criminal justice system. Such includes numerous and serious alleged violations of IPRA in an attempt to cover up wrong doing, editing, deleting and/or destroying lapel camera video in controversial officer involved shooting cases, a refusal to cooperate, and in fact, hinder Police Oversight Board investigations and recently, problems with the APD lab and DNA analysis. (See attachments for reference.)

From the outside, looking in, it appears whenever a problem comes up, instead of honestly addressing it, APD engages in a cover-up. Many men and women of APD allege promotions are given to reward those who have "kept quiet" or maintained the chain of command's version of the "truth". Given this, change for the better is becoming a more and more distant reality. (It is important to distinguish the men and women of APD working on the front lines and those in the chain of command. The vast majority of officers and detectives working in APD are doing honorable jobs, under very trying circumstances.)

Frankly, if any other group of individuals were acting the way APD has allegedly been acting, some of us in law enforcement might refer to them as a continuing criminal enterprise and/or engaged in the act of racketeering. I appreciate how bold a statement that is.

As my term comes to an end, it is important that I do what I can to make certain APD is genuinely honoring their responsibilities to the public. If they fail in their duties, the District Attorney's Office cannot operate with the integrity required of it. This letter is written in the spirit of acknowledging the problems so they can be successfully and completely resolved. It is also critical that I clearly extricate the District Attorney's Office from any wrongdoing on APD's part. We have worked with the defense bar to alert them to potential issues with lapel cameras, DNA evidence and in other matters. We take very seriously our responsibility to do justice.

I thank you for the efforts of your office and the Department of Justice. I ask that you continue to persevere in your attempt to see that APD is functioning as it should, lawfully and in the best interest of its citizens. I am aware, via the media, that certain investigations into APD are ongoing. We cannot move forward with integrity and in the interest of justice until the wrongs are exposed, the truth is known, and APD, and involved individuals, are held accountable.

I do not envy your task at hand. Perhaps, the burden can be lightened with the knowledge that there is great reward in doing the right thing. The honest and hardworking officers of APD deserve to work for an agency that makes them proud. The people of our community are deserving of a police force that operates honestly and with transparency, truly serving its people.

Yours very truly,



KARI E. BRANDENBURG

Brandenburg, Kari

From: Simms, Letitia
Sent: Tuesday, December 06, 2016 10:05 AM
To: Brandenburg, Kari; Heisey, Todd
Subject: Fwd: State vs. Chavez, D-202-CR-2014-03660

Sent from my Verizon 4G LTE smartphone

----- Original message -----

From: "Hernandez, Jessica M." <jmhernandez@cabq.gov>
Date: 12/2/16 4:47 PM (GMT-07:00)
To: "Simms, Letitia" <LSimms@da2nd.state.nm.us>
Subject: State vs. Chavez, D-202-CR-2014-03660

Ms. Simms,

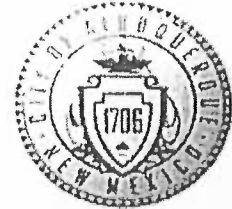
I am writing to inform you that a potential issue has arisen regarding the opinion provided in connection with the DNA testing performed in the above-referenced case. The analyst is not able to testify in this matter until that issue is resolved. Steps are being taken to resolve this issue.

If you have any questions regarding this matter, please contact me.

JESSICA M. HERNANDEZ
City Attorney
City of Albuquerque
Office 505-768-4500 / Fax 505-768-4525
jmhernandez@cabq.gov / www.cabq.gov

CITY OF ALBUQUERQUE

Albuquerque Police Department



Gorden E. Eden, Jr., Chief of Police

December 7, 2016

The Albuquerque Police Department Crime Laboratory is committed to keeping and remaining current with guidance published by the Scientific Working Group on DNA Analysis Methods (SWGDM). Following changes in SWGDM Mixture Interpretation Guidelines, the Crime Laboratory evaluated and implemented the recommendations by performing validation studies and following revised FBI Quality Assurance Standards. From 2014 through 2016, the Crime Laboratory DNA Unit conducted supplemental studies to ensure that the laboratory interpretation procedures in use fully addressed the SWGDM interpretation guidelines. Based on these supplemental studies, in November 2016, the DNA Unit technical leader issued a new standard operational procedure addressing the interpretation of mixed DNA profiles (profiles containing DNA from more than one individual) for the Crime Laboratory DNA Unit. With the issuance of these new procedures, the DNA Unit commenced a training process and has temporarily suspended issuing new case reports during this training.

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The application of SWGDM's DNA interpretation guidance has resulted in the data utilized for interpretation to be more reliable. In conducting additional validation studies and proposing new interpretation standards, it is the Crime Laboratory's goal to continue to adhere to the most current forensic scientific standards. It is likely that with these new interpretation guidelines, a given mixed-DNA sample will have a lower combined probability of inclusion (CPI), which translates to more conservative statistics. Until the forensic community is able to automate DNA data interpretation, professional analysis conducted in different laboratories will have some narrow variation of opinion.

APD recognizes advances in forensic science and changes in scientific protocol may impact current and past criminal cases. While SWGDM generally advises against retroactive re-analysis of past cases, in the course of training on this new mixed DNA interpretation procedure, questions arose over how, or if, it should be applied to current and former cases. Thus far, only one case has been analyzed under the new interpretation protocol. In order to ensure that the Crime Laboratory's work continues to use the most current industry standards, the City of Albuquerque is engaging independent third party forensic experts to perform a review of the new and the former mixed DNA interpretation procedures and to provide recommendations regarding their application to previous, current and future casework. While we await the review and recommendations of third-party experts, APD believes it is important to provide information on the potentially impacted criminal cases as soon as possible.

The APD Crime Laboratory will work with stakeholders in the community in moving forward. This process must be timely, accurate, and transparent. In that, the Department is committed to following the example of laboratories who have successfully traversed similar issues with changing scientific protocols, such as the Texas Department of Public Safety. We are enclosing a letter that Texas DPS issued in such a situation. As in that case, the first step for APD is to engage national experts to assist the Crime Laboratory with this challenge. Their appointment will be announced as soon as possible.

The Crime Laboratory will consider requests for re-interpretation in accordance with the recommendations we receive and on a case by case basis. We appreciate the support of the criminal justice community in addressing this challenge. Additional questions can be addressed by contacting my office.

Sincerely,

A handwritten signature in black ink, appearing to read "John Krebsbach". The signature is fluid and cursive, with a large initial "J" and "K".

John Krebsbach, M.S.
Crime Laboratory Director

TEXAS DEPARTMENT OF PUBLIC SAFETY

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RANDY WATSON

September 10, 2015

The August 21, 2015 notification to the Texas Criminal Justice Community from the Texas Forensic Science Commission (TFSC) is specific to the combined probability of inclusion (CPI) method of calculating statistics for DNA mixtures. The reported statistic provides a probability that an unrelated individual in a population is a contributor to a DNA mixture profile recovered from evidentiary items. In other words, a probability is calculated to assist the trier of fact in understanding the strength or weight of the inclusionary statement. This method was utilized by the Texas DPS Crime Laboratory when we started short tandem repeat (STR) testing in 1999 until we changed our standard operating procedure on August 10, 2015.

The Texas DPS Crime Laboratory Service is committed to keeping and remaining current with guidance published by the Scientific Working Group on DNA Analysis Methods (SWGDM). In 2010 when updated SWGDM Interpretation Guidelines were published, the Crime Laboratory Service's DNA Advisory Board began evaluating and implementing the recommendations. From 2011 through 2014, in addition to implementing revised FBI Quality Assurance Standards and new instrument validations, the DPS DNA sections conducted implementation validation studies across eight laboratories, two amplification kits, three injection times, and two instrument models to further address the recommendations. Due to a lack of consensus in the forensic DNA testing community about the direction of the changes or clear instruction on the application of CPI, final changes to our interpretation guidelines were not implemented until that clear instruction was provided, in part, by Dr. John Butler. In October 2014, Dr. Butler published *Advanced Topics in Forensic DNA Typing: Interpretation*. In this book, Dr. Butler proposes some practices and guidelines for the application of CPI statistics. Colleague-to-colleague communications and training has given the DPS system the tools necessary to implement the data interpretation changes resulting in our protocol change on August 10, 2015.

The application of SWGDM's DNA interpretation guidance will result in the data utilized for interpretation being more reliable. It is expected that with these new interpretation guidelines, a given sample will have lower "1 in" numbers that translate to more conservative statistics. The forensic community is moving in the direction of automating DNA data interpretation and a recommended software solution is being purchased by DPS. This move will also result in a conversion from CPI calculation to Likelihood Ratio (LR) calculation protocols. DPS anticipates that we will complete validation and implementation of this software solution and protocol conversion by the end of the calendar year.

While SWGDM advises against retroactive re-analysis of past cases, DPS recognizes advances in forensic science and changes in scientific protocol may impact current and past criminal cases. In saying that, DPS also recognizes it may not be possible to re-evaluate data obtained prior to recent validation studies. While many questions remain, DPS believes it is important to provide as much information on potentially impacted criminal cases as soon as possible. A list of DNA cases potentially impacted by this protocol change, listed by county of offense, accompanies this letter.

The Texas DPS Crime Laboratory Service is working with the TFSC to develop a path forward. This path will need to cover three different types of cases: 1) cases with CPI interpretations that are currently pending trial; 2) cases that are completed and ready to report under our August 10, 2015 standard operating procedures; and 3) cases with CPI interpretations that have already been adjudicated. The third case type may also include post-conviction cases that were reexamined under a Chapter 64 motion for forensic DNA testing. Our first step is to engage a panel of national experts to assist the Texas crime laboratory community with this challenge. The TFSC has reached out and assembled this panel. The first meeting will be held September 18, 2015.

With the help of these experts, the Texas crime laboratory community will be able to develop a plan for each case type listed above. We are committed to considering requests for re-calculation on a case by case basis as suggested by the Texas Forensic Science Commission. We appreciate the support of the Commission in assisting all Texas laboratories in addressing this challenging area. Additional questions can be addressed by contacting my office.



Brady W. Mills
Deputy Assistant Director
Texas Department of Public Safety
Crime Laboratory Service



OFFICE OF THE DISTRICT ATTORNEY
SECOND JUDICIAL DISTRICT
STATE OF NEW MEXICO

KARI E. BRANDENBURG
DISTRICT ATTORNEY

December 14, 2016

Jessica Hernandez, City Attorney
City of Albuquerque
PO Box 2248
Albuquerque, NM 87103

RE: Suspension of DNA Reports

Dear Ms. Hernandez,

First, I would like to thank you for your time last week when the issue over the DNA first arose. However, we still have grave concerns over the situation and would like additional clarification. As you know, this issue presents serious concerns in terms of successful prosecutions and public safety. A vast number of DNA samples are "mixed" and they pertain to our most violent crimes, including homicides, rapes and crimes against children.

Perhaps, it may make sense to list our concerns.


- 1) In view of the fact this situation may have serious consequences for the public, why were we not informed about it earlier? It first came to our attention when Letitia Simms had a case scheduled for trial (State v. Chavez, D-202-CR-2014-03660) on Monday, December 5, 2016. You sent her an email at 4:47 p.m. on Friday, December 2, 2016 informing her that the DNA analyst would not be available to testify. This late notice almost resulted in a dismissal. Your email was the very first indication there was any problem with DNA analysis and/or evidence.
- 2) After our telephone conference on December 7, 2016, we received John Krebsbach's letter stating that the issuance of new "mixed" DNA case reports would be temporarily suspended. No time frame was provided. This could and likely will, have devastating effects. We anticipate serious cases will be dismissed. We need, and the public deserves to have a definitive time frame. Further, we ask that you provide us with alternate sources for DNA testing that will not result in extraordinary expenses.

- 3) While Krebsbach's letter refers to "new case reports", the Chavez case is an old case report, and per your email is impacted. Therein lies a contradiction. Will old case reports be withdrawn, as well? This distinction is important.

- 4) I have spoken with individuals from other crime laboratories and the general consensus is that it is rare and extraordinary for a crime lab to discontinue issuing reports, while they are evaluating new protocols. There is the suggestion in their tone that more is going on and the issues may be multiple. Of course, this is concerning. If there are other issues, I would ask that you be open and candid about them so we can take whatever measures deemed necessary. Are you aware of any other labs that have ceased doing "mixed" DNA reports because of the SWGDAM mixture interpretation guidelines? If so, what labs? The letter from the Texas Department of Public Safety does not refer to any break in "mixed" DNA reports.

I thank you in advance for your attention to our concerns. I fear that the integrity of the APD Crime Lab could be called into question, as well as all their work and reports.

Yours very truly,



KATE BRANDENBURG
District Attorney

CITY OF ALBUQUERQUE

Albuquerque Police Department



Gorden E. Eden, Jr., Chief of Police



December 16, 2016

The Albuquerque Police Department Crime Laboratory, as part of its commitment to ensuring compliance with documents published by the Scientific Working Group on DNA Analysis Methods (SWGDM) and the FBI Quality Assurance Standards (QAS), conducts studies to ensure that laboratory interpretation procedures meet the SWGDM guidelines and the QAS standards. After the November issuance of the most recent standard operational procedure addressing the interpretation of mixed DNA profiles (profiles containing DNA from more than one individual) and in the course of training on this new procedure, questions arose over how, or if, this procedure should be applied to current and former cases.

In order to ensure that the APD Crime Laboratory's work was using appropriate industry standards the City of Albuquerque engaged an independent third party forensic expert, Valerie Fuller, PhD, to perform a review of the new, and former, mixed DNA interpretation procedures and to provide recommendations regarding their application to previous, current and future casework. The findings of that review are as follows:

- 1.) The DNA mixture interpretation procedures performed prior to the November issuance of new procedures are valid, require no reinterpretation and will continue to be used until the completion of a validation for a new DNA instrument/chemistry system in early 2017; and
- 2.) The DNA mixture interpretation procedures issued in November are also valid but were prematurely implemented. The associated training has been postponed, the interpretation procedures have been rescinded and they will be enhanced in order to further ensure continued compliance with the SWGDM and QAS requirements during concurrent validation of the new DNA instrument/chemistry system, to be implemented in early 2017.

In furtherance of the efforts to ensure already demonstrated compliance, the APD Crime Laboratory will continue to engage an independent third party forensic expert to perform guidance and reviews of the new validations scheduled for early 2017 to ensure an orderly transition. The issuance of new case reports has now fully resumed and we extend our appreciation for the support of the criminal justice community while examining these interpretational questions. Additional questions can be addressed by contacting my office.

Sincerely,

John F. Krebsbach, M.S.
Crime Laboratory Director

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