

Responding to the Call for Transparency in Forensic Labs



NIST Error Management Symposium
July 26, 2017



Brady and Texas Prosecutors—A Culture Shift

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Topics Covered

- **Where we came from: *Brady* in the 1990s**
- **Where we are: *Brady* today**
- **Where we are going: the cutting edge**

Brady v. Maryland (1963)

- “suppression by the prosecution of evidence favorable (exculpatory) to an accused violated due process where the evidence is material to either guilt or punishment”
- Good faith/bad faith is irrelevant

U.S. v. Giglio (1972)

- **Brady rule includes evidence that could be used to impeach a witness**
- **When the reliability of a given witness may be determinative of guilt or innocence, non-disclosure of evidence affecting credibility falls within the rule regardless of whether withheld in good faith**

Kyles v. Whitley (1995)

- Knowledge imputed to the prosecution includes knowledge that the police/prosecution team may have
- Prosecutor has a duty to learn of any favorable evidence known to others acting on behalf of the government including police, labs, and medical examiner offices

So What is *Brady* Material?

- Anything good for the suspect/defendant
- Anything that suggests they didn't commit the crime
- Anything that reduces their culpability
- Anything that reduces a prosecution witness's credibility
- In the possession of or known to the prosecution team

***Brady* Yesterday**

- **Police**
- **Juror attitudes**
- **Texas Prosecutors**
- **Fairly narrow, materiality-based view of *Brady***
- **DNA Exoneration Revolution**

***Brady* Today**

- **Public perceptions**
- **Police**
- **The Michael Morton Act (MMA)**

Texas Prosecutors Today

- **We burn disks...**
- **We try to follow “Best Practices”/Checklists**
- **“Brady Cops”**
- **CIUs**
- **TFSC**
- **Collaborative approach**
- **Cognitive bias training**

The Future of *Brady*

- **CIUs v2**
- **Forensic disclosures**
- **Snitches/Incentivized Informants**
- **“Mixed” trainings**
- **Use Root Cause Analysis/Sentinel Case Review**

COMMUNICATION

- Points of Contact
- Timing/Investigation
- Contents/Language



Points of Contact

- Establish before there is an issue
- Discuss disclosure policy with law enforcement clients
- Many prosecutor's offices keep a centralized *Brady* file

Timing/Investigation

- Nature of issue
- Disclose early and often? Over disclosure?
- Consult third party expert?
- Remediation

Contents/Language

- Scope of Issue (samples vs cases)
- Know your audience (not accrediting body)
- Serious, Substantial, Significant



NOTICE REGARDING DNA ISSUES

The Travis County District Attorney's Office has recently learned of scientific concerns involving the historical interpretation of DNA results. Attached please find the August 21st, 2015 letter to members of the criminal justice community by the Texas Forensic Science Commission and a publication recently authored by the Commission entitled "Unintended Catalyst: the Effects of 1999 and 2001 FBI STR Population Data Corrections on an Evaluation of DNA Mixture Interpretation in Texas."

The potential impact of these changes is still unknown, but they may have a material impact on some criminal cases.

We are in the process of identifying all Travis County cases where these issues need to be addressed and providing notice to the interested parties. This is expected to be a large undertaking. In the interim, this office will work closely to facilitate any requests for DNA reviews based on the changes. Anyone wishing to request a case review may submit a written request by emailing DNAReview@traviscountytx.gov

Dear Carlo:

Enclosed is a notice regarding DNA testing from the Texas Forensic Science Commission.

**NOTICE FROM THE
TRAVIS COUNTY DISTRICT ATTORNEY'S OFFICE**

July 21, 2017

«Defendant»
«LKA_Street_Address»
«LKA_City_State_ZIP»

Re: *The State of Texas vs. «Defendant»*; Cause No. «Cause_No»

Our records show that you were convicted or placed on deferred adjudication either by pleading guilty or by a trial verdict. If DNA tested by the Austin Police Department's DNA lab was used as evidence in your case, you might be entitled to have a defense attorney review your case.

The Austin Police Department DNA lab is currently closed. The lab was closed after an audit conducted in 2016 found issues with the lab's procedures that might affect the reliability of the testing that was done in some cases.

Copies of the audit reports and other information about the lab are available at
www.traviscountytexas.gov/tcda-dna.

If you are currently incarcerated in the Texas Department of Criminal Justice, copies of the audit report and other information about the lab are available in your prison law library.

The Travis County District Attorney's Office is sending this notice solely to inform you about the APD DNA lab issues. We CANNOT provide you with legal advice or act as your attorney.

**For questions, please contact:
Capital Area Private Defender Service
Travis County Forensic Project
507 W. 11th Street
Austin, Texas 78701
www.forensicproject.org
dnareview@capds.org
(512) 774-4208**

Culture of Disclosure

- Am I required to disclose?
- Should I disclose?