

The Path Forward: *Confronting & Resolving Disclosure Issues*

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Disclosure Goals:

- Provide Labs guidance on disclosure obligations
- Timely obtain reports, bench notes and data to
 - Comply with our Constitutional and statutory obligations
 - Yet, minimize burden on labs
- Facilitate better communication with labs
- Training for DA and Labs



Disclosure Challenges:

- Language Barrier
- System Objectives
 - *Legal = Blame*
 - *Lab = Improvement/Remediation*
- Defining “Brady”
 - *Scope*
 - *People vs. Process*
- Ain’t nobody got time for this



Defining the Scope of “*Brady*” in a Laboratory Setting:

Professional Misconduct
Professional Negligence
Human Error
Process/Systems Error



Professional Misconduct:

An intentional or knowing act or omission by a laboratory employee which casts substantial doubt on the integrity of the laboratory process or forensic analysis

Professional Negligence:

An act or omission by a laboratory employee which casts substantial doubt on the integrity of the laboratory process or forensic analysis and which results from the lab employee's gross deviation from generally accepted practices and failure to exercise the ordinary standard of care that a forensic practitioner in the same position would have followed or appreciated.



Controversial ex-forensic lab analyst focus of another inmate's appeal

Thousands of DWI cases potentially at risk as credibility of DPS lab expert questioned

Valerie Wigglesworth

Thousands of North Texas DWI convictions could be at risk after the testimony of a state forensic scientist whose work is key in such cases recently came under scrutiny.

One defense attorney has described the issue as a "big mess" and the continuation of a hearing next week could clarify the lab expert's testimony and determine whether he faces any

Several of whom were later exonerated and freed.

By CRIMESIDER STAFF / CBS NEWS

Annie Dookhan, chemist at Mass. crime lab, arrested for allegedly mishandling over 60,000 samples



MARCH 04, 2016

Thousands of criminal cases in doubt after N.J. lab tech allegedly fakes drug test results

Prosecutors say lab technician Kamalkant Shah "dry labbed" marijuana specimen in Little Falls case

INVESTIGATION DRUGS NEW JERSEY CRIMINAL JUSTICE SYSTEM

BY MICHAEL TANENBAUM
PhillyVoice Staff



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ore than 7,000 criminal cases in New Jersey have been cast into doubt after the Passaic County Prosecutor's Office revealed that a lab technician allegedly faked results in a drug case.

Earlier this week, the Office of the Public Defender issued a memo detailing the alleged violation in Little Falls by Laboratory Technician Kamalkant Shah, who was removed from his duties on Dec. 10 following the discovery.

Technician, boss in SFPD lab scandal flunked DNA skills exam

By Jaxon Van Derbeken Updated 7:47 am, Tuesday, March 31, 2016

Crime lab analysts made same mistake 3 times

Jeremy Rogalski, KHOU 6:17 PM CDT March 25, 2016



(Photo: KHOU)

HOUSTON -- Lab analysts at the Houston Forensic Science Center contaminated evidence in three DWI cases last year, according to an Office of the Inspector General report the KHOU 11 News I-Team obtained.

The first incident occurred in late May 2015. According to the report, an analyst was attempting to test blood alcohol levels on a new piece of equipment and accidentally pushed a button in the wrong order. As a result, a testing liquid was mistakenly

injected into the vial of evidence rendering it unusable.

The error, however, was never reported to the HFSC's Quality Division until five months later, when the same analyst and a co-worker made the same mistake again in October 2015.

"Looking back, we should have made in an incident right from the get-go," said an unidentified Forensic Analysis Division Director quoted in the OIG report.

"Let me just say it fell through the cracks," the division director said, according to the OIG investigation.

In all three instances, the analyst's performance was unaffected, according to the report, regardless of the outcome.

"We need to get better systems in place."



the guilty verdicts handed down in federal court against Sergeant Ian Furringer and officer Edmond Robles in San Francisco, 2014.

Bad grades, lapses in hiring process doomed Austin's crime lab leader

METRO-STATE By Tony Plohetski and Philip Jankowski - American-Statesman Staff, KVUE News

DNA testing for criminal cases halted after

Tanya Eiserer, WFAA 6:11 PM. CDT June 08, 2017



(Photo: WFAA, WFAA)

DALLAS -- The Dallas County District Attorney halted DNA testing for criminal cases after dealing with the county crime lab's new DNA test kits.

The problem will result in the DNA testing in criminal cases having to be redone.

County lab officials recently notified the DA's office of the issue. Lab officials are in the process of replacing the kits. Now, the lab has stopped all DNA testing for cases that were slated to go to trial.

Officials expect to resume DNA testing by September.

"It's not fatally defective in any of the cases," said First Assistant DA Mike Snipe. The slowdown in the administration of justice. The upshot of this is that we cannot rely on the results from the new kits that came online this year. It doesn't affect any cases that have already gotten convictions."

The issue revolves around new kits that the county's crime lab began using in March.

APD releases new stats on cases impacted by DNA lab freezer break



By [Claire Ricke](http://kxan.com/author/kxanclairricke/) and [Brittany Glas](http://kxan.com/author/brittany-glas/)

Published: February 6, 2017, 9:21 am | Updated: February 6, 2017, 6:44 pm



Texas forensic experts call for ban on bite mark evidence in court

METRO-STATE By [Jazmine Ulloa](#) - American-Statesman Staff

**Tarrant County Criminal District Attorney
Discovery Compliance Policy
for Laboratories and
Medical Examiner's Offices**



Laboratory/Agency Responsibility:

- Assign a Designated Agency Representative (DAR) (typically the QC manager)
- Conduct review of personnel files of employees, and quality actions (QAP/CAR) to determine any necessary disclosures
- Report (using designated form) by email
- Contact Discovery Compliance ACDA (or Conviction Integrity Unit) if guidance needed

CDA Responsibility:

- Relies on the due process provided by the agency to its employees and does not re-litigate findings
- Notifies DAR if CDA adds an employee or event to notifications
- Files a motion in limine with every disclosure made to the defense and contest in court as appropriate
- Contact Lab DAR for guidance and explanation
- Removal from database if agency does not ultimately sustain a pending issue

“Person” Disclosures by Agency:

- pending complaint or indictment or conviction for any crime other than traffic violations;
- pending formal investigation or conclusion by the agency of a misrepresentation or failure to disclose a material fact on the agency employee’s application;
- pending formal investigation or conclusion by the agency of untruthfulness regarding material facts in an official proceeding;

“Person” Disclosures (continued):

- pending formal investigation or conclusion by the agency that there was bias or prejudice to a class or group of persons;
- pending formal investigation or conclusion of professional misconduct or negligence as defined by that agency and as required to be reported to the Texas Forensic Science Commission under Texas Code of Criminal Procedure 38.01(4)(a), or the appropriate accrediting body for that agency.

“Process” Disclosures by Agency:

Reportable event required to be disclosed to the Texas Forensic Science Commission or the appropriate accrediting body for that agency.

Any subsequent action by the TFSC or accrediting body or any subsequently required root cause analysis as well as the findings of those actions or analysis should also be conveyed to the CDA for its consideration.

Reportable event:

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



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



TechShare.Lab Portal

Sharen Wilson, Criminal District Attorney



Common Sense Tips for Creating a DCP

- Meet and talk in person
- Actually listen and **have** empathy
- Ask for or offer a tour of/details about lab operation
- Ask for or offer an overview of the QC system
- Work together to define terms and be conscious of industry meanings
- Explain your concerns and try not to be defensive

