

**Second Report of the  
Independent Investigator  
for the  
Houston Police Department  
Crime Laboratory and Property Room**

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# Introduction

This is the Second Report of the Independent Investigator for the Houston Police Department (“HPD”) Crime Laboratory and Property Room. This report, like our First Report issued on April 29, 2005, is intended to advise the City of Houston (the “City”) and the public of our progress in fulfilling the mandate to conduct a comprehensive independent investigation of the Crime Lab and Property Room.<sup>1</sup> At the end of June 2005, we will issue a Phase I report summarizing our work, presenting our findings developed during the initial phase of this investigation, and outlining a plan for the remainder of the investigation.

In early February 2005, the Stakeholders Committee -- a Committee created by HPD Chief Harold L. Hurtt and composed of Houston-area public officials, civil rights advocates, academics, attorneys, and scientists -- selected our team of lawyers and forensic scientists to perform a comprehensive, independent investigation of the Crime Lab and Property Room.<sup>2</sup> On March 30, 2005, the Houston City Council approved a contract authorizing us to conduct this investigation.

Pursuant to our agreement with the City and HPD, our investigation into the management, operations, and performance of the Crime Lab and Property Room is divided into two phases.

During Phase I, which began on March 30, 2005, we have been gathering facts related to the current and historical operations and practices of the Crime Lab and Property Room. Among other things, this fact-gathering and related analysis is designed to lead, in consultation with HPD, to the development of a detailed plan for Phase II of the investigation. We have committed to completing Phase I within 90 days -- *i.e.*, by June 30, 2005. In addition to developing the plan for Phase II, we also have committed -- to the Crime Lab, Chief Hurtt, the City Council, and the Stakeholders Committee -- to issue public reports on a monthly basis during Phase I. All of these groups have agreed that this kind of transparency is a critical component of our work. This is our second report, which covers the period March 30, 2005 through May 27, 2005.

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<sup>1</sup> Our First and Second Reports are posted on our Web site at [www.hpdlabinvestigation.org](http://www.hpdlabinvestigation.org).

<sup>2</sup> The members of the Stakeholders Committee are listed in Appendix A to this report.

Phase II will involve reviewing a sample of cases analyzed by the Crime Lab during defined time periods, which will be drawn from each of the forensic science disciplines applied in the Crime Lab.<sup>3</sup> These cases will be reviewed by our team of forensic scientists and evaluated with reference to the Crime Lab's own standard operating procedures in place at the time, as well as applicable standards and practices generally accepted within the forensic community during the time the analyses were conducted. During Phase II, we will issue quarterly reports regarding the status of the investigation and our findings as well as report monthly to the Stakeholders Committee. At the end of our investigation, we will issue a comprehensive report that will present in detail our investigative findings regarding the historical practices within the Crime Lab and Property Room, as well as provide recommendations, based on our team's expertise and our observations of the Crime Lab, intended to assist HPD in putting the Crime Lab on a trajectory to become a first-rate forensic science laboratory that has the full confidence of the citizens of Houston.

We have been at work for almost two months and have made rapid progress in our investigation. Similar to our First Report, this report describes in general terms the progress we have made in gathering facts about the current and historical operations of the Crime Lab and Property Room. In addition, this report describes several of the central themes that have emerged in our work so far and that we will be pursuing as our investigation progresses.

Although it remains far too early to submit final factual findings with respect to any area of our investigation, this report includes a preliminary discussion of two major issues that we have identified. The first issue is the extended absence of a line supervisor, known in the HPD Crime Lab as a Criminalist III, responsible for overseeing the DNA/Serology Section from late 1996 until DNA analysis in the Section was shut down in December 2002. The

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<sup>3</sup> HPD's initial estimate for the number of case reviews we will conduct, which HPD formulated prior to the beginning of our work, is 1,966. We have begun reviewing the methodology and statistical calculations used by HPD to arrive at this global number and the number of cases to be reviewed in the specific areas of the Crime Lab's operations. As discussed further below, the members of our Advisory Board have conducted a limited number of preliminary case reviews to contribute to our assessment of (1) the appropriate number of cases to be reviewed in each of the Crime Lab's forensic science disciplines and (2) the approximate time it will take to complete these case reviews. We will complete this assessment during Phase I and discuss with HPD any proposal we may have for raising or lowering the number of case reviews that should be conducted during Phase II.

second involves allegations of “drylabbing” -- *i.e.*, the creation of false documentation intended to suggest the performance of analyses and tests that in fact were never performed -- on the part of two analysts in the Controlled Substances Section of the Crime Lab.

## Background

The public crisis that eventually led to the hiring of an independent investigator to review the Crime Lab’s operations began on November 11, 2002, with the first in a series of investigative news reports that aired on KHOU-Channel 11, a local Houston television station. These television newscasts, which were reported to be the product of a three-month investigation performed by KHOU in consultation with outside forensics scientists, severely criticized the forensic analysis performed by the DNA/Serology Section of the Crime Lab in a number of specific cases.

Within a month of the airing of the first of these news reports, HPD commissioned an outside review of the Crime Lab’s DNA/Serology Section. Representatives from the Texas Department of Public Safety Crime Lab Headquarters and the Tarrant County Medical Examiner’s Office performed an audit of the Crime Lab’s DNA/Serology Section over the course of two days, December 12 and 13, 2002, during which they found profound deficiencies in the operations of the Section. In December 2002, soon after the completion of this audit and based on the preliminary oral report of the auditors prior to the issuance of their final audit report, HPD suspended the performance of all DNA analysis by the Crime Lab. The final report documenting the audit’s findings was issued on January 10, 2003. DNA work by the Crime Lab has remained continuously suspended to this day, although HPD is hoping to re-start DNA analysis by the end of this calendar year.

In early 2003, HPD, in close consultation with the Harris County District Attorney’s Office, began a time-consuming process of identifying all cases in which some form of DNA analysis had been performed by the Crime Lab. This process evolved into a long-term retesting project coordinated among HPD, the Harris County District Attorney’s Office, and outside DNA laboratories, which has identified for retesting a total of 407 criminal cases involving DNA analysis performed by the Crime Lab.

On or about February 21, 2003, Donald Krueger, the head of the Crime Lab, retired after serving in that capacity for approximately eight years.

Following Mr. Krueger's retirement, Robert Bobzean, a senior manager in the Crime Lab, took over its leadership on an interim basis. In mid-July 2003, Frank Fitzpatrick of the Orange County (California) Sheriff-Coroner's Office was appointed Interim Director as part of a contract entered into by the City with the National Forensic Science Technology Center ("NFSTC"), a non-profit entity whose mission, according to its Web site, is "to provide quality systems support, training and education to the forensic science community in the United States."<sup>4</sup> During the course of its consultation with HPD, the NFSTC produced written evaluations of various aspects of the Crime Lab. In October 2003, questions arose related to the performance of the Toxicology Section, which led to the suspension that month of toxicological analysis by the Crime Lab. Also in October 2003, Irma Rios was appointed to be the new permanent head of the Crime Lab. Ms. Rios had been with the Texas Department of Public Safety crime laboratory system for over nineteen years and was a member of the outside audit team that reviewed the Crime Lab's DNA/Serology Section in December 2002.

On or about September 1, 2004, Chief Hurtt announced that HPD would seek an independent review of the Crime Lab. In November 2004, the Stakeholders Committee met for the first time, and, on December 2, 2004, the City issued a Request for Proposal ("RFP") to conduct an independent review of the Crime Lab and Property Room. On February 2, 2005, the Stakeholders Committee announced its selection of an independent investigator at a press conference held at the Houston Bar Association.

On May 10, 2005, the Crime Lab was accredited by the American Association of Crime Laboratory Directors/Laboratory Accreditation Board ("ASCLD/LAB") in the areas of controlled substances, toxicology (blood alcohol only), questioned documents, firearms/toolmarks, and biology (serology only). ASCLD/LAB is a voluntary program in which a "crime laboratory may participate to demonstrate that its management, personnel, operational and technical procedures, equipment and physical facilities meet established standards."<sup>5</sup> We congratulate the Crime Lab on this significant achievement, which is the product of a sustained effort on the part of its personnel and is an important milestone in the continuing effort to improve the quality of analysis in the Crime Lab.

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<sup>4</sup> [www.nfstc.org/aboutus.htm](http://www.nfstc.org/aboutus.htm).

<sup>5</sup> [www.ascl-dlab.org/dual/aslabdualaboutascl-dlab.html](http://www.ascl-dlab.org/dual/aslabdualaboutascl-dlab.html)

## Status of the Investigation

Since the period covered by our First Report, we have made rapid and substantial progress in our investigation by, among other things, continuing to gather and review relevant documents, including electronic documents such as e-mail; interviewing additional current and former Crime Lab personnel; consulting on a weekly basis with our Scientific Advisory Board and on a bi-weekly basis with our entire forensic science team; and conducting a small-scale review of cases analyzed by the Crime Lab in order to contribute to our preliminary assessments of the quality of the forensic science work it performed over time and to assist us in developing our plan for Phase II of the investigation.

### A. Documents

On April 4, 2005, we submitted a letter to HPD containing a broad range of document requests calling for all information, in whatever form, responsive to the requests, including but not limited to correspondence, memoranda, reports, journals, manuals, hard copy paper files, e-mail, computer files, electronic databases, and videotapes. On April 4, 2005, we also provided HPD with a letter requesting that it take steps to ensure that all materials potentially relevant to our investigation be preserved.

HPD has continued to be very cooperative in providing access to relevant documentation, and we remain pleased with the flow of information at this point in the investigation. Since our last report, HPD has worked with us to retrieve e-mail and other electronic documents from the hard drives of current, and some former, Crime Lab employees. Unfortunately, it appears that hard drives that may have contained archived e-mails for several significant former Crime Lab and HPD employees will not be retrievable because the computers were recycled by HPD after the departure of those former employees from HPD.

Over the past two weeks, we have begun to receive and review lab journals maintained by many Crime Lab employees. We anticipate that these journals will contain useful information because, in addition to recording case assignments, many analysts used these journals to contemporaneously record events in the Crime Lab, including the discussions that took place in meetings.



## B. Interviews

Since we began this investigation seven weeks ago, we have conducted a total of 55 interviews of 47 people, including current and former Crime Lab personnel, HPD officers, a representative from the Harris County District Attorney's Office, and the former interim director of the Crime Lab. We already have interviewed six key current and former Crime Lab personnel more than once. These follow-up interviews have proven extremely valuable since our knowledge has grown over the past two months as a result of interviewing more people and reviewing documents. Our interviews of persons central to our investigation commonly last four or more hours. The current and former personnel who have participated in multiple interviews have been very cooperative and generous with their time.

We continue to find current HPD and Crime Lab personnel to be extremely helpful and cooperative. Following the issuance of our First Report, we held a second meeting with all available current Crime Lab personnel to discuss the report and the status of our investigation and to answer any questions they may have had. We continue to underscore the importance of our being able to obtain the independent recollections of each and every Crime Lab employee, and, accordingly, we have repeated our admonitions about the hazards to our investigation posed by their speaking to each other about the substance of our interviews. On a couple of occasions, we have learned that such conversations were taking place despite our admonitions; in those cases, we have spoken with the individuals directly and reinforced the importance of this point.

The contributions former Crime Lab employees have made to our work have been very substantial, and we have expressed our sincere appreciation for their assistance. In our First Report, we stated that we had experienced difficulty in obtaining the cooperation of three key former Crime Lab employees. Since our last report, we have interviewed one of those persons four times and another one two times. Although we have made every effort to obtain the cooperation of the remaining former Crime Lab employee, former longtime DNA/Serology Section analyst Christy Kim, we have been unsuccessful in our efforts to interview Ms. Kim.

As discussed in our First Report, the recollections and perspectives of former Crime Lab personnel and former HPD officers and executives in the chain of command over the Crime Lab are central to our efforts to develop a complete and balanced picture of the challenges and problems that have confronted the Crime Lab over time and the reasons for its documented failures. We will

continue to use all means within our power to obtain relevant information from Ms. Kim and other former Crime Lab and HPD personnel. HPD has pledged to provide its full assistance in encouraging former personnel to cooperate with this investigation. Indeed, we recently met with HPD's Legal Advisor to discuss alternatives available to the Department to help secure the cooperation of former employees, should such measures ever be found necessary. We have also discussed with the Stakeholders Committee alternative methods of obtaining subpoena power if that proves necessary to secure the cooperation of key witnesses, and the Committee has given us its full and unqualified support in our efforts to obtain information from all relevant witnesses.

### **C. Case Reviews**

The RFP issued by HPD in connection with commissioning this review of the Crime Lab and Property Room suggests that 1,966 individual case reviews be performed across six forensic science disciplines historically worked in the Crime Lab. With respect to the areas of trace, controlled substances, firearms, questioned documents, and toxicology, the RFP calls for the cases to be drawn from the seven-year period 1998 through 2004. The DNA and serology cases are to be selected from cases performed between the years 1987 through 2002, when DNA analysis in the Crime Lab was suspended.

We have begun our review of HPD's process for selecting the number of cases in each forensic science area to be reviewed during Phase II of this investigation, and we will make an independent assessment of the number of case reviews that we believe will be necessary to obtain a representative sample of the casework performed by the Crime Lab during the periods set forth under the RFP. This assessment will require us to obtain the services of an independent statistician in coming weeks. Based on this assessment, we will make a recommendation to HPD regarding the number of case reviews that should be conducted during Phase II.

In connection with the development of our plan for the Phase II review of Crime Lab cases in each of the six forensic science disciplines described above, all of the members of our Advisory Board as well as our scientific team coordinator spent a week at the Crime Lab in the middle of May to perform a limited review of cases. The purpose of this limited case review by our Advisory Board was threefold: (1) to obtain a preliminary assessment of the quality of the laboratory work and reports generated by the Crime Lab across sections and time periods, (2) to get a sense of the volume of the case work performed during the relevant time periods, and (3) to develop estimates as to the time that our forensic

scientists will need during Phase II to review cases selected from each of the forensic science disciplines as well as other Crime Lab functions. We selected and reviewed cases analyzed by many of the forensic scientists currently and formerly employed in each of the areas of the Crime Lab across the relevant periods.

Because we are processing and evaluating the results of our limited case review, we are not reporting findings related to these case reviews at this time. The results of the limited case reviews will be incorporated into our June 2005 report and the Phase II plan we are developing.

#### **D. Property Room**

Our investigative mandate includes an assessment of the operations of HPD's Property Room, which is a separate operation from the Crime Lab. We (including the members of our Scientific Advisory Board) have examined the Property Room and met with its director. We also have begun reviewing documents related to the so-called Project 280, which involved identifying the contents of approximately 280 boxes of allegedly improperly stored evidence. In the coming weeks, we will continue our review and assessment of the Property Room and include our findings in our June 2005 report.

## **Developing Themes in the Investigation**

Because our eight-week-old investigation remains in the fact-gathering stage -- with many documents remaining to be reviewed and several important witnesses, including in particular high-level current and former HPD command staff, remaining to be interviewed -- we are not in a position to present a full array of findings and conclusions. However, several themes are developing as we investigate the root causes of the problems that gave rise to the crisis in the Crime Lab, including:

- The relationship between the Crime Lab and the HPD command structure, including HPD's general and consistent lack of adequate support for the Crime Lab.

- The salience of budgetary issues, including in the areas of salaries, equipment, facility maintenance, and reliance on grant funding for the development and maintenance of key Crime Lab functions.
- Problems relating to personnel management, including retention and promotion of analysts, annual evaluations, systemic difficulties in dealing with employee misconduct, reliance on the Internal Affairs Division to investigate allegations of even minor misconduct, and poor morale and high levels of conflict between and among Crime Lab employees.
- Inadequacy of training and professional development, including funding shortages, problems with the scope and availability of training, lack of provision for the regular training of Crime Lab personnel, the inadequacy of formal training programs and manuals, and poorly monitored and undocumented on-the-job training.
- The historical absence of quality assurance and quality control systems, including in many instances the absence of adequate supervisory and peer reviews and the absence of a system for monitoring courtroom testimony, as well as failures to communicate with and learn from the practices of other forensic science laboratories.

Although our review obviously is not yet complete in any of the above areas, we include in this report the preliminary findings on two specific issues that are important in themselves but also implicate and illustrate many of these issues. The first issue relates to the prolonged absence of first level supervision within the DNA/Serology Section of the Crime Lab. The second example concerns allegations of “drylabbing” on the part of two analysts in the Crime Lab’s Controlled Substances Section.

#### **A. Lack Of Supervision In The DNA/Serology Section**

We have developed substantial evidence that the Crime Lab’s DNA/Serology Section became dysfunctional in important respects in the mid-1990s. We believe the connection between this organizational dysfunction and the well-publicized problems in the DNA/Serology Section were profound and lasting. The Crime Lab began performing its own restricted fragment length

polymorphism (“RFLP”) DNA analysis in the early 1990s.<sup>6</sup> By May 1992, around the time the Crime Lab began performing DNA analysis in-house, the DNA/Serology Section was comprised of James Bolding, the Criminalist III supervisor; Dr. Baldev Sharma and Christy Kim, two Criminalist II senior bench analysts; three Criminalist I bench analysts; and a laboratory technician.<sup>7</sup>

In mid-1993, Mr. Bolding was promoted to the Criminalist IV position overseeing the Trace and DNA/Serology Sections as well as the Crime Lab’s Central Evidence Receiving (“CER”) unit. Dr. Sharma replaced Mr. Bolding as the Criminalist III line supervisor for the DNA/Serology Section. Substantial friction developed between Mr. Bolding and Dr. Sharma soon after Dr. Sharma’s promotion to Criminalist III for the DNA/Serology Section. In October 1994, a specific conflict developed between Mr. Bolding and Dr. Sharma over the placement of a new analyst in the Section. By the middle of 1995, Mr. Bolding had lowered Dr. Sharma’s overall evaluation rating, which led to a prolonged grievance process that extended into early 1996. On February 2, 1996, Mr. Bolding lodged a formal complaint with the Internal Affairs Division (“IAD”) against Dr. Sharma, alleging “official repression” and citing numerous incidents of alleged misconduct on the part of Dr. Sharma, some dating as far back as late 1994 and early 1995.<sup>8</sup> In short, the DNA/Serology Section at this time had become embroiled in bitter internal conflicts between the Section’s line supervisor and manager, which was obvious to everyone in the Section, if not the entire Crime Lab.

On October 11, 1996, the Houston Chronicle reported that Lynn Jones had been jailed on a sexual assault charge for nearly nine months while awaiting the Crime Lab’s completion of DNA tests that eventually cleared him and resulted in his release. On October 15, 1996, Chief Sam Nuchia directed HPD’s Inspections

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<sup>6</sup> For some period of time in the late 1980s and early 1990s, prior to establishing the technical capability to perform RFLP analysis in-house, the Crime Lab outsourced cases to a laboratory at Baylor University for DNA analysis.

<sup>7</sup> Criminalist I is the entry level position in the Crime Lab for personnel conducting forensic science analysis in the Lab; Criminalist II is the more advanced position for a working analyst; Criminalist III is the title for first-line forensic science supervisors; and Criminalist IV is the top-level supervisory position, which generally involves the supervision of multiple sections in the Crime Lab.

<sup>8</sup> After an IAD investigation of Mr. Bolding’s charges against Dr. Sharma, the allegations were determined to be “not sustained.” This was the first of many IAD investigations prompted by allegations by Mr. Bolding against Dr. Sharma and vice versa.

Division to audit the DNA/Serology Section's procedures for receiving evidence requiring DNA analysis and for assigning, tracking, and managing DNA cases, and at approximately the same time an IAD investigation was launched as a result of the incident.

As a result of the mismanagement of the Lynn Jones case, on August 28, 1996, Donald Krueger, the head of the Crime Lab at that time, removed Dr. Sharma as the Criminalist III in the DNA/Serology Section. Mr. Krueger placed Dr. Sharma in a newly created Quality Assurance/Quality Control ("QA/QC") position that reported directly to him. Because Dr. Sharma retained the only Criminalist III title allocated to the DNA/Serology Section despite removal as the Section's line supervisor, no one replaced Dr. Sharma as the Criminalist III supervisor for the DNA/Serology Section. Although the vacancy appeared on the Crime Lab's organization chart, no supervisor position was available for the DNA/Serology Section because, in terms of personnel and salary allocation, Dr. Sharma retained the spot even though he was no longer supervising DNA analysts. The Criminalist III vacancy remained a gaping hole in the supervisory structure of the DNA/Serology Section for six years, through December 2002, when the Crime Lab stopped performing DNA analysis.

On September 14, 1999, a group of six Criminalist I and II bench analysts in the DNA/Serology Section sent a memorandum to HPD Chief C.O. Bradford entitled "Restoration Criminalist III Position to Serology/DNA Section." This memorandum described the period between 1993 and 1996, when Dr. Sharma was the line supervisor of the DNA/Serology Section, as a "total disaster" due to Dr. Sharma's "mismanagement" of the Section. The memorandum stated that "it is critical" that the DNA/Serology supervisor position, which had remained vacant since Dr. Sharma's removal from the position three years earlier, "be restored and occupied by one of the most qualified Criminalists in the section."

On October 20, 1999, a group of line analysts from the DNA/Serology Section met with Chief Bradford to discuss their request that the position of Criminalist III in the Section be restored as well as other issues related to equipment and training for the Section. Accounts from numerous people who were present at the meeting have described an extremely positive initial response from Chief Bradford. Indeed, the criminalists were euphoric after the meeting. They immediately convened a meeting with other personnel in the Crime Lab to report the reception from Chief Bradford, which they believed boded well for positive action on their requests.

However, the criminalists' optimism was short-lived. In an undated memorandum issued after the meeting, Chief Bradford responded that the "Criminalist III position has been put on hold until sufficient funding is acquired. Funds may be converted if future vacancies within Criminalist I or II classifications occur." This memorandum from Chief Bradford effectively sentenced the DNA/Serology Section to continue functioning without a supervisor for the indefinite future. We have been told that the members of the DNA/Serology Section were devastated by this response from Chief Bradford.<sup>9</sup>

Thus, as DNA analysis grew in importance as a forensic technique in the mid and late 1990s, the DNA/Serology Section was the only section in the Crime Lab that lacked a Criminalist III line supervisor. This result was dictated by several factors, including the lack of funding for a line DNA/Serology supervisor once the QA/QC position was created for Dr. Sharma, the failure fully to recognize within top management of the Crime Lab and the Department that the extended gap in supervision was bound to create a crisis for the quality of the work being performed in the DNA/Serology Section, and, perhaps most important of all, the failure of the chain of command to recognize the importance of providing the DNA/Serology Section with a line supervisor, as well as providing the Crime Lab generally with sufficient resources.

#### **B. Allegations Of "Drylabbing" By Certain Personnel In The Controlled Substances Section**

"Drylabbing" is the most egregious form of scientific misconduct that can occur in a forensic science laboratory -- it means the fabrication of scientific results. In the Crime Lab, the instances of drylabbing took the form of controlled substances analysts creating false documentation intended to reflect analytical procedures that were never performed. We have heard of four separate allegations of drylabbing involving two Criminalist I analysts in the Crime Lab's Controlled Substances Section. All of these incidents happened several years ago -- between 1998 and 2000. The two analysts involved in these misconduct allegations -- one of whom is still in the Crime Lab and the other of whom resigned in March 2001 -- were each accused of drylabbing on two occasions. Each of the incidents was detected by a Criminalist III supervisor in the section,

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<sup>9</sup> These facts are plainly established by the witnesses with whom we have spoken, as well as the documents we have reviewed. We will be seeking to interview former Chief Bradford as well as other members of the HPD command staff to get additional information on this issue.

and each resulted in an investigation by HPD's IAD.<sup>10</sup> These incidents highlight a number of important issues, including: the importance of Criminalist III line supervisors in performing quality assurance and quality control; the difficulty the Crime Lab has experienced in disciplining analysts found to have been involved in misconduct; and the lack of support for imposing appropriate discipline from the HPD command staff.

The first analyst's drylabbing incidents both occurred in late 1999. In the first incident, the analyst failed to perform tests on tablets prior to identifying them as containing a controlled substance. Rather than run fresh tests with respect to the tablets, the analyst used falsified analytical data to support his misidentification of the tablets. The misidentification was discovered during a routine case review by the analyst's Criminalist III supervisor. After being confronted by all three of the Controlled Substances Section supervisors with the misidentification, the analyst charged each of the supervisors with harassment. The only discipline the analyst received as a result of this incident was a written reprimand, which was the same discipline imposed on one of the supervisors based on the harassment charge. In the second incident, this analyst copied and used a spectrum generated in the testing of one tablet to certify the chemical composition of a second tablet. Again, the drylabbing was detected during a case review by a Criminalist III supervisor. This time, the analyst was suspended for three days.

The drylabbing allegations against the second analyst related to incidents in 1998 and 2000. The 1998 incident involved the analyst's misidentification of the tranquilizer Flunitrazepam, a date rape drug the possession of which is a felony under Texas law. The analyst's Criminalist III supervisor discovered that the tablets actually were Clonazepam, the possession of which was only a misdemeanor. The supervisor determined that the analyst never tested the tablets recovered from the defendant but, rather, tested a standard sample of Flunitrazepam and reported those results in the Crime Lab's supplement to the offense report as though the tests related to the tablets possessed by the defendant. The analyst's "findings" supported the hunch of the submitting officer as reflected in his paperwork. The analyst was suspended for four days, and the original charge against the defendant was reduced to a misdemeanor charge. In 2000, this analyst misreported the presence of a steroid, Stanozolol, in

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<sup>10</sup> Each of the drylabbing incidents we discuss in this report was detected by a supervisor in the Controlled Substances Section early enough so that none of the incidents resulted in false drug analyses being introduced in court or otherwise used to obtain a conviction.



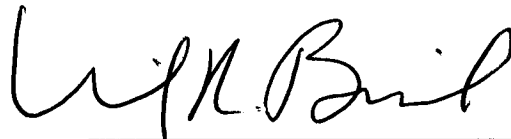
a sample. During a routine check of one of the Crime Lab's gas chromatograph/mass spectrometers, a Criminalist III supervisor discovered that the analyst had printed the test results obtained by another analyst, which had in fact confirmed Stanazolol in a different sample, and then had inserted those results in his own case file. According to documents related to the incident, the Chief of Police was considering an indefinite suspension of the analyst for his conduct in this case, but the analyst resigned from the Crime Lab before he was disciplined.

We are continuing to explore the particulars of each of these drylabbing incidents and have not yet reached any final conclusions based on them. At this point in our investigation, we believe these incidents to be relatively isolated events rather than to reflect broad problems in the Controlled Substances Section. Indeed, in each case the applicable supervisors identified the problems and took swift and appropriate action. At least one of the supervisors believed strongly that both analysts should have been terminated immediately once the frauds were identified. This supervisor was extremely frustrated when the system for investigating and disciplining personnel in the Crime Lab failed to produce those results.

The issues described above illustrate some important principles. First, they show the importance of the quality assurance and quality control function performed by Criminalist III line supervisors -- a position that was left vacant in the DNA/Serology Section from late 1996 through December 2002, when HPD closed the DNA function. Second, events in the DNA/Serology and Controlled Substances Sections reflect the substantial obstacles faced by Crime Lab supervisors in responding appropriately to evidence of misconduct by Crime Lab analysts. The issues of effective supervision and systemic and practical barriers to effective discipline and remediation are ones on which we will continue to focus as our investigation continues.

## Conclusion

We have made substantial progress towards completing Phase I of our investigation of the HPD Crime Lab and Property Room. We have continued to receive a high level of cooperation from HPD and current personnel in the Crime Lab. We also are encouraged by the cooperation we have received from former Crime Lab employees, with the exception of one former DNA analyst. Although it is premature at this stage to suggest any ultimate conclusions, several themes have become apparent as a result of our interviews and our preliminary review of the documentary record. Those themes have been briefly described in the body of this report and will be further developed as our work moves forward. It already is clear, however, that the circumstances that led to the troubling crisis of confidence in the Crime Lab are complex and deeply rooted in the history of the Crime Lab and HPD as a whole over the past two decades.



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May 31, 2005

# Appendix A

## Stakeholders Committee Members

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