

On April 9, 2010, Attorney David Wise provided 2 documents for posting:

1. The attached **DNA discovery request** and
2. **DNA Lab's unredacted Corrective Action Log.**

Mr. Wise reports the following timely information regarding the DNA/Forensic Biology Lab:

- ❑ ASCLD-LAB, has a website, wherein they have documents delineating the accreditation (and renewed accreditation) process. SFPD Crime Lab is accredited by them, and one of the Brady disclosures by Russ Giuntini in March was the November ASCLD-LAB audit report from November 2009. That report dealt largely with the narcotics part of the lab, but also found the forensic biology section failing in two essential criteria for re-accreditation. I have also received discovery on two instances of lab analyst DNA showing up in other lab analysts D.N.A. tests. Their accreditation expired on Feb 26, 2010. To date , they have not been re-accredited. My understanding from a colleague is that the Biology section is currently being audited. The procedures posted on ASCLD-LAB's website suggests that the Biology section, as well as the rest of the lab, is currently out of accreditation. I refer in this request in italics to several ASCLD-LAB posted procedures that are likely occurring currently in relation to the Lab's current accreditation crisis.
- ❑ The P.D.'s office has D.N.A. discovery motion on for hearing on the 19th, mine is on for the 22nd, both in Dept. 22.
- ❑ **The D.N.A. lab's un-redacted Corrective Action Log**, obtained for the first time through a discovery motion on March 26 is attached. This is essentially an Error Log. It lists the two instances of contamination of D.N.A. testing: the last two entries.

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**BY U.S. MAIL, FACSIMILE**

April 9, 2010

Mr. Kin Tong  
Assistant Dist. Atty., Sexual Assault Division  
San Francisco District Attorney's Office  
850 Bryant Street  
San Francisco, CA 94103  
Fax: (415) 553-9054

Re: **Discovery Request re D.N.A. Evidence, Including Audit Material**

**Next Court: April 22, 2010, D.N.A. Discovery Motion Hearing; No time waiver jury trial set May 7, 2010.**

Dear Mr. Tong:

Please provide the following discovery under the authority of *Brady v. Maryland*. The material is exculpatory as it has some tendency in reason to undermine the credibility of the laboratory and staff responsible for implementing and overseeing procedures designed to ensure the reliability and accuracy of D.N.A. testing. It is material to the reliability of the D.N.A. results which purport to identify this Defendant as the perpetrator of crimes. Evidence of a lack of reliability of the D.N.A. results here may result in exclusion of the evidence by the court, or rejection of the evidence by a jury.

On March 17, 2010, the Chief Assistant to the District Attorney made a *Brady* disclosure to all members of the Indigent Defense Administration, including that The Forensic Biology Section failed two essential criteria for renewed accreditation in the November 2009 ASCLD-LAB Inspection Report. The Laboratory's accreditation expired on February 26, 2010, and it is currently out of compliance with accreditation.

Additionally the Defense has been provided and obtained two highly unusual instances of laboratory contamination of D.N.A. case-work in this laboratory. In one of those, initially disclosed by the Prosecution under *Brady*, the D.N.A. of the laboratory analyst working on my client's case, showed up in the results of another Defendant's D.N.A. test. The same thing happened with another analysts' D.N.A. in a separate Defendant's D.N.A. test. This is not supposed to happen, and demonstrates a *systematic* failure of reliability in the Biology section of the S.F.P.D. Crime Lab.

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The systemic nature of the failure is noted in the Forensic Biology Section's Corrective Action Log entries for these mishaps.

Finally, my understanding is that the Forensic Biology Section of the lab is *currently* being audited, either internally or externally, as a result of these serious problems.

This is the background for these requests.

Therefore, the Defense requests copies of the following information, whether in paper or electronic format. In the event that the matter is in paper format and voluminous, the Defense can come to the laboratory and review and photo-copy the material. The Defense requests compliance with these requests by 4:00 p.m. on April 15, 2010.

1. Reports, findings, conclusions, recommendations and notes of all *internal* as well as *external* audits of the S.F.P.D. Crime Lab, which included the Forensic Biology Section, from 1995 through 2000<sup>1</sup>, and 2005 through 2010 whether by external auditors such as ASCLD-LAB<sup>2</sup> or internally by the S.F.P.D.<sup>3</sup> This includes a request for the results of any current internal or external audits, that have not yet been completed, or which will not be completed at the time of the next hearing in this matter. Additional specific requests related to this are below.
2. Any responses or replies from the S.F.P.D. Crime Lab to *internal* or *external* audits related to the state of the Forensic Biology Section of the laboratory.
3. Any communication of responses issued from the S.F.P.D. Crime Laboratory to ASCLD-LAB, in response to the ASCLD-LAB Audit Inspection Report of November 2009, related to the findings that the Biology Section had *not* met two "essential criteria" for renewed accreditation.
4. Copy of all Certifications of Accreditation for the San Francisco Crime Laboratory from 1995 through 2000 and from 2006 through April 8, 2010, and continuing to the date of this hearing, in

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<sup>1</sup> Requests for the time period of 1995-2000 are relevant to the Lizette S. testing, while those from 2006 to 2010 are relevant to Lizette S. re-testing and Brenda S. testing.

<sup>2</sup> References to "ASCLD-LAB" are to the accrediting organization the *American Society of Crime Laboratory Directors / Laboratory Accreditation Board*.

<sup>3</sup> The Defense has already received the initial ASCLD-LAB Inspection Report of November 17-20 2009, as well as NIJ/NFSTC External Audit Reports for December 7-8 2006 and November 17-18, 2008.

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light of the current audit of the D.N.A. portion of the lab.<sup>4</sup>

5. Written notes, emails, reports or documentation of any *Interim Inspections* of the S.F.P.D. Crime Laboratory, including the Forensic Biology Section, by ASCLD-LAB, NIJ/NFSTC<sup>5</sup> or any other inspecting or auditing body from 1997-2000 and 2006 through April 8, 2010, and continuing to the date of this hearing, in light of the current audit of the D.N.A. portion of the lab.

6. All *Annual Accreditation Audit Reports*, and self evaluations, as well as any accompanying *supplemental explanatory statements*, as required on an annual basis for continued accreditation by ASCLD-LAB, issued from the S.F.P.D. laboratory director regarding failure of any *essential criterion*, from 1995-2000, and from 2006 through April 8, 2010, and continuing to the date of this hearing, in light of the current audit of the D.N.A. portion of the lab.

7. Any written responses or findings from ASCLD-LAB to the laboratory director, manager of the Forensic Biology Section, or any other staff of the S.F.P.D. Crime Laboratory in response to the *Annual Accreditation Audit Report* and any *self evaluation / supplemental explanatory statement*.

8. *Proficiency tests* and results for analyst Tahnee Nelson from 2006 to the present, and for Alan Keel from 1995 to 2000.

9. Documentation including Reports, findings, and correspondence regarding any *Interim Inspection* by ASCLD-LAB or any other inspecting organization, including but not limited to NIJ, of the S.F.P.D. Crime Laboratory, Forensic Biology Section, from 1995 to 2000 and 2006 through April 8, 2010, and continuing to the date of this hearing, in light of the current audit of the D.N.A. portion of the lab.

10. Material issued by the S.F.P.D. Crime Lab director, in the form of documents, correspondence, summaries, and reports constituting *Disclosures of Non-Compliance*, which report substantive occurrences of non-compliance with *Essential Criteria* required for continued accreditation by ASCLD-LAB, from 2006 through April 8, 2010, and continuing to the date of this hearing, in light of the current audit of the D.N.A. portion of the lab. .

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<sup>4</sup> The Defense is in possession of the S.F.P.D. Crime Lab's Certificate of Accreditation, which expired on February 26, 2010

<sup>5</sup> "NIJ/NFSTC" is the non accrediting external auditor *National Institute of Justice* and *National Forensic Science Technology Center*

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11. Any *Statement of Actions* regarding attempts to fix problems with essential criteria for accreditation, sent by representatives of the S.F.P.D. Crime Laboratory to the Executive Director of ASCLD-LAB; namely, regarding steps taken or being taken by the S.F.P.D. crime laboratory to 1.) Determine the root cause of the problem, 2) determine who may have been impacted by the occurrences, 3) notify those who are potentially impacted by the occurrences and 4) appropriately correct and/or eliminate the cause of the occurrences. The request is for communications from 2006 through April 8, 2010, and continuing to the date of this hearing, in light of the current audit of the D.N.A. portion of the lab.
12. Documentation or memorialization of any *sanctions* issued by ASCLD-LAB against the San Francisco Police Department Crime Laboratory, which include the Forensic Biology Section, including probation, suspension or revocation.
13. Any *appeal* by the San Francisco Police Department Crime Laboratory of any sanction for non compliance with essential criteria for accreditation, sent to the Delegate Assembly of ASCLD-LAB. The request is for communications from 2006 through April 8, 2010, and continuing to the date of this hearing, in light of the current audit of the D.N.A. portion of the lab.
14. Any *application for renewed accreditation* submitted by the San Francisco Police Department Crime Laboratory to ASCLD-LAB prior to the February 2010 expiration of their accreditation.
15. The *Criteria File*, whether in electronic or paper format, submitted with the Application for renewed Accreditation by the San Francisco Police Department Crime Laboratory to ASCLD-LAB prior to the February 2010 expiration of their accreditation.
16. *Grade Computation Sheets/Summation of Criteria Ratings* submitted by the San Francisco Police Department Crime Laboratory to ASCLD-LAB prior to the February 2010 expiration of their accreditation.
17. Finally, important material not dealing with audits: Color photos of all 1998 D.N.A. gels in Mr. [REDACTED] case, previously provided only as black and white photo-copies. Color photos are necessary for any independent evaluation of the results, as the old tests were *color* tests - the *colors* of the gels told the analyst if there was a "match" or not. The black and white photo-copies are useless for this purpose. This material falls plainly within Penal Code section 1054.5 *et seq.*

Sincerely,

David Elliott Wise

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DW/gc

cc: Asst. Chief Jeffrey Godown  
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April 9, 2010

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Re: Discovery Request re D.N.A. Evidence, Including Audit Material  
*People v. [REDACTED]*  
Next Court: April 22, 2010; D.N.A. Discovery Motion Hearing: No time waiver jury trial set May 7,  
2010.

Gentlemen,

This is a "cc" copy to management of the Crime Lab, of a discovery request to the District Attorney, in the above  
referenced criminal case.

Regards,

David E. Wise

Encl

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## CORRECTIVE ACTION LOG

Use this table to record instances of corrective action.

Note: Changes to the operation of the Unit as a result of DAB or ASCLD-LAB audit findings, though not defined as corrective actions (Refer to Standard 14 in the DNA Quality Assurance Manual), may be documented here at the discretion of the DNA Technical Leader for record-keeping purposes.

DNA Technical Leader, QA Manager and/or Lab Manager will determine the type(s) of remediation required for each instance of analytical/interpretive error uncovered.

**Date:** Date corrective action is recorded.

**Initials:** Initials of DNA Technical Leader or QA Manager, as assigned.

Date	Type of Error	Brief Summary	Remediation	Initials
03.22.05	2	Inspector Hofsaas performed testing beyond what was requested by the Inspector and DNA Technical Leader.	VC	MG
01.26.07	3	NIST-traceable DNA standard may be processed as part of QA/QC for each new DNA STR typing system. At a minimum, NIST-traceable standard will be tested against each system once yearly.	O (see response to audit finding)	MG
01.15.09	3	Record for 2007 testimony evaluation was obtained from ADA Fleming following December 2008 external audit.	O (see response to audit finding)	MG
01.15.09	2	Partial profile obtained in a water control swab for 08-0005 (Item 1A-WC).	VC	MO
07.31.09	2	Partial profile obtained in a water control swab for 08-0143 (Item 1B).	VC	MO

Type of Error: 1 = Administrative, 2 = Analytical/Interpretive/Systematic, 3 = Other (e.g., audit finding, etc.)

Remediation: CS = casework suspension/re-training, PT = proficiency testing/re-qualification, VC = verbal counseling, O = other