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**REPORT OF INVESTIGATION  
INTO THE CONDUCT OF  
MAGISTRATE JUDGES, PROSECUTORS,  
DEFENSE LAWYERS, AND LABORATORY PERSONNEL  
IN THE SO-CALLED “FAKE DRUG CASES”  
IN DALLAS COUNTY, TEXAS**

May 9, 2005

## Contents

1.	PRELIMINARY STATEMENT .....	1
1.1	Purposes of this Phase of the Investigation.....	1
1.2	Scope of this Report.....	2
1.3	Investigation Methodology .....	3
2.	BACKGROUND .....	5
3.	WHAT HAPPENED ON THE STREET .....	6
4.	WHAT HAPPENED AT THE BEGINNING OF THE LEGAL PROCESS.....	8
5.	WHAT HAPPENED TO THE SUSPECTED CONTROLLED SUBSTANCES .....	10
6.	WHAT HAPPENED IN THE DISTRICT ATTORNEY’S OFFICE.....	12
7.	WHAT HAPPENED IN THE LABORATORY .....	14
8.	WHAT HAPPENED AFTER THE SUBSTANCES WERE DISCOVERED TO BE FAKE.....	15
9.	WHAT HAPPENED IN THE DEFENSE LAWYERS’ OFFICES .....	22
10.	BRIEF SUMMARIES OF CASES WHICH ILLUSTRATE HOW THE CRIMINAL JUSTICE SYSTEM REACTED .....	23
10.1	Relatively Prompt .....	23
10.2	Too Slow .....	24
10.3	Justice Delayed .....	27
11.	EXAMPLES OF THE BEST AND WORST PERFORMANCE OF DUTY BY PROSECUTORS AND DEFENSE COUNSEL .....	29
12.	REMEDIAL ACTIONS WHICH WERE TAKEN .....	31
12.1	District Attorney’s Office .....	31
12.2	SWIFS .....	32
13.	PRINCIPLES OF LAW WHICH GUIDED THIS PHASE OF THE INVESTIGATION.....	34
14.	POTENTIAL CRIMINAL LAW VIOLATIONS EXAMINED .....	36

14.1	Offenses Examined .....	36
14.2	FBI Investigation .....	41
15.	WHY EVENTS OCCURRED AS THEY DID .....	42
15.1	Obtaining These Search Warrants .....	42
15.2	Prosecuting These Cases.....	42
15.3	Defending These Cases.....	47
16.	HOW TO PREVENT A REOCCURRENCE.....	49
16.1	The Municipal Court Judges.....	49
16.2	The Dallas County District Attorney’s Office .....	49
16.3	The Dallas County Criminal Defense Bar .....	51
16.4	The Southwestern Institute of Forensic Science.....	51
17.	CONCLUSIONS.....	53
Appendix A:	Appointment Certificate	
Appendix B:	List of Reports of Interview	
Appendix C:	A compilation of search warrant affidavits	
Appendix D:	Case Listing Spreadsheet	
Appendix E:	Timeline	
Notes	.....	54

# 1.

## PRELIMINARY STATEMENT

### 1.1 Purposes of this Phase of the Investigation

When Daniel K. Hagood was appointed as the Special Prosecutor in December 2003, his primary focus was on the activities of former Detective Mark Delapaz, certain fellow police officers of the Dallas Police Department, and certain confidential informants used by Officer Delapaz. By February 2004, he believed it was appropriate to expand the scope of the Investigation beyond the Police Department. A Deputy Special Prosecutor was appointed to perform that task. Jack B. Zimmermann, the Deputy Special Prosecutor, was brought in from Houston, Texas, where he is in private practice as a specialist in criminal law, to conduct this phase of the Investigation. Mr. Hagood's investigation activities continued to concentrate on the police officers and confidential informants.

There were three purposes of the phase of the Investigation by the Deputy Special Prosecutor. The primary purpose was to determine if probable cause exists for any state penal code violation by any municipal court judge, prosecutor, criminal defense lawyer, or laboratory personnel associated with the so called "fake drug cases" in 2001-2002. The secondary purpose was to assess then-existing policies and procedures of the Dallas Municipal Court judiciary, Dallas County District Attorney's Office, members of the criminal defense lawyer bar who handled these cases, and the Southwestern Institute of Forensic Science (SWIFS), with the goal of recommending changes to prevent the reoccurrence of this type of event. Finally, as this phase of the Investigation progressed, it became apparent that it was necessary to be mindful of possible violations of the Texas Disciplinary Rules of Professional Conduct by any of the judges or attorneys involved. If necessary, any violations would then be forwarded to the State Bar of

Texas for appropriate action.

## 1.2 Scope of this Report

This report does not address in detail the actions of members of the Dallas Police Department Narcotics Division street squad in question supervised by Sgt. Jack Gouge. The reason for this is that some members of the street squad have been indicted and one trial has been completed. Accordingly, the actions of the supervisors of this squad are also not addressed in detail. The examination of such actions is best left for analysis at trial.

Therefore, this report will concentrate on an analysis of how the criminal justice system failed to function properly from the time the legally trained participants became involved. It will focus on activities of the Municipal Court judges who issued the search warrants in these cases, the prosecutors who prosecuted the defendants, the criminal defense lawyers who represented the defendants, and the laboratory scientists who analyzed the substances in these cases.

This report is being released now because this phase of the Investigation is complete, and the citizens of Dallas County need to know this matter has been investigated. It is important to emphasize that this phase of the Investigation was supervised by an individual with no ties to the Dallas County judiciary, District Attorney's office, criminal defense lawyers' bar, or forensic laboratory. The Deputy Special Prosecutor who supervised this phase of the Investigation is not currently a prosecutor, and has no cases pending in Dallas County. He has been board certified in criminal law by the Texas Board of Legal Specialization since 1980 and by the National Board of Trial Advocacy since 1981. A retired colonel in the United States Marine Corps Reserve, he is a former Chief Prosecutor of the 2nd Marine Division, and was certified as a military trial judge in 1978.<sup>1</sup> He was administered the oath as a Deputy Special Prosecutor by State District Judge Vickers Cunningham on February 18, 2004.<sup>2</sup>

The Deputy Special Prosecutor was assisted throughout this phase by two veteran sergeants from the Texas Department of Public Safety. Both have extensive experience in narcotics enforcement, and worked full-time as investigators in the Office of the Special Prosecutor. An experienced sergeant in the Public Integrity Division of the Dallas Police Department assisted in the final rounds of interviews in this phase.

The direction from the Special Prosecutor was clear: go where the evidence leads. Neither Special Prosecutor Dan Hagood, nor Deputy Special Prosecutor David Lewis, participated in any interviews in this phase of the Investigation. The Investigation began with no preconceived notions, no allegiance to any individual or organization involved, and with the charter to be impartial, open-minded, objective, and professionally courteous to all.

### 1.3 Investigation Methodology

The original prosecution case files in all “fake drug cases” and the original court files in those cases were reviewed by the Deputy Special Prosecutor and the two Department of Public Safety sergeants. Along with those files, any relevant notes, emails, laboratory reports, and search and arrest warrant affidavits were also examined. All prosecutors who handled these cases, including the supervising chain of command, were interviewed. This group was comprised of five former prosecutors; six current prosecutors; seven senior supervisory members of the District Attorney’s office, including the elected District Attorney; and two investigators for the District Attorney’s office. In addition, interviews were conducted with twelve criminal defense lawyers who handled some of the questioned cases; three municipal court judges who issued search warrants in the relevant cases; three supervisory officers of the Dallas Police Department, including the former Chief of Police; and three scientists from the Southwestern Institute of Forensic Science, including the Chief of the lab.<sup>3</sup> With the exception of one witness,

they were interviewed by the Deputy Special Prosecutor and at least one of the Department of Public Safety sergeants. The above mentioned Dallas Police Department Public Integrity sergeant participated in 23 of the interviews.

It is considered essential that the public know that this matter was thoroughly considered by the Grand Jury. In order to comply with the secrecy mandates of Article 20.02 of the Texas Code of Criminal Procedure, only a general description of what occurred before the Grand Jury will be given. In this phase of the Investigation, key witnesses from each group identified above who were interviewed outside the Grand Jury also testified before the Grand Jury. Twelve of the forty witnesses interviewed outside the Grand Jury were called by the Deputy Special Prosecutor to testify before the Grand Jury. Each witness was extensively questioned by the Grand Jurors, and not just by the Deputy Special Prosecutor. The Grand Jury considered this matter from February through June of 2004.

Within days of being sworn in, the Deputy Special Prosecutor was assigned to investigate allegations that the District Attorney and his senior staff had tampered with a witness and, in doing so, had engaged in organized criminal activity at a meeting in February 2004. All participants in that meeting, plus the individual making the criminal allegations, testified under oath and on the record before the Grand Jury on this issue. The Grand Jury heard five witnesses on this issue, beginning on February 24, 2004 and ending on March 11, 2004. On March 11, 2004, the Grand Jury decided that no indictments in this matter were appropriate. Since the allegation was made public in the Dallas Morning News, it should be noted that the meeting in question arose from events which occurred in 1999, long before the first arrest in any "fake drug case" in 2001. These events in 1999 did not involve fake drugs, any Dallas Police Department officers involved in the "fake drug cases," or any of their confidential informants.

## 2.

### **BACKGROUND**

In July 1999, former Dallas Police Officer Mark Delapaz was on his second tour as a Narcotics Officer when he arrested Enrique Alonso and Jose Ruiz for possession with the intent to deliver cocaine and methamphetamine. On October 8, 1999, Officer Delapaz signed an agreement with Enrique Alonso, that Enrique Alonso would become a confidential informant for the Dallas Police Department in order to work off his case. Enrique Alonso completed the agreement by December 16, 1999. He then became a paid confidential informant. Mr. Alonso was assigned the confidential informant number of 2253. On March 27, 2000, Officer Delapaz signed an agreement with Jose Ruiz to become a confidential informant. By August 25, 2000, Jose Ruiz had also worked off his case and become a paid confidential informant. Jose Ruiz's number was 2344. In 2001, Enrique Alonso introduced Officer Delapaz to three other persons who also became confidential informants. They were Daniel Alonso (CI number 2459), Roberto Santos (CI number 2409), and David Cavazos (CI number 2452). Other informants officer Delapaz used, although not authorized to do so, were Brenda Davis and Reyes Roberto Gonzalez.<sup>1</sup>

In 2001, Delapaz filed 43 cases against 30 arrested persons, based on the activities of these informants. The informants supplied fake drugs in these cases and in some cases Officer Delapaz supplied fake police reports and related false documentation. Search warrant affidavits, confidential informant payment receipts and drug buy reports documented these activities. These arrests became known as the "fake drug" cases. The equation for these cases was simple: false drugs, false police reports, false affidavits, etc., equaled fake drug cases.<sup>2</sup>

### **WHAT HAPPENED ON THE STREET**

The Hispanic community in Dallas County is large and diverse. As exists for all areas and ethnic groups in Dallas County, some members of the Hispanic community illegally distributed controlled substances. The overwhelming majority of the cases in question involved defendants who were from the Hispanic community. Some members of the street squad involved were Hispanic. The confidential informants who cooperated with the Dallas Police Department in an effort to arrest and convict such persons were also from the Hispanic community.

There are multiple types of confidential informants. In the questioned cases, there were two specific types used. One type was the confidential informant who worked to receive more lenient treatment after being arrested for a similar offense. The second type worked only for money.<sup>1</sup>

The confidential informants worked on small transactions for the Dallas Police Department Narcotics “street squad” in question. The street squads targeted drug transactions, usually by local dealers, involving relatively small amounts of controlled substances. The street squads were not typically involved in drug deals of the magnitude found in the fake drug cases. Ordinarily, such large transactions were the province of the Dallas Police Department Narcotics Enforcement Section or an appropriate state or federal law enforcement agency. These agencies were equipped to deal with large transactions, which indicate interstate or international distribution organizations. The law enforcement agencies that were primarily concerned with large amounts of controlled substances had specific techniques they employed in their operations that the street squad rarely used. For example, the DPD Narcotic Enforcement Section used

audio and video surveillance, money flashes, wire intercepts, gathered larger amounts of criminal intelligence, and conducted longer-term conspiracy investigations.<sup>2</sup> The street squads rarely used any of these methods.

Beginning in 1999 and continuing into 2000, the confidential informants working with the Dallas Police Department Narcotics street squad in question pursued real drug dealers. As time progressed, during this period, the confidential informants began to dilute the real drugs with fake substances. In early 2001, they began targeting innocent members of the Hispanic community, although not all arrestees were Hispanic. The cases with these confidential informants began to involve very large amounts of suspected drugs.<sup>3</sup> The suspected cocaine was in reality billiard chalk or gypsum. The suspected methamphetamine was actually dimethyl-sulfone (a food additive), which is also not a controlled substance.<sup>4</sup> Many of these defendants were undocumented Mexican immigrants. Often they did not speak English. Almost all of these defendants were persons with very limited financial resources. None of these defendants attempted to flee, drove luxury vehicles, lived in expensive homes, wore expensive jewelry or clothes, carried large sums of money, or carried weapons on their person. Court-appointed lawyers represented the majority of these defendants .

#### 4.

### **WHAT HAPPENED AT THE BEGINNING OF THE LEGAL PROCESS**

When a confidential informant identified a target, a confidential informant then went to a location to supposedly “make a buy” or to check the location for the presence of drugs. The locations could have been a residence, a business, or a motor vehicle depending upon the situation. When the confidential informant returned, the alleged information he provided Officer Delapaz served as a basis for seeking a search warrant from a municipal court judge to search the location. Sometimes Officer Delapaz would appear before the judge himself. Other times he would call another officer on the telephone and that second officer would file the required sworn affidavit with the judge based on what was relayed in the telephone conversation.<sup>1</sup>

Although some police reports indicated otherwise, the confidential informants were not under visual surveillance at all times during alleged drug transactions. In actuality, the activities of the confidential informants in question were recorded only twice on video with an audio recording of one of those transactions. The confidential informants were not searched before and after an alleged drug transaction. Marked money used to buy alleged drugs was seldom recovered.<sup>2</sup> Field tests to determine if a seized substance was an illegal drug were either not conducted or were not properly conducted.<sup>3</sup>

The affidavits in support of these search warrant applications submitted to municipal court judges were extraordinarily brief. They lacked detail on probable cause and in at least one case, the affidavit reflected no probable cause at all to search the named location. The probable cause paragraph(s) often consisted of only a few sentences and were strikingly similar from affidavit to affidavit. Often identical words were utilized.<sup>4</sup> The municipal court judges were not advised of any problems with the reliability or credibility of the confidential informants.<sup>5</sup> The

magistrates approved search warrant applications in about ninety-eight percent of the cases presented to them. However, if a magistrate refused a search warrant application, no notation of the refusal was made on the application. There was no policy prohibiting a police officer from taking the same refused application to a different magistrate. The second magistrate had no way to know if an application had been presented previously to a different magistrate and that authorization of a search and arrest warrant was refused.<sup>6</sup> For probable cause, many of the search warrants presented to judges in these cases relied on affidavits that were a recitation by the officer of double hearsay. In other words, a confidential informant gave a police officer information and that police officer then relayed the information, via telephone, to the officer appearing before the judge.<sup>7</sup>

Once the arrest had been made, proper procedure called for a member of the squad to field test the seized substance. This consisted of obtaining a small amount of the substance and placing it in a kit containing vials that held chemicals. If used properly, the interaction of chemicals in the vials with the substance would cause a change in color. Depending upon the color, it would indicate the presence, or lack thereof, of a specified controlled substance (thus, the terms “field test” and “color test”). In some cases, evidence indicates no field test was performed, although the police reports prepared in connection with that arrest stated that a positive field test had been conducted.<sup>8</sup>

## 5.

### **WHAT HAPPENED TO THE SUSPECTED CONTROLLED SUBSTANCES**

The policy of the District Attorney's office since at least 1987 was to send suspected controlled substances for laboratory analysis only after a request by a defense counsel or in anticipation of trial.<sup>1</sup> This policy did not prevent the Dallas Police Department, or any other law enforcement agency, from sending a suspected controlled substance to the lab for analysis on its own initiative. It is an expensive procedure to test a suspected controlled substance. If a defendant desired to plead guilty, it was viewed as a cost-saving procedure to forego laboratory analysis.<sup>2</sup> As a result, the substances alleged to be controlled substances in these cases were not analyzed in the laboratory unless the defense lawyer, or the prosecutor, requested testing in preparation or anticipation of a contested trial.

When the arrests began to involve relatively large amounts of alleged cocaine or methamphetamine, typical police responses did not occur. The arrestees were not advised of their constitutional rights, nor interrogated to obtain confessions or learn the source of these large amounts of alleged controlled substances. Witnesses at the locations were not interviewed to learn the source of the substance or even to obtain evidence needed for a contested trial. Apparently, no effort was made to learn if the defendants possessed hidden bank accounts, had spent large sums of money, or had secreted assets that could be forfeited. The mode of operation alleged in police reports involved a defendant giving a confidential informant, who was either a complete stranger or passing acquaintance, extremely large amounts of a controlled substance on credit. That is, the confidential informant allegedly was allowed to take the "drugs" without paying for them, on the uncollateralized promise to bring the money later. Marked money was

either not used, or, if used, rarely recovered and was not properly documented.<sup>3</sup> Only once was an audio recording made of the confidential informant's contact with the arrested persons. If the prosecutor, Gregg Long, had reviewed this one audio recording, he would have detected that the audio portion was highly inconsistent with Officer Delapaz' police report. This is an example of one of many "red flags" missed by the prosecutors assigned to these cases. Further, unbeknownst to the prosecutors, defense counsel, judges, and lab personnel, police reports, controlled buy reports, CI payment receipts, and search and arrest warrants were falsified in order to further the case against the arrested person.

## 6.

### **WHAT HAPPENED IN THE DISTRICT ATTORNEY'S OFFICE**

Most of the questioned cases were prosecuted by the Organized Crime Section of the Dallas County District Attorney's office. The caseloads per prosecutor in the Organized Crime Section approached 150-200 cases per prosecutor.<sup>1</sup> Witnesses were not routinely interviewed by Organized Crime Section prosecutors until a case was set for trial, and then only shortly before a pre-trial hearing or trial.

The Organized Crime Section did not have an official open-file discovery policy, even relative to scientific analysis reports. This meant that the defense lawyer did not have access to the prosecutor's file to read the offense report, lab report, witness statements, or other documentation in the file.<sup>2</sup>

There was pressure from the district courts to move cases expeditiously. This pressure was felt primarily by prosecutors and court-appointed defense attorneys.<sup>3</sup> Some of the defendants in question had prior criminal records; many had no record at all. The Organized Crime Section was operating in two "drug courts," which originally were funded by a state grant.<sup>4</sup> There was a perception that a large number of jury trials were required to maintain funding. In fact, there was no statistical jury trial requirement, but there was perceived pressure to try cases that otherwise may have resulted in plea agreements. The prosecutors' discretion to effectuate such agreements by an offer of a lower sentence for certain offenses was restricted by office policy.<sup>5</sup>

The prosecutors in the Organized Crime Section worked for a long period of time with many of the same law enforcement officers. Most prosecutors came to trust the officers, and did not question their veracity or methods. Many prosecutors came to view all defendants accused

of drug offenses as being guilty. The prosecutors were skeptical of any claim of innocence or police wrongdoing.<sup>6</sup> Given this attitude, some Organized Crime Section prosecutors did not provide discovery unless ordered to do so by a judge.<sup>7</sup> The classic “them against us” syndrome developed, wherein some prosecutors viewed themselves as aligned with law enforcement officers at war with defendants and defense counsel. In most instances, this led to an inadequate initial review and analysis by prosecutors of offense reports, search warrant application affidavits, drug field testing reports, and post-arrest police procedures.<sup>8</sup>

When the prosecutors questioned the primary officer involved, Mark Delapaz, about the fake drugs, they were told that the arrested persons were real drug dealers and selling real drugs, but that the real drugs had somehow been switched for fake drugs in Laredo or San Antonio.<sup>9</sup> The District Attorney files are replete with instances where Officer Delapaz lied to the prosecutors. For example, in an attempt to bolster the credibility of the confidential informants, Officer Delapaz told a prosecutor that both Enrique Alonso and Jose Ruiz had passed polygraph tests.<sup>10</sup> In fact, only one informant, Enrique Alonso had taken and passed the polygraph test. The polygraph operator has testified that Officer Delapaz lied to him about the circumstances surrounding the confidential informant, and these lies affected the outcome of the test.<sup>11</sup>

## 7.

### WHAT HAPPENED IN THE LABORATORY

Historically, approximately ten percent of all lab tests result in a negative finding, meaning no illegal substance was found.<sup>1</sup> When forensic lab reports were completed, they would be mailed or faxed to the Dallas Police Department, or picked up from the lab by a Dallas Police Department officer. The lab report would then be sent by DPD or the officer to the District Attorney's office for routing to the assigned prosecutor or investigator.<sup>2</sup> Often stacks of lab reports would be received by an investigator, and filed in the appropriate file at one time. However, sometimes the prosecutor was not advised of the receipt of the lab report or of its findings.<sup>3</sup> Relatively few of the questioned cases were set for trial. Consequently, few of these cases led to lab analyses. In addition, because these cases were assigned to various prosecutors, when the negative reports began to appear in mid-September 2001, it was more difficult for the prosecutors to recognize a pattern. There was not a central receiving person who exercised an overview of all lab reports as they came in.<sup>4</sup>

SWIFS tested the substances for quality (nature of the substance) and quantity (how much was there). The quantity often determined the seriousness of the offense and the maximum penalty upon conviction. In many of the fake drug cases the lab found that there was indeed some amount of a controlled substance present, but the amount was less than one percent, resulting in a finding of insufficient to quantitate, which is tantamount to a negative finding.<sup>5</sup> In the relevant period, SWIFS had a backlog of cases, had fewer personnel, and unless a case was designated for an immediate analysis it sometimes took months to provide a lab report.

## 8.

### **WHAT HAPPENED AFTER THE SUBSTANCES WERE DISCOVERED TO BE FAKE**

The questioned arrests began to occur in early 2001, and continued until October 23, 2001. A pattern of a greater-than-normal percentage of negative lab tests was detected by the scientists at the Southwestern Institute of Forensic Science. In late August 2001, forensic chemist Nancy Weber first detected no controlled substance in a seizure of fifty-one kilos of suspected cocaine in the Hugo Rosas case. On August 27, 2001, she communicated this by telephone to Gregg Long, Chief of the Organized Crime Section of the District Attorney's office. Her written report was sent to him on September 12, 2001.<sup>1</sup> The final report indicated thirty-seven kilos with no controlled substance, and amounts of cocaine insufficient to quantitate in the other fourteen packages.<sup>2</sup>

The Dallas Police Department learned of the Hugo Rosas lab results around the same time Gregg Long received the report from Nancy Weber. In September 2001, Deputy Police Chief John Martinez gave an order to check out the confidential informant in that case, to stop paying him, to stop using him as a confidential informant, and to take previous seizures to the lab for analysis. On September 13, 2001, Lt. William Turnage reiterated this order to Mark Delapaz. In mid-October Chief John Martinez and Lt. Turnage were notified that the confidential informant had passed a polygraph; they both nevertheless continued their order not to use or pay the confidential informant.<sup>3</sup> This information about, and order concerning, the confidential informant was not immediately transmitted to the District Attorney's office.<sup>4</sup> Moreover, there was a leadership change at the lieutenant level in the Dallas Police Department Narcotics street squad in October 2001. The new lieutenant, Lt. Craig Miller, was not aware of the problems

with the confidential informant, Officer Delapaz, his cases, or the lab reports made in connection with his cases.

The laboratory personnel were speaking to Mark Delapaz and Assistant District Attorney Gregg Long from late August forward about the nature of the substances being discovered in large multi-kilo seizure cases Officer Delapaz had filed. Throughout September, October, November, and December of 2001, Nancy Weber and other chemists at SWIFS discovered that other large seizures in the cases Officer Delapaz had previously filed contained either no controlled substance, or a controlled substance in amounts less than one percent or insufficient to quantitate.

Individual prosecutors were not initially aware of fake substances in cases not assigned to them.<sup>5</sup> The prosecutors were not aware of the common identity and alliance of Officer Delapaz's confidential informants. Therefore, they were unable to detect quickly the patterns of large cases that involved fake substances.<sup>6</sup>

A significant change occurred on September 24, 2001. On this date, Officer Delapaz arrested Jorge Hernandez for possession with intent to deliver eight pounds of suspected methamphetamine. This was the first arrest that involved a large seizure of fake methamphetamine. Before that arrest, all large fake drug seizures involved suspected cocaine. From September 24, 2001 forward, all fake drug cases involved suspected methamphetamine, with the exception of real cocaine being found in conjunction with fake methamphetamine in the Francisco Mendoza and Jose Mendoza arrests.<sup>7</sup> Officer Delapaz, a member of a single five-officer squad in the Dallas Police Department Narcotics Division, made all of the questioned arrests.

On October 18, 2001, Officer Delapaz arrested Estanislao Mendoza for possession with

intent to deliver twenty-five pounds of methamphetamine. On Oct 19, 2001, pursuant to the order of Lt. William Turnage, Officer Delapaz took one pound of the seizure to SWIFS for analysis. Anne Weaver, a chemist, performed this analysis and that afternoon reported to Officer Delapaz that the one pound contained methamphetamine in an amount that was insufficient to quantitate.<sup>8</sup>

Assistant District Attorney Gregg Long, reported that he too found out about this insufficient to quantitate report on October 19, 2001. This raised additional questions about the confidential informants that Officer Delapaz was using to make his cases. This was Gregg Long's first realization that the confidential informants in the multi-kilo fake cocaine cases Delapaz had previously filed were the same confidential informants in the new fake methamphetamine case. Mr. Long expressed this concern to Lt. Miller the next week.<sup>9</sup>

Throughout October and November 2001, the District Attorney's office began to recognize a pattern of negative lab reports. Assistant District Attorney Gregg Long was the primary contact point between SWIFS and the District Attorney's office. Based on what Officer Delapaz was saying, when District Attorney Bill Hill was briefed on the problem in October, the initial reaction was that the defendants involved were pulling a scam on the confidential informants and the police.<sup>10</sup> The prosecutors and supervisors at the Dallas Police Department thought they had a field test problem. While Gregg Long had serious questions about the confidential informants, he and other prosecutors did not think that the confidential informants or the police officers were corrupt. The police officers in question were assuring the prosecutors that these were good cases. No serious thought was given to the idea that the police officers might be lying.<sup>11</sup>

Some samples from seizures had a real controlled substance in trace amounts that were

between the layers of plastic wrapping material, which contained the fake controlled substance. If the lab report stated that a controlled substance was in fact discovered in the seizure, but it was insufficient to quantitate, one of three alternatives was followed depending on the defendant's past record and whether the case was a possession case or a delivery case: either 1) the case was dismissed, or 2) in a possession case, the defendant was offered a lenient sentence for the amount of controlled substance that had the lowest penalty range, or 3) in a delivery case, the defendant was offered a lenient sentence for delivery of a simulated controlled substance, which is a state jail felony under Texas law.<sup>12</sup>

Representatives of the District Attorney's office, the Dallas Police Department, and SWIFS met on November 20, 2001 to investigate potential training problems in the field testing procedures. The concern over how a drug sample could be reported positive on a field test by a police officer, and yet be found negative in the lab was explained by an apparent lack of training of the testing officer. This lack of training, so this reasoning went, led to improper or incorrect use of the field test kit.<sup>13</sup> The prosecutors did not suspect that reports of positive field test results might be false because no field tests were being conducted at all.<sup>14</sup> On November 28, 2001, the District Attorney's office sent the Dallas Police Department a list of false positive or "fake drug" cases, which were all filed by Officer Delapaz. On November 30, 2001, DPD opened an Internal Affairs Division investigation on Officer Delapaz and his partner, Officer Eddie Herrera.<sup>15</sup>

The cases in question involved the conduct of a small number of identified confidential informants, known only to Officer Delapaz and perhaps a few other officers. The cases also involved a small number of identified police officers from the same street squad.<sup>16</sup>

The District Attorney's office responded once the similarities were recognized in early December 2001 by designating Assistant District Attorney Eric Mountin, then Chief of the

Public Integrity Section, to gather all the suspected files and analyze each one for appropriate action. A group comprised primarily of Eric Mountin; Assistant District Attorney Steve Tokoly, Chief of the Felony Trial Bureau; Assistant District Attorney George West, Division Chief of the Organized Crime, Specialized Crime, and Welfare Fraud Sections; and Gregg Long, Chief of the Organized Crime Section, were involved in this task. All prosecutors in the Organized Crime Section also assisted in identifying such cases.<sup>17</sup> By early December, George West and Gregg Long had placed a hold on prosecuting these suspected cases.<sup>18</sup>

The prosecutors' files were gathered and secured in the Public Integrity Section's file room. DPD had resisted turning over the confidential informant files. An internal debate among the Dallas Police Department officers from Internal Affairs, Public Integrity, the Narcotics Division, and the Office of the Chief of Police began over whether the confidential informant files should be delivered to the District Attorney's office. On January 11, 2002, DPD finally delivered copies of the confidential informant files to the District Attorney's Office. This was what the District Attorney's Office needed to link all these cases together.<sup>19</sup> When the confidential informant files were delivered they were kept in the safe of the Administrative Division under the responsibility of Assistant District Attorney Kimberly Gilles. Access was limited to Ms. Gilles and her assistant. Two people were always present whenever these files were removed from the safe.<sup>20</sup>

The internal investigation by Eric Mountin's group lasted until February 2002. At the request of the District Attorney, in 2002, the FBI began a federal criminal investigation into the conduct of Officer Delapaz and the cases he filed in 2001. When the federal investigators took over, Mr. Mountin was designated as the District Attorney's representative to the FBI. Mr. Mountin is a former Special Agent with the FBI. Mr. Mountin concluded that the confidential

informants had been in charge, or “the inmates were running the asylum.” He found fault with the way the officers were not following the proper documentation procedures, the inordinate amount of money that was being paid to the confidential informants, and that a street squad was making cases of this magnitude.<sup>21</sup>

When the relevant confidential informants and police officers were identified, the alleged drugs from significant seizures they had made were sent for laboratory analysis to determine if fake drugs were present. Fortunately, almost all of the substances in the questioned cases remained available for testing in both pending and closed cases. Many of the alleged controlled substances from smaller seizures still remained in the property room. Once the problem was recognized, pending cases involving a negative lab report were dismissed.<sup>22</sup> In cases involving a negative lab report where a defendant had pleaded guilty, the District Attorney’s office agreed to a writ of habeas corpus. Then they moved to dismiss the case. As of the date of this report, thirteen writs of habeas corpus for defendants on probation and four writs for incarcerated defendants have been agreed to by the District Attorney’s office.<sup>23</sup> No innocent person in the cases in question remains incarcerated or restrained of his or her liberty.<sup>24</sup>

Dismissals of cases began in September 2001. On November 28, 2001, Greg Long faxed Lt. Craig Miller a list of questionable cases made by Officer Delapaz. Lt. Miller received the fax and took it to Deputy Chief Martinez. They agreed that an Internal Affairs investigation was appropriate. The Internal Affairs investigation was requested on November 30, 2001. A Public Integrity investigation was requested in December 2001.<sup>25</sup> By mid-January 2002, almost all of the questioned pending cases involving fake drugs had been dismissed.<sup>26</sup> In all, at least 32 persons, who were innocent of the drug offenses alleged against them had been arrested, taken to jail, and indicted.<sup>27</sup> After those cases were resolved, other cases were dismissed because the

officers in question had either signed the affidavits for search warrants or were fact witnesses in the cases.<sup>28</sup>

Eventually, 45 cases were dismissed because of the nature or quantity of the substances discovered by lab analyses. Another 64 cases were dismissed because of the identity of the confidential informant, the arresting officer, or a fact witness in the case.<sup>29</sup>

## 9.

### WHAT HAPPENED IN THE DEFENSE LAWYERS' OFFICES

In almost all of the questioned cases, defense lawyers did not suspect that the alleged controlled substances were not real.<sup>1</sup> Most defense lawyers in these cases permitted their clients to enter pleas of guilty without ever having seen the lab report to confirm the existence or quantity of such controlled substance. Instead, the defense lawyer was searching for a legal issue as a defense, such as an unlawful search and seizure. Even if the client told the defense lawyer that he or she did not possess or deliver the substance seized, the chemical composition of the substance was disregarded as a defensive issue.<sup>2</sup> If a defendant in the questioned cases had a criminal record, especially a drug-related record, often the defense lawyer would recommend a plea agreement as a matter of risk aversion (for example, an agreement for the minimum sentence of fifteen years versus a likely sentence of fifty years if convicted after a contested case).<sup>3</sup>

Many of the defendants in these cases had no prior record, and desperately needed to return to work to support their families. Different ways the cases were resolved include the defendant being released from jail and placed on probation at an early setting, in return for a plea of guilty. Alternatively, some were released from jail by receiving credit for time served in jail while awaiting trial, in return for a guilty plea. Even though these defendants did not have a prior conviction that could be used to impeach them at trial, they often elected another type of risk aversion. That is, who would believe an undocumented immigrant over a police officer at trial?<sup>4</sup> A very small number of defendants refused to take a plea agreement and stayed in jail.

## 10.

### BRIEF SUMMARIES OF CASES WHICH ILLUSTRATE HOW THE CRIMINAL JUSTICE SYSTEM REACTED

#### 10.1 Relatively Prompt

Some cases were dismissed very promptly once it was discovered that the substance was not a controlled substance. Other cases were more problematic and took far too long to be resolved.

##### 10.1(1). Jose Vega

One case that appears to be in the former category was that of Jose Vega. Mr. Vega was arrested on August 16, 2001 and charged with possession of twenty-four kilos of cocaine.<sup>1</sup> He was a mechanic, who denied guilt from the outset. He retained Cynthia Barbare as his defense attorney. She requested a lab report. She had a polygraph test administered to Mr. Vega, which he passed.<sup>2</sup> The case was eventually assigned to Assistant District Attorney Marquite Washington. The lab report was received on October 31, 2001, indicating no controlled substance. Ms. Washington dismissed the case on November 12, 2001.<sup>3</sup>

##### 10.1(2). Abel Santos

Another example of prompt response by counsel for both sides is that of Abel Santos. Factually, the scenario was very similar to that of Jose Vega. Mr. Santos was also a mechanic with limited assets. He was accused of possessing twelve kilos of cocaine and was arrested on July 16, 2001. He too denied his guilt. Mr. Santos's court appointed attorney recommended he accept a plea agreement. Mr. Santos fired that lawyer and retained Ms. Barbare.<sup>4</sup> She again asked for a lab report. The results came back on October 31, 2001 indicating no controlled substances.<sup>5</sup> The case was dismissed by Assistant District Attorney Gregg Long on November

1, 2001.

## 10.2 Too Slow

### 10.2.(1). Jacinto Mejia

A case that was eventually dismissed, but took too long to process, was that of Jacinto Mejia. He was arrested on May 22, 2001, on charges of possession of fifteen kilos of cocaine.<sup>6</sup> Mr. Mejia owned a mechanic shop and had few financial resources. Mr. Mejia retained Tony Wright as defense counsel. Mr. Wright had a polygraph test administered by the same examiner who polygraphed Mr. Vega. Mr. Mejia passed the polygraph. The examiner told Mr. Wright to contact Cynthia Barbare because of the similar fact pattern. Mr. Wright approached Assistant District Attorney Gregg Long for a dismissal, but was unable to obtain one. He explained in detail all the factors that indicated this was not a major drug dealer situation. Gregg Long, knowing this was a Mark Delapaz case, told Mr. Wright that the officer had been the Officer of the Year.<sup>7</sup> The lab report came back with no controlled substance. An offer was made for a plea to delivery of a simulated controlled substance and the case was reindicted for that offense. Mr. Mejia refused to plead guilty.<sup>8</sup> That indictment was eventually dismissed on January 16, 2002.<sup>9</sup>

### 10.2.(2). Daniel Licea and Denny Ramirez

An example of where counsel for both sides were frustrated with this situation, and where each side believed its course of action was justified, is that of Daniel Licea and Denny Ramirez. They were arrested on August 7, 2001 for possession of seventy-one kilos of cocaine. This was one of the largest drug cases in Dallas history.<sup>10</sup> Both were represented by court-appointed attorneys: Mr. Licea by Reynaldo Chavez and Mr. Ramirez by Adrianna Martinez Goodland.<sup>11</sup> The defendants were day laborers waiting for work when they were approached by a man in a vehicle who asked if they wanted work. They replied they did and were told to drive a van to a Jack-in-the-Box located at the corner of Illinois and R. L. Thornton Fwy. They met Officer

Delapaz, in an undercover role, and Enrique Alonso there. They had a confusing discussion about what they were to do. They were then told to get back in the van and follow Officer Delapaz and Mr. Alonso. As they drove the van away, it was stopped by the police, and the seventy-one kilos were discovered in the back of the van, covered by a blanket.<sup>12</sup>

Both men insisted to their lawyers that they were not involved with controlled substances.<sup>13</sup> The case was turned over to Assistant District Attorney Gregg Long because of the amount of “drugs.” Both sides wanted a lab report. Neither the defendants, nor the lawyers, suspected fake drugs. The defense wanted a trial.<sup>14</sup> Because of their immigration status, bond was set at \$1,000,000.00 for each defendant.<sup>15</sup> The lab results came to the District Attorney’s office in October 2001, indicating no controlled substance.<sup>16</sup> There was never an agreement to plead guilty. In this instance, a videotape existed. Both defense lawyers speak Spanish. They wanted to review the video, as did the prosecutor.<sup>17</sup> Gregg Long asked Mark Delapaz, the case agent, numerous times to produce the video. The case was reset four times to enable Mark Delapaz to bring it to court. Gregg Long promised to review the tape over Thanksgiving because he had been in trial since the lab report came back.<sup>18</sup>

When the defense lawyers saw the video and heard the Spanish audio portion, they were convinced no crime had occurred. They believed the tape did not match the police report at all.<sup>19</sup> Gregg Long believed the tape showed the delivery of a simulated controlled substance, a state jail felony, and even offered a plea agreement for a misdemeanor.<sup>20</sup> The defense lawyers believed Gregg Long’s supervisors prohibited a dismissal in the case, but he did agree to personal recognizance bonds during a court setting on December 5, 2001.<sup>21</sup> After the personal recognizance bonds were made, the Immigration and Naturalization Service deported Mr. Licea and Mr. Ramirez.<sup>22</sup>

The news media made several attempts to obtain a copy of the videotape, which the defense counsel resisted. Eventually, in December, the story was run, without the videotape. To defense counsel, the story made the defendants look guilty. Again, they asked Gregg Long to dismiss the cases, but when he refused, the defense attorneys again believed his supervisors had taken away his authority to do so. To this day, defense counsel trust Gregg Long and do not blame him for the refusal to dismiss.<sup>23</sup> At a year-end press conference held by then Chief of Police Terrell Bolton, a display of guns created the false impression there had been weapons involved in this case. Afterwards, defense counsel provided a copy of the videotape to the media, which ran on television on January 8, 2002.<sup>24</sup> The cases were dismissed January 16, 2002.<sup>25</sup>

#### 10.2.(3). Arturo Villareal

An example where the system failed again is the case of Arturo Villareal. Mr. Villareal was arrested for possession of cocaine on March 20, 2001.<sup>26</sup> He denied the allegation to his court-appointed lawyer, Rick Magnis. However, Mr. Villareal had a prior conviction. Assistant District Attorney Dan Benavides volunteered to get a lab report. Mr. Benavides offered a plea agreement for probation and to tell the judge that he and Mr. Magnis both knew Mr. Villareal would be deported.<sup>27</sup> On July 2, 2001, Mr. Villareal decided to accept the plea agreement and go home.<sup>28</sup> He was promptly deported. In March of 2002, Dan Benavides showed Rick Magnis a lab report he had received indicating no controlled substance was found. He suggested to Mr. Magnis that he file a writ of habeas corpus and obtain a dismissal.<sup>29</sup> As of August 18, 2004, the District Attorney's office had agreed to thirteen Article 11.05 writs for defendants on probation. Mr. Magnis had not filed a writ for Mr. Villareal by this date. He said it was not intentional.<sup>30</sup> As far as is known, Mr. Villareal is not in the United States, and he still has a felony conviction

on his record.

### 10.3 Justice Delayed

#### 10.3.(1). Jorge Hernandez

On September 24, 2001, the nature of the fake drug cases Officer Delapaz made with these confidential informants changed. This occurred with the arrest of Jorge Hernandez and involved the first large seizure of suspected methamphetamine. A search warrant was obtained on September 24, 2001. Eight pounds of alleged methamphetamine were seized.<sup>31</sup> On December 3, 2001, Marquite Washington requested the evidence be sent to the lab for analysis. On January 7, 2002, SWIFS notified Assistant District Attorney Gregg Long that the substance had methamphetamine in an amount insufficient to quantitate. On January 9, 2002, Mr. Hernandez was released on a personal recognizance bond. Assistant District Attorney Marquite Washington dismissed the case on January 16, 2002.<sup>32</sup>

#### 10.3.(2). Betty Jenkins

A case, which clearly demonstrates the dilemma of an innocent person who pleads guilty to avoid the risk of a greater sentence because of a prior conviction, is that of Betty Jenkins. Ms. Jenkins, who has several prior drug-related convictions and a long arrest and conviction history, was arrested on April 18, 2001 for possession of cocaine of over 400 grams. This amount that carries a sentence range of fifteen years to life in the penitentiary.<sup>33</sup> She told her court-appointed lawyer, Brett Martin, that she had let another woman use the restroom. Later a police officer came to her residence with a search warrant and found something in her bathroom. She denied possessing any drugs. Given her record, on August 17, 2001, she opted to plead guilty in hopes of receiving deferred adjudication with treatment as a condition of probation. She even concocted a story to tell the judge so that he would accept her guilty plea. She received a fifteen-

year sentence, not probation, and went to prison.<sup>34</sup>

Only after this scandal broke in late December 2001, was the “evidence” tested by the lab. On February 7, 2002, SWIFS reported no controlled substance in the seizures from Ms. Jenkins’ case.<sup>35</sup> Assistant District Attorney Layne Jackson called Brett Martin, to let him know of the lab results. Assistant District Attorney Karen Wise of the District Attorney’s appellate section agreed to a writ of habeas corpus.<sup>36</sup> On February 5, 2003, the writ was granted. The case was dismissed on March 14, 2003.<sup>37</sup> Ms. Jenkins spent nineteen months in custody for a crime she did not commit. Her lawyer feels terrible about it, but neither he nor Ms. Jenkins ever had a reason to challenge the composition of the substance.<sup>38</sup> A request for a lab report however, would have prevented this injustice.

Ms. Jenkins is another example of a citizen who is poor, under-educated, helpless, and unable to mount a defensive attack in the criminal justice system. She chose to avert the risk.

## 11.

### **EXAMPLES OF THE BEST AND WORST PERFORMANCE OF DUTY**

#### **BY PROSECUTORS AND DEFENSE COUNSEL**

Some prosecutors took their responsibility to correct the injustices that occurred in the questioned cases very seriously. Others took it less seriously. The case with the most commendable conduct by a prosecutor involved Kristen O'Brien Tinajero. She, upon learning in February 2002 that a case had been dismissed due to the identity of the arresting officer, found that a co-defendant had pleaded guilty and was on probation. She contacted the defense counsel, Roberto Dueno, and advised that the State would agree to a writ of habeas corpus. She contacted him again in April, and then in June. When no writ had been filed, she personally typed the writ and order and walked them through to the court for signature, all in one day.<sup>1</sup>

The case with the most troubling conduct by a prosecutor involved a case with co-defendants Joy Everett and Patrick Grogan. This is not one of the drug cases associated with Officer Delapaz and the same confidential informants, but it does involve the same street squad. The defendants were arrested in May 2001 and released on bond by August 2001.<sup>2</sup> The prosecutor in those cases, Vanita Budhrani White, ordered a lab analysis of suspected methamphetamine in August 2001. The lab report was retrieved by the Dallas Police Department in September 2001 indicating that no controlled substance was found.<sup>3</sup> That same month, Johnny Gussio, the court-appointed defense lawyer for Patrick Grogan, advised the prosecutor and the arresting officer that his client claimed the substance was flour. The police officer, a one-time partner of Officer Delapaz, told the defense lawyer that he had field tested the evidence and it was methamphetamine. The prosecutor told the defense lawyer she had received the lab report and the drugs were real.<sup>4</sup> As a result, the cases did not go to trial. Instead, Mr.

Grogan and Ms. Everett began to work for the arresting officer as confidential informants to receive credit on their own cases (“work off the case”). While Mr. Grogan told his lawyer, Johnny Gussio, and Ms. Everett told her retained lawyer, Doug Wilder, that the drugs were not real, both defense lawyers trusted the prosecutor and relied on her statement that the lab report indicated the drugs were real.<sup>5</sup> Neither defense lawyer asked for a copy or even to see the lab report. The prosecutor had placed a copy of the September 2001 report in the Everett file without reading it.<sup>6</sup> Ms. Everett was later arrested on a new charge and incarcerated. Another copy of the September 2001 lab report was faxed on January 23, 2002, to the investigator in that case, Mark Murphy. He also placed it in the file without reading it.<sup>7</sup> On January 30, 2002, Ms. Everett hired a new defense lawyer, Cynthia Barbare. Ms. Barbare visited the prosecutor on January 31, 2002, and asked to see a copy of the lab report. The prosecutor went to retrieve the lab report, read it, and discovered the negative results. Four and a half months after the lab found the sample to contain no controlled substance, both cases were dismissed within an hour of the belated discovery of the contents of the lab report.<sup>8</sup> No disciplinary action was taken against Ms. White or Mr. Murphy.<sup>9</sup>

## 12.

### REMEDIAL ACTIONS WHICH WERE TAKEN

#### 12.1 District Attorney's Office

In January 2002, the District Attorney ordered certain actions to be taken, the most significant of which was the requirement that all drug cases were to have the suspected substance analyzed in the laboratory before an indictment was sought. In November 2002, the District Attorney modified that policy to permit a defense waiver of testing before indictment if the defendant and defense attorney requested it. This change was designed to permit a defendant who knew the substance was illegal to reach a favorable plea agreement and resolve the case more quickly. It was restricted to third degree felony and state jail felony cases.<sup>1</sup> Personnel changes were made in the District Attorney's office to rotate prosecutors in and out of the Organized Crime Section.<sup>2</sup> A prosecutor is now assigned to monitor confidential informants by number for patterns and problems, including amounts paid to confidential informants. An administrative chief prosecutor must now approve any new confidential informant who wants to "work off" his or her own drug case.<sup>3</sup>

In early 2002, the District Attorney's office contracted with Magellan Research Corporation to conduct a comprehensive Operations Analysis Project. This was performed from May 15, 2002 to May 15, 2003. It resulted in an Evaluation Summary and Recommendations in July 2003, as well as an extensive Comparative Report of the budget, staff, salary, and workload of the Dallas County District Attorney's office. The Dallas County office was compared to the nine district attorney's offices in the country serving larger populations, as well as the nine districts that were smaller but closest in size to Dallas County. It used statistics generated in 2001 by the National Survey of Prosecutors, done by the Bureau of Justice Statistics. The report

made national comparisons and comparisons within the State of Texas.

Without going into detail, which is beyond the charge of this Deputy Special Prosecutor's investigation, it should be noted that the outside research was in fact done, it found no major deficiencies in the office, and it submitted over seventy recommendations for improving efficiency and effectiveness.<sup>4</sup> The focus of that effort was different from the focus of this investigation by the Deputy Special Prosecutor.

Another reoccurrence prevention effort implemented in the District Attorney's office is that they now send a letter to the cognizant Deputy Chief of Police at the Dallas Police Department whenever a SWIFS lab report is received which conflicts with the Dallas Police Department prosecution report. This includes differences in the type or weight of the substance seized or that the lab analysis showed no controlled substance when the field test indicated there was a controlled substance. This letter also indicates whether the discrepancy requires immediate release of an incarcerated suspect, or if a discrepancy in weight or nature of the substance affects the penalty group or severity of the charged offense.<sup>5</sup>

## 12.2 SWIFS

SWIFS hired more personnel and revised their procedures in an attempt to reduce the processing time. At the time of this Investigation, a lab report can be produced approximately eleven days from receipt of the evidence by SWIFS.<sup>6</sup> Hard copies of lab reports are still produced, but the lab report is entered into a computer database the day it is produced. This is immediately available to the District Attorney's office (via computer). The defense bar does not have access to lab reports via computer at this time.<sup>7</sup> There is an assigned prosecutor with the responsibility to monitor the lab processing of all drug cases.<sup>8</sup> SWIFS is continuing its policy of testing all samples qualitatively and quantitatively. Presently, they are in the finishing stage of

developing a single test that will accomplish both objectives, at the cost of the existing qualitative test alone.<sup>9</sup>

13.

**PRINCIPLES OF LAW WHICH GUIDED  
THIS PHASE OF THE INVESTIGATION**

Judges serving as magistrates issuing search or arrest warrants are to be neutral and detached in order to uphold the federal and state constitutional requirements prohibiting unreasonable searches and seizures and arrests without probable cause. United States v. Leon, 468 U.S. 897, 914 (1984). All prosecutors are constitutionally and statutorily required to provide to the defense any evidence that is exculpatory or mitigating as to guilt or punishment, and evidence that can be used as impeachment of State witnesses. Brady v. Maryland, 373 U.S. 83 (1963); United States v. Bagley, 473 U.S. 667 (1985); Kyles v. Whitley, 514 U.S. 419 (1995); Wyatt v. State, 23 S.W.3d 18, 27 (Tex. Crim. App. 2000); TEX. CODE CRIM. PROC. art. 2.01. All criminal defense counsel are ethically required to provide the client with a zealous defense, to include a full investigation of the facts and the law, and are required to be prepared for a trial or a resolution by a plea agreement. See Strickland v. Washington, 466 U.S. 668 (1984); Flores v. State, 576 S.W.2d 632, 634 (Tex. Crim. App. 1978). The client, after advice from counsel, is to make the decisions whether to plead not guilty, guilty, or no contest; whether to be tried by a jury or a judge without a jury; whether to testify or remain silent; and whether to appeal. Burnett v. State, 642 S.W.2d 765, 768 n.8 (Tex. Crim. App. 1982).

The defense is entitled to pretrial discovery of physical evidence and access for scientific testing. Gabriel v. State, 900 S.W.2d 721, 722 (Tex. Crim. App. 1999) (en banc); Cf. Massey v. State, 933 S.W.2d. 141, 153 (Tex. Crim. App. 1996). Proof beyond a reasonable doubt of the existence of an actual controlled substance is an element of an offense involving either possession or delivery of a controlled substance. Cawthon v. State, 849 S.W.2d 346, 348-49

(Tex. Crim. App. 1992) (en banc). Proof beyond a reasonable doubt of the amount of a controlled substance is required to establish the sentencing range in such a case. Id.

## 14.

### POTENTIAL CRIMINAL LAW VIOLATIONS EXAMINED

#### 14.1 Offenses Examined

This Investigation examined every offense that the Texas Penal Code contains that reasonably could apply to the facts discovered during the Investigation. The elements of those offenses, penalty classifications, and statutes of limitations, are listed below. “Elements” are the things the Deputy Special Prosecutor would have to prove beyond a reasonable doubt to a jury to obtain a conviction.

##### 14.1(1). § 36.05 – Tampering with a Witness

A. Elements: The offense of tampering with a witness is committed if a person:

- 1) with intent to influence the witness or prospective witness
- 2) coerces a witness or prospective witness
- 3) by (the indictment must specify what the defendant did to coerce the witness)
- 4) in an official proceeding
  - a. to testify falsely;
  - b. to withhold any testimony, information, document, or thing;
  - c. to elude legal process summoning him to testify or supply evidence;
  - d. to absent himself from an official proceeding to which he has been legally summoned; or
  - e. to abstain from, discontinue, or delay the prosecution of another.

B. This is a state jail felony (maximum two years in state jail facility)

- C. The statute of limitation is three years.
- 14.1(2). § 37.02 – Perjury
- A. Elements: The offense of perjury is committed if a person:
    - 1) with intent to deceive and
    - 2) with knowledge of the statement’s meaning
    - 3) makes a false statement under oath and
    - 4) the statement is required or authorized by law to be made under oath.
  - B. This is a class A misdemeanor (maximum one year in county jail).
  - C. The statute of limitations is two years.
- 14.1(3). § 37.03 – Aggravated Perjury
- A. Elements: The offense of aggravated perjury is committed if a person:
    - 1) commits perjury and
    - 2) the statement is made during or in connection with an official proceeding
    - 3) and the statement is material
  - B. This is a third degree felony (maximum ten years in prison).
  - C. The statute of limitations is two years (by case law).
- 14.1(4). § 37.09 (a)(1)-(2) – Tampering with or Fabricating Physical Evidence
- A. Elements: The offense of tampering with or fabricating physical evidence is committed if a person:
    - 1) knowing that an investigation or official proceeding is pending or in progress
      - a. alters, destroys , or conceals any record, document, or thing
      - b. with intent to impair its verity, legibility, or availability as

evidence in the investigation or official proceeding;

or

- 2) knowing that an investigation or official proceeding is pending or in progress
  - a. makes, presents, or uses any record, document, or thing
  - b. with knowledge of its falsity and
  - c. with intent to affect the course or outcome of the investigation or official proceeding.

B. This is a third degree felony (maximum of ten years in prison).

C. The statute of limitations is three years.

14.1(5). § 37.10 (a)(1)-(3) – Tampering with Governmental Record

A. Elements: The offense of tampering with governmental record is committed if a person:

- 1) knowingly makes a false entry in, or false alteration of, a governmental record;
- 2) makes, presents, or uses any record, document, or thing
  - a. with knowledge of its falsity and
  - b. with intent that it be taken as a genuine governmental record;

or

- 3) intentionally destroys, conceals, removes, or otherwise impairs the verity, legibility, or availability of a governmental record; and
- 4) acts with intent to defraud or harm another.

B. This is a state jail felony (maximum two years in state jail facility)

C. The statute of limitations is three years.

14.1(6). § 39.03 – Official Oppression

A. Elements: The offense of official oppression is committed if a person is:

1) A public servant acting under color of his office or employment and

a. intentionally subjects another to mistreatment or to arrest, detention, search, or seizure

b. that he knows is unlawful

or

2) A public servant acting under color of his office or employment and

a. intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity

b. knowing his conduct is unlawful

B. This is a class A misdemeanor (maximum one year in county jail).

C. The statute of limitations is two years.

14.1(7). §39.04 (a)(1) Violation of the Civil Rights of Person in Custody

A. Elements: The offense of violation of the civil rights of person in custody is committed if a person is:

1) a peace officer and intentionally:

a. denies or impedes a person in custody in the exercise or enjoyment of any right, privilege, or immunity

b. knowing his conduct is unlawful.

B. This is a Class A misdemeanor (maximum one year in county jail).

C. The statute of limitations is two years.

14.1(8). §15.02 – Criminal Conspiracy to commit any of the foregoing felony offenses

A. Elements: The offense of criminal conspiracy is committed if a person:

- 1) with intent that a felony be committed
  - a. agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense; and
  - b. he or one or more of them performs an overt act in pursuance of the agreement

B. In this case,

- 1) Conspiracy to Commit Tampering with or Fabricating Physical Evidence is a state jail felony (maximum two years in state jail facility);
- 2) and Conspiracy to Commit Tampering with a Witness or Tampering with Governmental Record is a Class A misdemeanor (maximum one year in county jail).

C. The statute of limitations for a state jail felony is three years, and for a Class A misdemeanor is two years.

14.1(9). § 71.02(a)(9) – Engaging in Organized Criminal Activity

A. Elements: The offense of engaging in organized criminal activity is committed if a person:

- 1) with the intent to establish, maintain, or participate in a combination or in the profits of a combination commits or conspires to commit one or more of the following:

- a. any offense under Chapter 36;

B. Engaging in Organized Criminal Activity to Commit Tampering with a Witness

in this case would be a third degree felony (maximum – ten years in prison).

C. The statute of limitations is three years.

#### 14.2 FBI Investigation

There was a federal investigation into the “fake drug cases,” which included examining some of the conduct that was reviewed by the Deputy Special Prosecutor. The United States Attorney for the Northern District of Texas, Jane Boyle, recused her office, and the case was assigned to the Department of Justice Civil Rights Section. The federal authorities requested in January 2002 that the internal investigation by the Dallas Police Department cease while the FBI was working on the federal investigation.<sup>1</sup> It was conducted from January 2002 until the resulting federal criminal trial ended in November 2003, a period of almost 23 months. It led to guilty pleas by three confidential informants and the trial of Officer Delapaz, who was acquitted of civil rights violations.<sup>2</sup> The statute of limitations for all misdemeanors and aggravated perjury expired before the Deputy Special Prosecutor was sworn in on February 18, 2004.

## 15.

### WHY EVENTS OCCURRED AS THEY DID

#### 15.1 Obtaining these Search Warrants

The almost identical wording of the probable cause paragraphs in the supporting affidavits indicates use of a form affidavit (the so-called “go by” affidavit – it worked before, so copy it or “go by” it). The procedure used permitted judge-shopping. That is, taking an application rejected by one judge to a second judge. When an affidavit is based on a confidential informant’s information, additional detail is needed about the credibility of the confidential informant. The affidavits used in these cases contain hardly any detail about the confidential informant. This lack of detail fails to provide the approving judge an accurate picture of the credibility of the informants in these cases.

Furthermore, the use of telephonic double hearsay affidavits has the undesirable consequence of insulating the police officers involved from perjury charges. Only the officer presenting the affidavit to the judge takes an oath regarding the truth of the affidavit. Later, this officer can simply say, “I just passed on what officer so-and-so said the confidential informant said.” This process arguably protects both officers involved from being held accountable for the information in the affidavits.

#### 15.2 Prosecuting these Cases

The role of the public prosecutor is to ensure that justice is done. It is a noble calling entitled to great respect and support. Experienced prosecutors like George West, Gregg Long, Marquite Washington, and Layne Jackson should have recognized that in seizures of this size, it is highly unusual to have a confidential informant who is not physically under surveillance, wired for sound, or recorded on video. It is also improper police procedure to fail to search a

confidential informant before and after a transaction, or fail to account for marked money. However, Mark Delapaz was telling the Assistant District Attorneys that he was searching the confidential informants before and after a transaction. Therefore, the Assistant District Attorneys had no reason to suspect that the informants were not being searched and that an officer was being dishonest with them.<sup>1</sup>

More importantly, the Chief of the Organized Crime Section, Gregg Long, realized on October 19, 2001 that there was a problem in Officer Delapaz's cases because both cocaine and methamphetamine cases were coming back as "fake drugs."<sup>2</sup> Nonetheless, he failed to establish a sense of urgency in his section, with SWIFS, or with the Dallas Police Department, that was commensurate with the problem he was facing.

Gregg Long received a one pay level demotion to Chief of a felony court. As previously noted, he was too slow to react and took too long to "connect the dots."<sup>3</sup> Some of the factors that Gregg Long should have noticed sooner include the fact that the confidential informants appeared to have no relationship or history with the defendants, yet large quantities of drugs were always fronted on consignment with no exchange of money. Officer Delapaz did not collect any intelligence on the defendants. The arrests involved the same officers and the same problems with field testing. Furthermore, the arrestees did not have any assets, they had no weapons in their possession, no guard dogs, no counter surveillance, no protection for hundreds of thousands of dollars of drugs, and nearly all of the arrests had the same scenarios (i.e. an abandoned car or a garage).

However, Gregg Long should not have been the only supervisor disciplined. His superiors, including George West, bear much responsibility. Mr. West should have been looking at the same dots at the same time. George West had his responsibility for supervising the

Organized Crime Section taken away, but remained at the same pay level.<sup>4</sup> The captain of the ship, District Attorney Bill Hill, is ultimately responsible for what happens on his watch. It is noted that George West and Marquite Washington are no longer employed as assistant district attorneys.<sup>5</sup> The decision to discipline only George West and Gregg Long, and no other prosecutor or investigator, is questionable, at best. Other persons that should have been disciplined include Vanita Budhrani White and Mark Murphy.

There was conflicting information about the procedures followed and the authority of individuals to dismiss these cases once the problem was recognized. Some reported that there was no problem in obtaining dismissals from George West, Gregg Long, Marquite Washington, or Layne Jackson.<sup>6</sup> Others stated there was an institutionalized “culture,” existing before the current leadership of the District Attorney’s office arrived, not to dismiss cases. According to the latter group, this resistance led to lengthy delays in dismissing some cases that needed to be dismissed sooner. Some thought that Layne Jackson, Marquite Washington, and even Gregg Long were restricted from dismissing cases by their superiors.<sup>7</sup> While there is evidence on both sides, the events themselves indicate that these prosecutors acted promptly in some cases and others were not dismissed expeditiously. Therefore, it can reasonably be inferred that dismissal authority was retained at too high a level within the District Attorney’s office; thus preventing more rapid dismissals.

A major flaw in the questioned cases was the non-existence of the scientific safeguard of a laboratory analysis of suspected contraband before indictment. If a defendant did not know of the presence of an alleged controlled substance that was fake, or did not participate in a delivery of an alleged controlled substance that was fake, he or she would not know to challenge the chemical composition of the substance, nor would the defense lawyer. Without this knowledge,

a defendant was left with limited options.

The overwhelming majority of innocent defendants caught in this trap were among the community's most vulnerable persons: non-English speaking, poor, under-educated, fearful, often undocumented immigrants who did not have the resources or familiarity with the criminal justice system needed to mount a defense.<sup>8</sup> Prosecutors should have immediately suspected something was amiss when huge amounts of alleged controlled substances were being possessed or sold by people who had no indications of assets commensurate with drug dealer profits. The fact that court-appointed lawyers represented almost all of these defendants should have alerted seasoned prosecutors that something did not add up. Most individuals involved in real drug distribution schemes of this magnitude have the funds themselves or are provided funds by others involved in the organization to at least hire more experienced defense lawyers. Many of these defendants just wanted to go home to their families and jobs, so they took plea agreements for probation or very short sentences merely to end the ordeal quickly. Others merely elected a course of risk aversion. For example, Hugo Rosas, Jaime Siguenza, Pablo Olin, Arturo Villareal and Betty Jenkins each pleaded guilty in order to avoid the risk of trial. In Betty Jenkins case, she agreed to plead guilty and was sentenced to 15 years in the penitentiary, instead of the 25 or more years that were possible if she had gone to trial and lost.

The prosecutors in the Organized Crime Section were over-loaded and had far too many cases to handle properly.<sup>9</sup> This led to inexcusable neglect in some cases. For example, there is no excuse whatsoever for failing to read a lab report before filing it. Funding must be provided to the Dallas County District Attorney to hire and train enough additional prosecutors and investigators to permit individual prosecutors to have a caseload that permits sufficient time to execute properly this important public function. The Dallas County District Attorney's office

should have an open-file discovery policy, which would permit the defense lawyer to review everything in the file except for the prosecutor's notes and other examples of his or her work product. This procedure does not hinder prosecution of a valid case. This Deputy Special Prosecutor's experience is that this policy leads to plea agreements in the cases where the evidence is solid, and alerts the prosecutor to weaknesses if any exist.<sup>10</sup> The Deputy Special Prosecutor is aware that the District Attorney believes an open-file policy exists, but it has not filtered its way down to the courtroom line prosecutor level.

Both prosecutors and defense lawyers feel pressure to move cases quickly. This can lead to injustices such as the ones in these questioned cases. This pressure is felt more acutely by the prosecutor who appears regularly before the same judge, and by some appointed counsel who may depend in large part on a particular judge or judges for his or her livelihood.

Prosecutors must overcome the natural tendency to become complacent with police officers, thereby losing their objectivity. Having the same supervising prosecutors working with the same law enforcement officers over an extended period contributed greatly to the delay in responding to these cases once negative lab reports began to be received. Prosecutors should have questioned why there were no confessions and no attempts to elicit confessions in the police offense reports. Questions should have been raised as to the absence of witness interviews or attempts to locate the source or supplier of these large amounts of alleged drugs. In possession cases in which the defendant had no record and no attributes of a big-time drug dealer, results of "insufficient to quantitate" should have been distrusted because of the unlikely probability that the defendant was scamming the confidential informant or was using a wrapping from prior drug deals.

Ms. Kristen O'Brien Tinajero executed her duty as a prosecutor in seeking dismissal of

the case of a defendant for three and one-half months, after the defense lawyer failed to do so. She is to be commended, and her conduct should serve as a model of what a prosecutor should do.

Ms. Karen Wise did the right thing in agreeing to thirteen post-conviction writs of habeas corpus where defendants had been placed on probation, and four when they had been incarcerated.

There was no excuse for Vanita Budhrani White to fail to read a negative lab report, or worse, to imply to the defense lawyers that the report was positive. Vanita Budhrani White should have been disciplined in some way, even if no intent to harm the defendant was found by the District Attorney's office. Failure to even note the matter in a performance evaluation was inappropriate. This is especially significant since the great majority of these cases were dismissed two weeks before discovery of this negative lab report. As previously noted, rather than being disciplined, Ms. White has been promoted.

### 15.3 Defending These Cases

It is a calling of the highest order to vigorously defend those accused of crime, and it is the defense lawyer's role to ensure that only the guilty are punished, and the innocent go free. Much of the "blame" in this series of events must fall on the shoulders of the defense lawyers, who did not thoroughly investigate the cases before participating in guilty pleas by innocent clients. At a minimum, a defense lawyer in a drug case with a first-offender client charged with possession or delivery of a very large amount of drugs, or in a case carrying a possible life sentence, should request a lab report. In any case, where the client states that the nature of the substance is not illegal, or the amount charged is wrong, an independent analysis should be sought.

When a defendant insists on following a procedure of risk aversion, without allowing the defense lawyer time or resources to do a proper investigation, or where the client insists he or she is not guilty but nonetheless wants to get out of jail and go home that day, the defense lawyer should strongly encourage the use of a no contest plea, which is permitted by Article 27.02 of the Texas Code of Criminal Procedure.

Ms. Cynthia Barbare, Mr. Rey Chavez, Ms. Adriana Martinez Goodland, and Mr. Tony Wright rendered superb service to their clients by their persistence. Their conduct should serve as a model of what a criminal defense lawyer should do. Roberto Dueno, the criminal defense lawyer who failed to file a writ of habeas corpus for three and one-half months after notification that the State would agree to it, and Rick Magnis, who had not done so after the passage of over twenty-eight months, rendered extremely inadequate representation.

## 16.

### HOW TO PREVENT A REOCCURRENCE

#### 16.1 The Municipal Court Judges

It is recommended that a policy be established which requires that a second application for a search warrant be presented to the same judge who denied the first application, if that judge is available. Another option would be to have the forms reprinted to include a block identifying the application as a first or subsequent application. Judges should require a good deal more detail about the credibility of an unnamed confidential informant's past reports to law enforcement. For example, the number of arrests made based on prior reports in a certain period, the number of convictions as a result of the arrests, and similar information. Judges should strictly scrutinize the use of hearsay within hearsay if the original source is not named or is identified only as a confidential informant not supported by indicia of reliability, as opposed to an undercover law enforcement officer as the original source.

#### 16.2 The Dallas County District Attorney's Office

Since any charge or sentence reduction is ultimately up to the prosecutor, any agreement or contract with a confidential informant to work off a case should be approved in advance by a prosecutor. Prosecutors in drug cases involving such large amounts of alleged drugs should review the facts with a more critical eye if the arrested defendant was not questioned about his source, or no interrogation of witnesses occurred at all. Prosecutors should cast a skeptical eye on cases involving controlled confidential informants with no physical surveillance, no audio or video recording, no search before and after the transaction, no accounting for marked money, or no other reliable means of corroboration. Training in the handling of cases of this magnitude must be implemented. In cases where a defense lawyer is not providing effective representation,

prosecutors must always keep one eye on the record, to avoid obtaining a conviction that is later overturned for ineffective assistance of counsel. Training should be conducted in every division to give both new and more experienced prosecutors a clear understanding of the pre-trial duty to disclose exculpatory and impeachment evidence. The District Attorney's open-file philosophy should be turned into reality by supervision from the highest level down the chain of command to the junior supervisors, who in turn should supervise the courtroom prosecutors to ensure compliance with this policy. The District Attorney should implement the policy that no contest pleas are acceptable in certain circumstances. Prosecutors should be reassigned to different divisions on some published schedule, so that a change of position is perceived as expected rather than as a measure of discipline. The District Attorney should submit a documented request for funds to hire a specific number of additional prosecutors and investigators to obtain a caseload distribution suggested by national organizations of prosecutors for a metropolitan county with similar demographics to Dallas County.

The biggest problem with the operations of the District Attorney's office during these events was that there was insufficient communication among the prosecutors. Once the fact that more than one case involving unusually large amounts of fake drugs had been discovered by SWIFS was communicated to the District Attorney's office and to the Dallas Police Department, the problem should have been apparent and led to a more expeditious solution. The components of the system, SWIFS, the police department, and the prosecutors must communicate better with each other. There must be cooperation among all the departments.

### 16.3 The Dallas County Criminal Defense Bar

Training should be conducted at Dallas Criminal Defense Lawyers Association seminars regarding the duty of defense attorneys to investigate and prepare a case for trial or plea

negotiations. Training events for those who apply for appointments under the Fair Defense Act should include similar training. When a client insists he or she is innocent, but nevertheless is adamant about accepting a plea offer, the no contest option should be utilized. This would avoid permitting the client essentially to commit perjury when telling the court that all elements of the offense are true and the guilty plea is being entered because the client is guilty when it is not true.

#### 16.4 The Southwestern Institute of Forensic Science

A significant safeguard in the prosecution or defense of a drug case is the neutral lab expert. The approximately eleven-day turn-around time currently existing is a dramatic improvement. Determining the quantity of the controlled substance is a worthwhile procedure. SWIFS personnel should ask the District Attorney's office to identify clearly drug samples from defendants who are incarcerated, and place those cases at the head of the testing queue. They should use the new combined testing technique, which is the cost of the qualitative test, for samples less than a gram. Different layouts for lab reports should be used to identify, at a glance, that a report contains a negative test result. Using two different forms and formats will ensure that a positive report will not look like a negative report. This should be followed up with a documented phone call.

17.

## CONCLUSIONS

The primary mandate of this Deputy Special Prosecutor was to determine if any criminal law violations were committed by municipal court judges, prosecutors, defense counsel, or SWIFS personnel. There was no evidence of criminal intent by these individuals. The Investigation did not find coercion; intent to deceive; intent to alter, conceal or impair any record; knowingly making false entries or statements; intent to defraud or harm another; intent to illegally detain or deny any right; any agreement with another to commit any offense; or intent to violate the criminal law.

No probable cause exists to suspect that any crime was committed by any municipal court judge involved in the questioned cases. No probable cause exists to suspect that any crime was committed by any prosecutor involved in the questioned cases. No probable cause exists to suspect that any crime was committed by any criminal defense lawyer involved in the questioned cases. No probable cause exists to suspect that any crime was committed by any SWIFS personnel in the questioned cases.

No prosecutor knowingly allowed any defendant to plead guilty if the prosecutor knew the defendant was an innocent person. When the prosecutors pursued a lesser-included offense (*see e.g.* Hugo Rosas, Jaime Siguenza) the prosecutors believed the defendants were at least guilty of delivery of a simulated controlled substance. Those beliefs were based on representations that Officer Delapaz made to the prosecutors and the police reports Officer Delapaz wrote indicating that the arrested persons were culpable even though fake drugs were involved. This accounts for the reason defendants were allowed to plead guilty to those offenses

even though the offenses had not been committed. This investigation has not uncovered an instance where the prosecution knew of the fraud that the confidential informants and Officer Delapaz perpetuated, and nevertheless allowed a person to plead guilty to an offense.

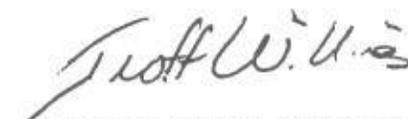
No evidence was discovered that any prosecution file or any court file was altered, tampered with, or had anything removed from it. The primary reason for the running of the statute of limitations on some possible criminal law violations was the federal investigation preempting any state investigation for twenty-three months. Given the failure to find probable cause of any criminal violation, the expiration of the statute of limitations on some offenses did not affect the ultimate outcome of this phase of the Investigation.

The system in place in 2001 moved far too slowly to detect and then correct the existence of large-scale irregularities in the processing of controlled substances cases. The recommendations in this report to reduce the probability of a reoccurrence should be implemented. Non-criminal disciplinary action is beyond the scope of this investigation, but a copy of this report will be sent to the State Bar for action the Bar deems appropriate.

To prosecute a judge, prosecutor, defense lawyer, or SWIFS employee in the absence of probable cause of a criminal law violation by those individuals would create additional victims, contrary to the goal of the criminal justice system.

  
Jack B. Zimmermann  
Deputy Special Prosecutor

  
Sergeant David G. Eldridge  
Narcotics Services, DPS

  
Sergeant Jeff A. Williams  
Narcotics Services, DPS

May 9, 2005

# **NOTES**

## **Chapter 1**

1. <http://www.texasdefenselawyers.com>
2. Deputy Special Prosecutor Oath of Office Appointment Certificate, (Feb. 18, 2004) at Appendix A
3. List of Reports of Interview at Appendix B

## **Chapter 2**

1. Timeline by David Eldridge at Appendix E
2. Timeline by David Eldridge at Appendix E

## **Chapter 3**

1. Cynthia Barbare report of interview (April 28, 2004); Gregg Long report of interview (April 8, 2004; August 20, 2004); John Martinez report of interview (May 12, 2004); Craig Miller report of interview (April 9, 2004); Eric Mountin report of interview (August 19, 2004); Vanita Budhrani White report of interview (April 8, 2004; May 13, 2004; August 20, 2004); Tony Wright report of interview (April 9, 2004)
2. Timeline by David Eldridge at Appendix E
3. Cynthia Barbare report of interview (April 28, 2004); Reynaldo Chavez report of interview (August 18, 2004); Brett Martin report of interview (August 20, 2004); Craig Miller report of interview (April 9, 2004); Bill Stovall report of interview (August 18, 2004); George West report of interview (April 18, 2004); Nancy Weber report of interview (May 12, 2004; August 18, 2004)
4. Gregg Long report of interview (April 8, 2004; August 20, 2004); Nancy Weber report of interview (May 12, 2004; August 18, 2004)

## **Chapter 4**

1. Victor Lander report of interview (April 29, 2004); Michael L. O'Neal report of interview (August 17, 2004); Jay Robinson report of interview (April 28, 2004)
2. Cynthia Barbare report of interview (April 28, 2004); John Martinez report of interview (May 12, 2004)
3. Timeline by David Eldridge at Appendix E; Bill Hill report of interview (May 14, 2004;

August 19, 2004); Elizabeth Todd report of interview (May 12, 2004; August 18, 2004); Vanita Budhrani White report of interview (April 8, 2004; May 13, 2004; August 20, 2004)

4. A compilation of search warrant affidavits at Appendix C
5. Victor Lander report of interview (April 29, 2004); Michael L. O'Neal report of interview (August 17, 2004); Jay Robinson report of interview (April 28, 2004)
6. Victor Lander report of interview (April 29, 2004); Michael L. O'Neal report of interview (August 17, 2004)
7. Victor Lander report of interview (April 29, 2004); Michael L. O'Neal report of interview (August 17, 2004); Jay Robinson report of interview (April 28, 2004)
8. Timeline by David Eldridge at Appendix E; Elizabeth Todd report of interview (May 12, 2004; August 18, 2004); Anne Weaver report of interview (May 12, 2004; August 18, 2004); Nancy Weber report of interview (May 12, 2004; August 18, 2004)

### **Chapter 5**

1. Mike Carnes report of interview (May 14, 2004; August 20, 2004); Bill Hill report of interview (May 14, 2004; August 19, 2004); Gregg Long report of interview (April 8, 2004; August 20, 2004); John Martinez report of interview (May 12, 2004); Kristen O'Brien Tinajero report of interview (May 13, 2004); Elizabeth Todd report of interview (May 12, 2004; August 18, 2004); Steven Tokoly report of interview (April 9, 2004; August 20, 2004)
2. Robbie McClung report of interview (May 13, 2004; August 19, 2004); Elizabeth Todd report of interview (May 12, 2004; August 18, 2004)
3. Cynthia Barbare report of interview (April 28, 2004); Mike Carnes report of interview (May 14, 2004; August 20, 2004); Tony Wright report of interview (April 9, 2004); Timeline by David Eldridge at Appendix E

### **Chapter 6**

1. Kimberly Gilles report of interview (August 18, 2004); Marquite Washington report of interview (April 8, 2004; August 20, 2004); Vanita Budhrani White report of interview (April 8, 2004; May 13, 2004; August 20, 2004)
2. Greg Davis report of interview (April 28, 2004); Jack Gaulding report of interview (May 14, 2004; August 19, 2004)
3. Bill Hill report of interview (May 14, 2004; August 19, 2004)

4. Jack Gauling report of interview (May 14, 2004; August 19, 2004); Kimberly Gilles report of interview (August 18, 2004); Robbie McClung report of interview (May 13, 2004; August 19, 2004)
5. Adrianna Martinez Goodland report of interview (August 19, 2004); Robbie McClung report of interview (May 13, 2004; August 19, 2004); Michael Lowe report of interview (May 12, 2004; August 20, 2004)
6. Gregg Long report of interview (April 8, 2004; August 20, 2004)
7. Bill Hill report of interview (May 14, 2004; August 19, 2004); Layne Jackson report of interview (April 29, 2004; August 19, 2004); Robbie McClung report of interview (May 13, 2004; August 19, 2004); Marquite Washington report of interview (April 8, 2004; August 20, 2004)
8. Greg Davis report of interview (April 28, 2004)
9. Mike Carnes report of interview (May 14, 2004; August 20, 2004)
10. Michael Lowe file notes, *State v. George Sifuentez*, (Nov 15, 2001)
11. Jim Gallagher, Trial Testimony, *State v. Mark Delapaz* (March 2005)

### **Chapter 7**

1. Elizabeth Todd report of interview (May 12, 2004; August 18, 2004)
2. Vanita Budhrani White report of interview (April 8, 2004; May 13, 2004; August 20, 2004); Nancy Weber report of interview (May 12, 2004; August 18, 2004)
3. Layne Jackson report of interview (April 29, 2004; August 19, 2004)
4. Layne Jackson report of interview (April 29, 2004; August 19, 2004)
5. Elizabeth Todd report of interview (May 12, 2004; August 18, 2004); Nancy Weber report of interview (May 12, 2004; August 18, 2004); Anne Weaver report of interview (May 12, 2004; August 18, 2004)

### **Chapter 8**

1. Gregg Long report of interview (April 8, 2004; August 20, 2004); Nancy Weber report of interview (May 12, 2004; August 18, 2004)
2. Case Listing Spreadsheet at Appendix D
3. John Martinez report of interview (May 12, 2004)

4. Timeline by David Eldridge at Appendix E
5. Layne Jackson report of interview (April 29, 2004; August 19, 2004); Vanita Budhrani White report of interview (April 8, 2004; May 13, 2004; August 20, 2004)
6. Layne Jackson report of interview (April 29, 2004; August 19, 2004); Robbie McClung report of interview (May 13, 2004; August 19, 2004); Craig Miller report of interview (April 9, 2004)
7. Case Listing Spreadsheet at Appendix D; Timeline by David Eldridge at Appendix E
8. Timeline by David Eldridge at Appendix E
9. Gregg Long report of interview (April 8, 2004; August 20, 2004)
10. Bill Hill report of interview (May 14, 2004; August 19, 2004)
11. Bill Hill report of interview (May 14, 2004; August 19, 2004); Gregg Long report of interview (April 8, 2004; August 20, 2004)
12. Bill Hill report of interview (May 14, 2004; August 19, 2004); Elizabeth Todd report of interview (May 12, 2004; August 18, 2004)
13. Bill Hill report of interview (May 14, 2004; August 19, 2004)
14. Gregg Long report of interview (April 8, 2004; August 20, 2004); John Martinez report of interview (May 12, 2004); Timeline by David Eldridge at Appendix E
15. Gregg Long report of interview (April 8, 2004; August 20, 2004); John Martinez report of interview (May 12, 2004)
16. Gregg Long report of interview (April 8, 2004; August 20, 2004); Eric Mountin report of interview (August 19, 2004)
17. Greg Davis report of interview (April 28, 2004); Gregg Long report of interview (April 8, 2004; August 20, 2004); Robbie McClung report of interview (May 13, 2004; August 19, 2004); Eric Mountin report of interview (August 19, 2004); Kristen O'Brien Tinajero report of interview (May 13, 2004); Steven Tokoly report of interview (April 9, 2004; August 20, 2004); Vanita Budhrani White report of interview (April 8, 2004; May 13, 2004; August 20, 2004)
18. Craig Miller report of interview (April 9, 2004)
19. Kim Gilles report of interview (August 18, 2004); Eric Mountin report of interview (August 19, 2004)

20. Eric Mountin report of interview (August 19, 2004)
21. Cynthia Barbare report of interview (April 28, 2004); Mike Carnes report of interview (May 14, 2004; August 20, 2004); Bill Hill report of interview (May 14, 2004; August 19, 2004); Layne Jackson report of interview (April 29, 2004; August 19, 2004); Livia Liu report of interview (April 9, 2004); Gregg Long report of interview (April 8, 2004; August 20, 2004); Michael Lowe report of interview (May 12, 2004; August 20, 2004)
22. Karen Wise report of interview (August 18, 2004); Brett Martin report of interview (August 20, 2004); Bill Stovall report of interview (August 18, 2004)
23. Mike Carnes report of interview (May 14, 2004; August 20, 2004); Bill Hill report of interview (May 14, 2004; August 19, 2004); Layne Jackson report of interview (April 29, 2004; August 19, 2004); Karen Wise report of interview (August 18, 2004)
24. Timeline by David Eldridge at Appendix E
25. Bill Hill report of interview (May 14, 2004; August 19, 2004); Layne Jackson report of interview (April 29, 2004; August 19, 2004); Gregg Long report of interview (April 8, 2004; August 20, 2004)
26. Case Listing Spreadsheet at Appendix D
27. Timeline by David Eldridge at Appendix E
28. Timeline by David Eldridge at Appendix E; Eric Mountin report of interview (August 19, 2004)

## **Chapter 9**

1. Reynaldo Chavez report of interview (August 18, 2004); Brett Martin report of interview (August 20, 2004)
2. Reynaldo Chavez report of interview (August 18, 2004); Brett Martin report of interview (August 20, 2004)
3. Brett Martin report of interview (August 20, 2004)
4. Roberto Dueno report of interview (April 28, 2004); Bill Stovall report of interview (August 18, 2004)

## **Chapter 10**

1. Cynthia Barbare report of interview (April 28, 2004), Case Listing Spreadsheet at Appendix D

2. Cynthia Barbare report of interview (April 28, 2004)
3. Case Listing Spreadsheet at Appendix D
4. Cynthia Barbare report of interview (April 28, 2004); Case Listing Spreadsheet at Appendix D
5. Case Listing Spreadsheet at Appendix D
6. Case Listing Spreadsheet at Appendix D
7. Tony Wright report of interview (April 9, 2004)
8. Tony Wright report of interview (April 9, 2004)
9. Tony Wright report of interview (April 9, 2004); Case Listing Spreadsheet at Appendix D
10. Reynaldo Chavez report of interview (August 18, 2004); Case Listing Spreadsheet at Appendix D
11. Reynaldo Chavez report of interview (August 18, 2004); Adrianna Martinez Goodland report of interview (August 19, 2004)
12. Reynaldo Chavez report of interview (August 18, 2004); Timeline by David Eldridge at Appendix E
13. Reynaldo Chavez report of interview (August 18, 2004); Adrianna Martinez Goodland report of interview (August 19, 2004)
14. Reynaldo Chavez report of interview (August 18, 2004); Adrianna Martinez Goodland report of interview (August 19, 2004)
15. Reynaldo Chavez report of interview (August 18, 2004); Adrianna Martinez Goodland report of interview (August 19, 2004)
16. Adrianna Martinez Goodland report of interview (August 19, 2004); Case Listing Spreadsheet at Appendix D
17. Reynaldo Chavez report of interview (August 18, 2004); Adrianna Martinez Goodland report of interview (August 19, 2004)
18. Adrianna Martinez Goodland report of interview (August 19, 2004)
19. Reynaldo Chavez report of interview (August 18, 2004); Adrianna Martinez Goodland report of interview (August 19, 2004)

20. Reynaldo Chavez report of interview (August 18, 2004); Adrianna Martinez Goodland report of interview (August 19, 2004); Gregg Long report of interview (April 8, 2004; August 20, 2004)
21. Reynaldo Chavez report of interview (August 18, 2004); Adrianna Martinez Goodland report of interview (August 19, 2004); Gregg Long report of interview (April 8, 2004; August 20, 2004)
22. Reynaldo Chavez report of interview (August 18, 2004)
23. Reynaldo Chavez report of interview (August 18, 2004)
24. Reynaldo Chavez report of interview (August 18, 2004); Adrianna Martinez Goodland report of interview (August 19, 2004)
25. Reynaldo Chavez report of interview (August 18, 2004); Case Listing Spreadsheet at Appendix D
26. Case Listing Spreadsheet at Appendix D
27. Rick Magnis report of interview (August 18, 2004)
28. Rick Magnis report of interview (August 18, 2004); Case Listing Spreadsheet at Appendix D
29. Rick Magnis report of interview (August 18, 2004)
30. Rick Magnis report of interview (August 18, 2004)
31. Timeline by David Eldridge at Appendix E; Case Listing Spreadsheet at Appendix D
32. Timeline by David Eldridge at Appendix E; Case Listing Spreadsheet at Appendix D
33. Brett Martin report of interview (August 20, 2004); Case Listing Spreadsheet at Appendix D
34. Brett Martin report of interview (August 20, 2004)
35. Case Listing Spreadsheet at Appendix D
36. Brett Martin report of interview (August 20, 2004)
37. Case Listing Spreadsheet at Appendix D
38. Brett Martin report of interview (August 20, 2004)

## **Chapter 11**

1. Kristen O'Brien Tinajero report of interview (May 13, 2004)
2. Case Listing Spreadsheet at Appendix D; Johnny Gussio report of interview (May 12, 2004)
3. Case Listing Spreadsheet at Appendix D; Cynthia Barbare report of interview (April 28, 2004)
4. Cynthia Barbare report of interview (April 28, 2004); Johnny Gussio report of interview (May 12, 2004); Doug Wilder report of interview (May 13, 2004)
5. Johnny Gussio report of interview (May 12, 2004); Doug Wilder report of interview (May 13, 2004)
6. Johnny Gussio report of interview (May 12, 2004); Bill Hill report of interview (May 14, 2004; August 19, 2004); Vanita Budhrani White report of interview (April 8, 2004; May 13, 2004; August 20, 2004); Doug Wilder report of interview (May 13, 2004)
7. Mark Murphy report of interview (May 21, 2004)
8. Cynthia Barbare report of interview (April 28, 2004); Johnny Gussio report of interview (May 12, 2004); Vanita Budhrani White report of interview (April 8, 2004; May 13, 2004; August 20, 2004)
9. Mike Carnes report of interview (May 14, 2004; August 20, 2004); Bill Hill report of interview (May 14, 2004; August 19, 2004); Layne Jackson report of interview (April 29, 2004; August 19, 2004); Marquite Washington report of interview (April 8, 2004; August 20, 2004); Vanita Budhrani White report of interview (April 8, 2004; May 13, 2004; August 20, 2004)

## **Chapter 12**

1. Mike Carnes report of interview (May 14, 2004; August 20, 2004); Livia Liu report of interview (April 9, 2004); Gregg Long report of interview (April 8, 2004; August 20, 2004)
2. Mike Carnes report of interview (May 14, 2004; August 20, 2004)
3. Mike Carnes report of interview (May 14, 2004; August 20, 2004)
4. Mike Carnes report of interview (May 14, 2004; August 20, 2004)
5. Mike Carnes report of interview (May 14, 2004; August 20, 2004)

6. Elizabeth Todd report of interview (May 12, 2004; August 18, 2004)
7. Anne Weaver report of interview (May 12, 2004; August 18, 2004)
8. Mike Carnes report of interview (May 14, 2004; August 20, 2004)
9. Elizabeth Todd report of interview (May 12, 2004; August 18, 2004)

#### **Chapter 14**

1. Terrell Bolton report of interview (May 14, 2004; August 17, 2004); John Martinez report of interview (May 12, 2004)
2. Timeline by David Eldridge at Appendix E

#### **Chapter 15**

1. Timeline by David Eldridge at Appendix E
2. Gregg Long report of interview (April 8, 2004; August 20, 2004)
3. Bill Hill report of interview (May 14, 2004; August 19, 2004); Nancy Weber report of interview (May 12, 2004; August 18, 2004)
4. Mike Carnes report of interview (May 14, 2004; August 20, 2004); Layne Jackson report of interview (April 29, 2004; August 19, 2004); Steven Tokoly report of interview (April 9, 2004; August 20, 2004)
5. Marquite Washington report of interview (April 8, 2004; August 20, 2004); George West report of interview (April 18, 2004)
6. Gregg Long report of interview (April 8, 2004; August 20, 2004); Marquite Washington report of interview (April 8, 2004; August 20, 2004); Vanita Budhrani White report of interview (April 8, 2004; May 13, 2004; August 20, 2004)
7. Mike Carnes report of interview (May 14, 2004; August 20, 2004); Reynaldo Chavez report of interview (August 18, 2004); Gregg Long report of interview (April 8, 2004; August 20, 2004); Layne Jackson report of interview (April 29, 2004; August 19, 2004)
8. Bill Alexander report of interview (August 19, 2004); Cynthia Barbare report of interview (April 28, 2004); Reynaldo Chavez report of interview (August 18, 2004); Roberto Dueno report of interview (April 28, 2004); Adrianna Martinez Goodland report of interview (August 19, 2004); Bill Knox report of interview (August 19, 2004); Rick Magnis report of interview (August 18, 2004); Bill Stovall report of interview (August 18, 2004); Tony Wright report of interview (April 9, 2004)

9. Kimberly Gilles report of interview (August 18, 2004); Marquite Washington report of interview (April 8, 2004; August 20, 2004); Vanita Budhrani White report of interview (April 8, 2004; May 13, 2004; August 20, 2004)

10. Bill Hill report of interview (May 14, 2004; August 19, 2004)

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