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Gerry LaPorte  
Director  
National Institute of Justice  
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VIA FACSIMILE and U.S. MAIL

**Re: Allegations of Serious Negligence or Misconduct in the Michigan State Police Forensic Science Division and the Paul Coverdell Forensic Science Improvement Grant Program**

Dear Director LaPorte:

As you are no doubt aware, the integrity of the Michigan State Police Forensic Science Division ("Crime Lab") is vitally important to the fair and objective administration of justice within the criminal justice system. Unfortunately, we have into possession of evidence that there is serious negligence and misconduct occurring within Crime Lab such that the Crime Lab's findings, integrity and reliability are in serious doubt. We write to inform you of both negligence committed by the Crime Lab and, worse, misconduct that (has taken place and) continues to take place that substantially compromises the integrity of the Crime Lab's forensic results. Recently, it has come to light that the Crime Lab management allows the Prosecuting Attorneys Association of Michigan to control its reporting in such a way that a misdemeanor charge under the Michigan Public Health Code can be elevated from a basic misdemeanor to a felony for the possession or manufacture of synthetic marijuana.<sup>1</sup> This suggests that the Crime Lab committed serious negligence or misconduct by virtue of compromising forensic science in order to allow a prosecutor in a case in Ottawa County to support a felony prosecution. The co-author of this letter, Michael Komorn, is the counsel of record in the matter and during the course of that litigation, uncovered email communications that exposed the misconduct. **(Emails Attached As Exhibit "A")**.

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<sup>1</sup> See Article that led to discovery of error.

A simple review of the emails reveals that rather than simply report the substance pursuant to established scientific criteria, the Crime Lab was influenced in its reporting of a test result by a representative of the Prosecuting Attorneys Association of Michigan. Since Michigan maintains a medical marijuana program, the impact of this political decision had serious repercussions for medical marijuana patients attempting to assert a medical purpose defense to charges of the possession of marijuana edibles: with the Crime Lab reporting the substance as something other than marijuana, these patients would be deprived of their ability to assert a medical purpose defense to allegations. Worse, the influence of the prosecutor would cause the accused to face a felony offense rather than a misdemeanor. We need not linger too long over the implications of these developments. If the allegations are true, they substantially affect the integrity of forensic results by literally altering the reporting of a forensic analysis to fit with the theory of an attorney prosecuting a case. Worse, this error may lead to the false convictions of Michigan citizens for a felony and generally undermines the faith in forensic science.

Under the Paul Coverdell Forensic Science Improvement Grant ("Coverdell") program, the Michigan State Police Internal Affairs (MSP IA) division has been designated to investigate allegations of serious negligence or misconduct at the Crime Lab, a laboratory receiving grant funding under the Coverdell program. As such, the MSP IA is required to investigate this allegation.

## **I. The problem and its implication**

The problem is the interference by the prosecuting attorneys association with the reporting of scientific results. The emails that were obtained through a series of Freedom of Information Act (FOIA) requests reveal a co-dependence between the Crime Lab and the prosecuting attorneys association that is the antithesis of an independent, objective and science-focused forensic crime laboratory including but not limited to the following:

- Prosecutors and city attorneys contacting the prosecuting attorneys association member for information about the capabilities of individual laboratory technicians to testify to the impact of certain drugs on an individual's ability to operate a motor vehicle;
- The prosecuting attorneys association member provides arguments for laboratory technicians and witnesses to offer in response to issues raised by defense lawyers in certain cases;
- The prosecuting attorneys association member provides laboratory technicians and witnesses responses to articles authored by defense lawyers that were published in the public domain; and, last but not least,

- The prosecuting attorneys association member influenced the reporting of a forensic test and/or an outcome.

In short, it reflects a culture that the Crime Lab and its analysts are not scientists reporting forensic analyses dispassionately in court through testimony. Instead, it reflects a systematic top-down management of the reporting by the Prosecuting Attorneys Association through the MSP laboratory supervisors.

## **II. Other issues**

The Crime Lab refused to report uncertainty in its results for blood alcohol analysis until it was ordered to do so in a district court case in 2011. Since then, the Crime Lab's supervisors have been compromising and under-reporting uncertainty by failing to keep up with its accreditation standards under ISO 17025 as well as the guidelines set forth by SWG-TOX.

The Crime Lab also failed to analyze and scientifically establish a limit of detection for analytes such as THC. This omission is negligent and has a major impact on the justice system because Michigan jurisprudence criminalizes the presence of "any amount" of a schedule I substance in an operator's system while driving.

## **III. Breach of American Society of Crime Laboratory Directors / Laboratory Accreditation Board (ASCLD/LAB) Guidelines**

It is worth mentioning that the interplay between the prosecuting attorneys association member and the Crime Lab breaches the Crime Lab's obligations of Professionalism pursuant to the American Society of Crime Laboratory Directors / Laboratory Accreditation Board (ASCLD/LAB). For several years, the Crime Lab fought to gain ASCLD/LAB accreditation. After gaining this accreditation, the Crime Lab included this credential on the bottom of its reports of forensic findings in individual cases.

The ASCLD/LAB requires of accredited laboratories the following:

### **Professionalism**

The ethical and professionally responsible forensic scientist and laboratory manager . . .

1. Are independent, impartial, and objective, approaching all examinations with due diligence and an open mind.

2. Conduct complete and unbiased examinations. Conclusions are based on the evidence and reference material relevant to the evidence, not extraneous information, political pressure, or other outside influences.<sup>2</sup>

The involvement and participation of the prosecuting attorney in the operation and conduct of the Crime Lab violates these guidelines. A prosecuting attorney is a representative of only one (1) side of the criminal justice system. As evidenced by the rebuttal arguments and presentations that the member of the prosecuting attorneys association has put forth, he is an advocate. In other words, he is unbiased, impartial, independent and objective. Yet, the Crime Lab allows this advocate to participate in laboratory decisions, direct laboratory policy and as evidenced by the recent discovery actually influences how the laboratory reports the outcome of an alleged scientific test. In other words, the Crime Lab has reported on examinations and reached conclusions that are impacted by “extraneous information, political pressure and other outside influences.” This has resulted in a lack of independence and the reporting of partial and subjective results. (A separate complaint will be filed with ASCLD/LAB.)

#### **IV. Safeguards**

The Crime Laboratory in this situation could have simply reached out with documentation to various standardization and accreditation entities such as the SWG-DRUG or even its own accreditation agency, ASCLAD-LAB. Ultimately, the Crime Lab must be made an independent entity and brought out from underneath the very law enforcement agency that collects the evidence and seeks prosecution: the Michigan State Police.

#### **V. The Required Statutory Response to Allegations**

The allegations mandate specific action under the Paul Coverdell Forensic Science Improvement Grant Program, from which the Crime Lab receives funds. As a precondition to receive funding, each applicant was required to furnish:

A certification that a government entity exists and an appropriate process is in place to conduct independent external investigations into allegations of serious negligence or misconduct substantially affecting the integrity of the

forensic results committed by employees or contractors of any forensic laboratory system, medical examiner's office, coroner's office, law enforcement storage facility, or medical facility in the State that will receive a portion of the grant amount.<sup>3</sup>

Congress initiated the grant program in 2000 which, since 2002, has provided states with a fertile source for forensic laboratory funding. The money is intended "to improve the quality and timeliness of forensic science and medical examiner services, and to eliminate backlogs in the analysis of forensic evidence, including controlled substances, firearm examination, forensic pathology, latent prints, questioned documents, toxicology and trace evidence."<sup>4</sup>

The grants play a central role in virtually all states' forensic laboratory funding.<sup>5</sup> The Department of Justice's National Institute of Justice (NIJ), a division of the DOJ's Office of Justice Programs (OJP), administers the Coverdell grants. The NIJ disbursed \$236,000.00 to the lab.

According to Crime Lab's most recent Coverdell application, the Crime Lab has named the MSP IA to provide independent and external oversight in keeping with the Coverdell requirement.<sup>6</sup> As such, the MSP IA is responsible for conducting investigations under the parameters of the Coverdell certification requirement.

## **VI. Scope of the Investigations**

The federal government has long recognized its duty to the public to identify and remedy the causes of catastrophic errors. For example, when an airplane crashes or a train derails, the National Transportation Safety Board (NTSB) immediately conducts an investigation into the causes of the incident and makes recommendations. Such investigations enable the government to figure out what went wrong and, even more importantly, what can be done to correct the problem and prevent it from happening again. Congress realized the benefit of the approach, and with its passage of the Justice for All Act of 2004 (JFAA) and the attendant changes to the Coverdell granting process, it brought this model to the nation's forensic entities. As the office for fielding Coverdell Program allegations connected with the Crime Lab, the MSP IA is responsible for investigating these allegations for the benefit of MSP IA and the criminal justice system at large.

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<sup>3</sup> 42 U.S.C. § 3797k (4) (2004).

<sup>4</sup> A description of the funding stream is available on the National Institute of Justice's Web site, at <http://www.nij.gov/nij/topics/forensics/lab-operations/capacity/nfsia/welcome.htm>

<sup>5</sup> See U.S. Department of Justice, Office of the Inspector General, Evaluation and Inspections Division, "Review of the Office of Justice Programs' Forensic Science Improvement Grant Program," (December 2005), available at <http://www.usdoj.gov/oig/reports/OJP/e0602/final.pdf>.

<sup>6</sup> See the relevant certification within the [State] [FY] Coverdell application, attached.

The process the MSP IA utilizes when it conducts this investigation is a crucial consideration, as well. The U.S. Government Accountability Office has developed standards for sound audits<sup>7</sup> like the one I am requesting, and the MSP IA investigation will have the resonance and impact that Congress intended if it adopts the spirit of the GAO's recommendations. With that context in mind, I would ask the State Police to:

- (1) Identify the source of the alleged problems;
- (2) Identify whether there was serious negligence or misconduct;
- (3) Describe the method used and steps taken to reach the conclusions in parts 1 and 2;
- (4) Identify corrective action to be taken;
- (5) Where appropriate, conduct retrospective re-examination of other cases which could have been affected by the same problem;
- (6) Conduct follow-up evaluation of the implementation of the corrective action, and where appropriate, the results of any retrospective re-examination;
- (7) Evaluate the efficacy and completeness of any internal investigation conducted to date;
- (8) Determine whether any suggested laboratory protocol change might also benefit other laboratories within its investigatory jurisdiction; and
- (9) Present the results of Parts 1-8 in a public report.

Any corrective action must not result exclusively in blame of a particular person for a particular act, but instead should determine the underlying causes of the act via "root cause analysis," the purpose of which is to solve problems by correcting or eliminating root causes, as opposed to merely addressing immediately obvious symptoms.

### **VIII. The Importance of This Investigation**

The importance of this investigation is vital. Without accountability the lab has no check to try to ensure quality assurance practice are followed and not just discussed to the public via general statements and in court. A series of emails are available that show how the interplay between the PAAM and lab analysts led to changes to a protocol for reporting marihuana that did not appear to follow a proper scientific procedure or guidelines set forth by reference bodies such as SWG-DRUG.

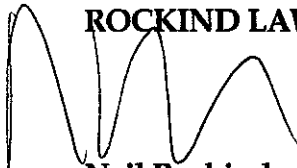
We are thankful that Congress has made it possible for the MSP IA to investigate this allegation. We expect that public concern will be alleviated by knowing the MSP IA is involved in ensuring that Congressional intent is fulfilled for the good of The People of the State of Michigan and the criminal justice system at large. We ask that the MSP IA


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<sup>7</sup> See "Government Auditing Standards: January 2007 Revision," available at <http://www.gao.gov/govaud/d07162g.pdf>. See sections 3.01-3.39

investigate the circumstances described above as promptly as possible and release its resulting findings without undue delay.

Very truly yours,

**ROCKIND LAW**  
  
**Neil Rockind**

**KOMORN LAW**  
  
**Michael Komorn** *et Cangel*  
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Enclosure