

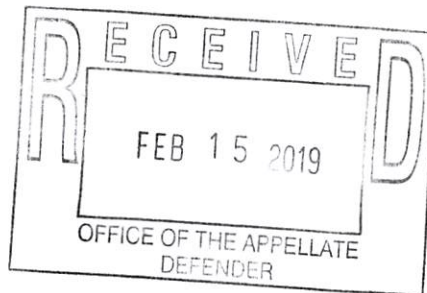
Federal Defenders
OF NEW YORK, INC.

APPELLATE
ADVOCATES

INNOCENCE PROJECT

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OAD | OFFICE OF THE
APPELLATE
DEFENDER



January 31, 2019

Timothy Kupferschmid
Chief of Laboratories
Office of Chief Medical Examiner
421 East 26th St.
New York, NY 10016

Re: Use of Combined Probability of Inclusion at the OCME

Dear Mr. Kupferschmid,

We, New York City indigent and post-conviction defense providers, write to inquire about the use of the Combined Probability of Inclusion (CPI) at the Office of Chief Medical Examiner. Laboratories across the country, as you know, have been re-visiting CPI case work in light of recent developments in the forensic science community. We hope that you would share CPI data with us so we can collaborate on a similar review. We raised this suggestion with General Counsel Florence Hutner this past fall, and she requested we make our inquiry in writing. We also have had preliminary conversations with some New York City District Attorney's Office about CPI cases.

This request is based on our understanding that the OCME formerly employed CPI to provide a statistical weight to mixture interpretations, but discontinued use when the Forensic Statistical Tool was brought online. The recently-published NIST Mixture 13 study, *NIST interlaboratory studies involving DNA mixtures (MIX05 and MIX13): Variation observed and lessons learned*¹ demonstrated that the CPI method is vulnerable to errors, which include "a risk of including a non-contributor when blindly applying CPI without interpretation of the DNA mixture itself."² We are concerned about the impact of the use of CPI on evidence that was used

¹ John M. Butler, et al. *NIST interlaboratory studies involving DNA mixtures (MIX05 and MIX13): Variation observed and lessons learned*, *Forensic Sci. Int'l: Genetics* 37 (2018) 81-94.

² *Id.* at 93.

in the prosecution of our clients' cases and the possibility that even one of those clients could have been wrongfully convicted.

In order to evaluate the potential universe of our clients' cases that may have had CPI evidence, we hope you could answer the following questions:

1. What was the time period during which CPI was used at the OCME?
2. How many cases at the OCME involved the use of CPI?
3. How many samples tested at the OCME involved the use of CPI?
4. Please provide a list of all cases in which CPI was used at the OCME;
5. Please identify the cases in which CPI was used on high sensitivity/low copy number samples.
6. Has the OCME compared the use of CPI with other statistical methods, such as probabilistic genotyping?
7. Did the OCME reanalyze its CPI cases, and if so, when and how?
 - a. Did OCME reanalyze its CPI cases with another statistical method?
 - b. Did OCME discover inconsistencies in the manner in which analysts applied the CPI? Did OCME discover error in the application of CPI? If so, what were the inconsistencies and/or errors? Were any root cause analyses done?
 - c. Were any defendants or prosecutor offices notified of any reanalysis?

We hope to work together with the OCME and the District Attorneys of the five city boroughs to ensure that no misleading evidence was used in the prosecution of criminal cases because of the misapplication of CPI. To this end, we propose a meeting in February with the OCME and the prosecutor offices to discuss the scope of the issue and any necessary future steps.

Thank you for your anticipated cooperation.

Sincerely,



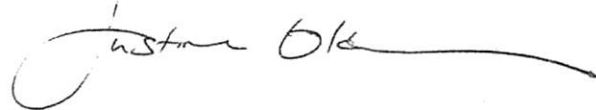
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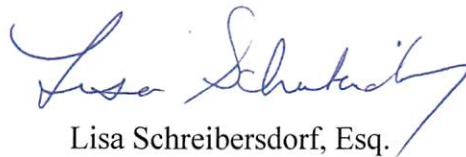
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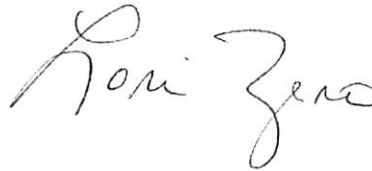
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Cc: Florence Hutner, General Counsel, OCME
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Hon Rolando T. Acosta
Acting Presiding Justice

January 30, 2019

Timothy Kupferschmid
Chief of Laboratories
Office of Chief Medical Examiner
421 East 26th St.
New York, NY 10016

Re: Use of Combined Probability of Inclusion at the OCME

Dear Mr. Kupferschmid,

On behalf of the Assigned Counsel Plan for the First Judicial Department, I would join in the request of the Legal Aid Society for the requested information.

Sincerely,



Michael Alperstein