

(“Fourth HPD Lab Report”). Nowhere was that breakdown more evident than with the serologists whose work led to the wrongful conviction of George Rodriguez.

2. After spending more than 17 years in prison for crimes he did not commit, George Rodriguez was exonerated in 2004 through DNA and other forensic tests. Those tests demonstrated that every scientific conclusion rendered by the HPD Crime Laboratory personnel and supervisors in George Rodriguez’s case had been utterly wrong and, in some respects, patently fabricated.

3. Defendant City of Houston caused the wrongful conviction of George Rodriguez. The City’s policies and customs regarding its crime laboratory, its police department’s investigative techniques, and its police officers’ training and supervision all contributed to this injustice. The City was deliberately indifferent to the known or obvious consequences of its policies and customs.

4. During the 1970s and 1980s, the City hired, promoted, failed to train, and failed to supervise employees in the crime lab who did not meet the City’s own supposed minimum requirements for education, experience, and training in an effort to fill technical positions with cheap labor. These decisions were part of the City’s official policy, which was sometimes referred to as “civilianizing” the Crime Laboratory. Even by ignoring its own rules about minimum qualifications, the City could not staff the crime lab with an adequate number of employees. The result of the City’s crime lab policies and customs was to devastate the proficiency of the crime lab by 1987 to the point that it was unable to do basic forensic analysis reliably. Instead, some crime lab workers manufactured evidence by reporting tests they had not performed and by fabricating or backdating test reports, bench notes, and other materials to give

the false appearance that they had performed tests in accordance with basic standards of scientific and police conduct when they had not done so. The City, by and through its final policymakers for the City crime laboratory, was deliberately indifferent to the known and obvious consequences of its crime lab policy, which was that innocent men and women would be illegally convicted by utterly wrong scientific proof provided by crime lab employees who cut corners and were incompetent, badly trained, and badly supervised, while the guilty remained free to prey on other citizens.

5. The City of Houston Police Department misconduct leading to the wrongful conviction of George Rodriguez extended far beyond the confines of the Crime Laboratory. HPD officers and supervisors focused their investigation on George Rodriguez despite knowing that (a) two witnesses who were present when the abduction/rape occurred, including Manual Beltran, a co-defendant who admitted to committing the crime, identified a different person – Isidro Yanez – as the actual perpetrator, (b) Yanez’s car was used in the kidnapping, (c) George Rodriguez had an alibi for the time of the crimes, (d) Yanez was implicated in a previous and strikingly similar abduction and rape, (e) Yanez tried to evade police after the crimes, (f) Yanez concealed his identity and altered his appearance after the crimes, and (g) Yanez committed another sexual assault while George Rodriguez was awaiting trial, one for which his own mother turned him in, telling police that her son had raped several other women, but “nothing has ever been done to him.” In their effort to convict George Rodriguez of the crimes, HPD officers and supervisors fabricated police reports, manipulated victim and eyewitness identifications, and failed to disclose material exculpatory evidence to the prosecution, causing George Rodriguez’s wrongful conviction and imprisonment.

6. The conduct of these HPD officers and supervisors was made possible by the City's policy, custom, and practice of failing properly to train and supervise police officers in their investigations, including conducting and documenting identification procedures, avoiding manipulating and shaping the recollections of witnesses, preparing investigative reports, and disclosing exculpatory evidence. Had the HPD personnel been properly trained and supervised, an innocent man would not have spent 17 years of his life in prison. The City, by and through its final policymakers for the HPD, was deliberately indifferent to the known and obvious consequences of its policies and customs regarding criminal investigations, which was that innocent men and women would be illegally convicted by manipulated or fabricated evidence, while the guilty remained free to prey on other citizens.

7. The unconstitutional conduct responsible for the injustice suffered by George Rodriguez is not limited to the City of Houston and its Crime Lab employees and police officers. Defendant Harris County also caused the wrongful conviction of George Rodriguez. The County's official policies and customs, as promulgated and carried out by the final policymaker, the Harris County District Attorney, were to employ Assistant District Attorneys who were inadequately trained and supervised with respect to their duty to disclose to defense counsel all material exculpatory and impeachment evidence. In addition, the Harris County District Attorney knew or should have known that the County's "open file policy," as implemented by Assistant District Attorneys, routinely failed to achieve disclosure of material exculpatory and impeachment evidence to the defense. The County's final policymakers knew of these policies and customs, and implemented them with deliberate indifference to the known and obvious consequences, which was that innocent men and women would be illegally convicted without access to material exculpatory and impeachment evidence.

JURISDICTION AND VENUE

8. The Court has jurisdiction under 28 U.S.C. §1331.

9. Venue is proper in the Southern District of Texas under 28 U.S.C. §1391(b), because that is the judicial district in which the claims arose and in which the defendants resided or conducted business in 1987.

PARTIES

10. Plaintiff George Rodriguez is an individual residing in Houston, Texas.

11. Defendant City of Houston is a home-rule city located in this judicial district.

12. Defendant Harris County is a duly designated county of the State of Texas. Harris County is sued for the constitutional harm suffered by plaintiff as a result of the County's official policies and customs of failing adequately to train and supervise District Attorneys with respect to their due process obligations to disclose material exculpatory and impeachment evidence, and thus for matters pertaining to the management and administration of the District Attorneys' office.

13. Defendant James R. Bolding was employed by the City as a Criminalist III in the HPD Crime Laboratory at the time of the investigation and trial of George Rodriguez, and was the supervisor of defendant Christy Y. Kim. Bolding is sued in his individual capacity.

14. Defendant Christy Y. Kim, formerly known as Christy Y. Cha, was employed by the City as a Criminalist II in the HPD Crime Laboratory at the time of the investigation and trial of George Rodriguez and is sued in her individual capacity.

15. Defendant Reidun M. Hilleman, a supervisor in the Trace Evidence Section, was employed by the City as a Criminalist III in the HPD Crime Laboratory at the time of the investigation and trial of George Rodriguez and is sued in her individual capacity.

16. Defendant Stephen L. Clappart was employed by the City as a Sergeant in the Homicide Division at the time of the investigation and trial of George Rodriguez and is sued in his individual capacity.

17. Defendant Russell E. Sisk was employed by the City as a Police Officer in the Juvenile Division at the time of the investigation and trial of George Rodriguez and is sued in his individual capacity.

18. Defendant Genaro Naranjo was employed by the City as a Police Officer in the Juvenile Division at the time of the investigation and trial of George Rodriguez and is sued in his individual capacity.

19. Defendant Mary D. Tobar was employed by the City as a Police Officer in the Juvenile Division at the time of the investigation and trial of George Rodriguez and is sued in her individual capacity.

20. Defendant Jose J. Gonzalez was employed by the City as a Police Officer in the Juvenile Division at the time of the investigation and trial of George Rodriguez and is sued in his individual capacity.

21. Defendant Eraldo Garcia, Jr. was employed by the City as a Police Officer in the Juvenile Division at the time of the investigation and trial of George Rodriguez and is sued in his individual capacity.

22. Defendants John Doe and Jane Doe, whose identities are currently unknown, are those employees of the Houston Police Department during 1987 and before with supervisory authority over defendants Genaro Naranjo, Stephen L. Clappart, Russell E. Sisk, and Mary D. Tobar. John Doe and Jane Doe supervisors are sued in their individual capacities.

23. Defendant Charles A. Rosenthal Jr. is currently District Attorney for Harris County and is sued in his official capacity as the successor-in-office and -liability to former District Attorney John B. Holmes, Jr., the District Attorney at the time George Rodriguez was wrongly convicted.

FACTS

A. Manuel Beltran And Isidro Yanez Committed The Crimes For Which George Rodriguez Was Convicted

24. At approximately 7:00 p.m. on February 24, 1987, two men driving in a green and white 1978 Chrysler Cordoba abducted a fourteen-year old girl (the victim) near the intersection of Dorsett Street and Kerr Street in Houston, Texas. The victim described one of the kidnapers as skinny and the other as fat.

25. The skinny kidnapper was Manuel Beltran.

26. The fat kidnapper was Isidro Yanez, also known as EZ, Izzy, and Isi.

27. The 1978 Chrysler Cordoba was owned by and registered to Yanez.

28. Immediately before the abduction, Yanez asked the victim and the person with her, Marco Saldana, for directions to Chadwick Street.

29. Yanez's sister, Norma Castillo, lived at 8226 Chadwick Street at the time of the kidnapping. 8226 Chadwick Street is approximately ten blocks from the place of the kidnapping.

30. Beltran and Yanez drove the victim from the place of the kidnapping to Beltran's residence at 7206 El Paso Street in Houston, Texas.

31. During the drive to 7206 El Paso Street, Beltran told Yanez not to use any names, and then called Yanez "George." The victim believed "George" was a false name.

32. The victim told police she thought "George" was a false name.

33. The victim told officers Adkins and Thomas she thought "George" was a false name.

34. The first police report in this case, based on initial statements of the victim to police officers, records her saying she thought "George" was a false name.

35. Beltran's brother, Uvaldo Beltran, was watching television at 7206 El Paso Street when Yanez and Manuel Beltran brought the victim into the house. Uvaldo Beltran saw Manuel Beltran and Yanez bring the victim into the house through the kitchen door.

36. Yanez took the victim into Manuel Beltran's bedroom and raped her. Manuel Beltran then went into the bedroom and raped the victim.

37. After the rape, Uvaldo Beltran spoke to Manuel Beltran in the living room before Manuel Beltran left the house to get Yanez's 1978 green and white Chrysler Cordoba. Uvaldo Beltran then saw Yanez bring the victim out of the house through the kitchen door to the 1978 green and white Chrysler Cordoba.

38. Manuel Beltran and Yanez then drove the victim to a location near Interstate 10 and Lyons Street in Houston and abandoned her. The victim went to a nearby Mobil station at 8022 East Freeway and told the attendant she had been raped. The attendant called police at approximately 10:30 p.m. The victim was taken to Hermann Hospital sometime after 11:00 p.m. on February 24, 1987.

39. The victim only saw Yanez's face for 3-4 seconds during the abduction and rape, and after the rape her eyes were completely covered with a knit cap.

B. Police Learned That Beltran And Yanez Committed The Crimes Within 48 Hours

40. Police arrested Manuel Beltran at 7206 El Paso Street after 7:00 p.m. on February 26, 1987. Both Manuel Beltran and Uvaldo Beltran were present at 7206 El Paso then.

41. Manuel Beltran and Uvaldo Beltran were physically separated and were questioned separately at the time of Manuel Beltran's arrest.

42. Manuel Beltran admitted his participation in the abduction and rape. Manuel Beltran told police officers Bonin, Eddie Rodriguez, and Phifer that his accomplice was Yanez. Early the next morning, February 27, 1987, while still detained by police, Manuel Beltran signed a statement confessing to the crime and stating that Yanez had been his accomplice. Manuel Beltran stated that Yanez had a .25 caliber pistol with a blue-black handle. Manuel Beltran also told police that Yanez had been at 7206 El Paso earlier on February 26, 1987, but had left abruptly after the police had driven past the house.

43. Uvaldo Beltran, after being separated from his brother Manuel, independently told defendants Naranjo, Tobar, and Sisk on February 26, 1987 that he was at 7206 El Paso on

February 24, 1987 when the rape of the victim occurred, that Yanez brought the victim into the house, accompanied by Manuel Beltran, that both Yanez and Manuel Beltran were in Manuel Beltran's bedroom with the victim, and that Yanez took the victim out of the house to Yanez's green and white Chrysler Cordoba. Uvaldo Beltran signed a statement to police recounting these facts in the early morning of February 27, 1987.

C. Police Pursued George Rodriguez Instead Of Yanez

44. On February 24, 1987, following the kidnapping and rape, defendant Naranjo and fellow HPD officers Randy Thomas and Thomas Adkins interviewed the victim. The victim told defendants Thomas and Adkins that during the kidnapping, the "skinny" attacker told the "fat" attacker not to use any names, and then the "skinny" attacker called the "fat" attacker "George." The victim told Thomas and Adkins that she believed "George" was a false or made-up name. When defendant Naranjo interviewed the victim the same night, the victim did not mention either of her attackers using any names.

45. The victim estimated that the attacker she described as "the fat one" was a Mexican male who was about 5'5" to 5'8" tall, weighed from 185 to 200 pounds, was between the ages of 30 and 40, had black, wavy, short hair, a thin mustache, a medium complexion, and spoke with a Spanish accent. The victim did not describe any tattoos or other identifying body marks on either of her attackers. The victim told police that both attackers were undressed during the rape.

46. Based on the victim's description of the house in which she was raped, officers David Bonin and Eddie Rodriguez determined that it was probably a house occupied by Manuel Beltran. Officer Eddie Rodriguez immediately speculated, and told other officers late on

February 24 or in the early morning of February 25, 1987, that Manuel Beltran might be the skinny male described by the victim, and that “the fat one” might be George Rodriguez, because Eddie Rodriguez believed Manuel Beltran and George Rodriguez hung out together.

47. Yanez fit the victim’s description of “the fat one,” with the exception of the victim’s estimate that “the fat one” was 30 to 40 years old. Yanez was 25 on February 24, 1987. George Rodriguez had just turned 21 on February 24, 1987.

48. Yanez had no tattoos or other identifying body marks. George Rodriguez had prominent tattoos on both of his arms and his chest.

D. Police Protected Yanez And Targeted George Rodriguez

49. By February 1987, the HPD had used Yanez from time to time as an informant.

50. By February 1987, HPD officers had socialized with Yanez.

51. On the morning of February 25, defendant Gonzalez interviewed the victim for the purpose of obtaining her formal statement concerning the crime.

52. On information and belief, defendant Gonzalez, by the time he took a statement from the victim, knew that officer Rodriguez believed that the rapists were Manuel Beltran and George Rodriguez. On information and belief, defendant Gonzalez also knew that hours earlier the victim had reported to officers Thomas and Adkins that “George” was not the name of the “fat” suspect.

53. The statement the victim signed on February 25, 1987 was similar to the statement she had given officers Thomas and Adkins a few hours earlier, with one substantial

and dramatic difference. Whereas the victim originally told police that she thought "George" was a made-up name, the statement defendant Gonzalez prepared for the victim to sign said that when the skinny rapist called the fat one "George," the fat one responded "don't you dare say my name." Upon information and belief, defendant Gonzalez coached the victim to alter her recollection so as to fit the speculation previously reported by officer Rodriguez that George Rodriguez may have been involved in the crimes.

54. In preparing the statement and soliciting the victim's signature, Gonzalez fabricated evidence by making it appear that the victim's statement that one of the rapists was named "George" had emanated from her recollection, rather than from suggestion and coaching provided by Gonzalez. The circumstances of the statement, including Gonzalez's coaching of the victim, were exculpatory and impeachment evidence that Gonzalez failed to document and disclose to prosecutors.

55. On February 25, 1987, at approximately 9:00 p.m., officers Naranjo and Garcia showed the victim a photo array comprising six photographs, one of which was a photo of George Rodriguez. Officers Naranjo and Garcia had previously prepared the array together. The victim selected the photo of George Rodriguez as a photograph of one of her attackers.

56. Officers Naranjo and Garcia then showed Marco Saldana, a young man who was an eyewitness to the abduction, the same photo array that was shown to the victim. Saldana identified George Rodriguez as one of the attackers.

57. Saldana later admitted he lied to police in his statement concerning his activity at the time of the abduction, and was not able to identify George Rodriguez in a show up.

58. Upon information and belief, defendants Naranjo and Garcia used unduly suggestive techniques in order to induce the victim and Saldana to identify George Rodriguez in the photo arrays they used on February 25, 1987, including but not limited to preparing an unduly suggestive array, providing suggestion and encouragement to the victim and Saldana that they select George Rodriguez's photograph, and explicitly or implicitly affirming that the victim's and Saldana's selection of George Rodriguez's photograph was correct.

59. Testimony concerning the February 25 identifications by the victim and Saladana was admitted against George Rodriguez's at his trial.

60. Defendants Naranjo and Garcia failed to document and disclose to prosecutors the unduly suggestive circumstances of the February 25 identifications, which was material, exculpatory and impeachment evidence.

61. From 1994 to 2005, twenty Texans convicted of rape or murder were cleared by post-conviction DNA test results, and sixteen of those twenty people were originally convicted based in part on eyewitness testimony. That same ratio applies to all 166 post-conviction DNA exonerations in the United States through 2005: 75% to 80% of those exonerated by DNA test results were originally convicted based in part on eyewitness testimony. *See Michael Hall, Why Can't Steven Phillips Get a DNA Test?*, TEXAS MONTHLY, Jan. 2006, at 129, 132.

62. On February 26, 1987, at about 7:00 p.m., officer David Bonin reported that he had driven by the house at 7206 El Paso Street and saw both Manuel Beltran and George Rodriguez there.

63. When police arrested Manuel Beltran later on February 26, 1987, Beltran told police that the person officer Bonin saw was Yanez, not George Rodriguez.

64. On February 26, 1987, police had one or more photographs of Yanez available to them.

65. Police did not show the victim a photo of Yanez at any time until April 23, 1987.

66. Police never asked the victim whether she could identify Yanez as her attacker in a show up.

E. Police Learned George Rodriguez Was At Work During The Crimes

67. Defendants Sisk, Tobar, and Naranjo tried to arrest George Rodriguez on February 26, 1987, at his place of work, Continental Silverline Products, at 710 North Drennan. George Rodriguez was not there at the time. His foreman, Clarence Green, told the officers that George Rodriguez had been at work on February 24, 1987, from 3:30 p.m. until 11:30 p.m.

68. Clarence Green also showed officers Sisk, Tobar, and Naranjo George Rodriguez's time card for February 24, 1987, as well as Green's notebook entries and other documents indicating work George Rodriguez had done during the shift.

69. The officers learned that Green sometimes allowed George Rodriguez to leave without punching out. Nevertheless, Green remained firm in his recollection that George had been working two days earlier from 3:30 p.m. until 11:30 p.m., the period of time during which the abduction/rape occurred.

70. Officers Sisk, Tobar, and Naranjo did not make a contemporaneous record of their interview with Green on February 26, 1987.

71. The arrest warrant for George Rodriguez was dismissed after police interviewed Clarence Green on February 26, 1987. Notwithstanding the photo identifications by the victim and eyewitness Saldana, officers Tobar and Sisk concluded in a police report that “important” evidence about George Rodriguez’s work record indicated “non culpability” because he was at work when the crime occurred.

F. Police Found The Car Yanez Used In The Crimes – And Ignored It

72. After the Beltran brothers both said Yanez was Manuel Beltran’s accomplice, police checked Yanez’s record and discovered that he had been detained in connection with a narcotics investigation, but released with no charges. Upon information and belief, the officers investigating the February 24, 1987 crime, including defendants Clappart, Garcia, Sisk, Naranjo, and Tobar, learned at about this time that Yanez was being used as a confidential informant by other law enforcement personnel.

73. On February 27, 1987, Ermina Limon told officers Tobar and Sisk that Yanez had come to her house at 8:00 a.m. and 2:00 p.m. that day in his green and white 1978 Chrysler Cordoba, looking for Uvaldo and Manuel Beltran.

74. On February 27, 1987, officers Thomas and Adkins located Yanez’s green and white 1978 Chrysler Cordoba parked near the intersection of Port Street and Alderson Street, and noted that it had a digital clock stuck to the dash. The victim had said the car in which she was

abducted had a digital clock stuck to the dash. Police did not impound the car or seek a search warrant for it. Police made no effort to obtain evidence from the car.

G. George Rodriguez Volunteered For A Show Up, Which Was Unduly Suggestive

75. On February 27, 1987, George Rodriguez called officer Tobar and volunteered to come down to the police station to participate in a show up whenever the police wanted him to.

76. On March 10, 1987, George Rodriguez participated in a show up.

77. Defendants Clappart, Sisk, or Tobar told the police officer who controlled the order of the show up to be certain that George Rodriguez entered the show up last.

78. Defendant Clappart fabricated a police report of the show up with a false statement that George Rodriguez had selected his own position in the show up.

79. Each participant was directed to speak during the show up. George Rodriguez was the only participant instructed to speak more than once. Defendant Clappart's report failed to disclose the exculpatory fact that George Rodriguez was the only lineup participant instructed to speak more than once.

80. The victim selected George Rodriguez in the show up as one of her attackers. She stated that she recognized him by the way he stood.

81. The victim did not give any other basis for selecting George Rodriguez in the show up except his posture.

82. Police did not contemporaneously record any other basis for the victim's selection of George Rodriguez in the show up except his posture.

83. George Rodriguez offered to take a polygraph examination on March 10, 1987.

84. The police never administered a polygraph examination to George Rodriguez.

H. The Crime Lab Could Not Tie George Rodriguez To The Crimes

85. George Rodriguez gave police hair and saliva samples on March 10, 1987. At 1:30 p.m. that day, defendant Hilleman took possession of the hair samples from George Rodriguez and analyzed them.

86. Defendant Hilleman orally reported to defendant Clappart on March 11, 1987 that she had not found any hairs from the crime scene or rape kit that she could place as coming from George Rodriguez.

87. The police released George Rodriguez on March 11, 1987.

I. Police Again Ignored Yanez Despite Knowing His Exact Location

88. On February 28, 1987, Yanez was shot after harassing a woman in a bar on Liberty Road. Yanez was taken to Ben Taub hospital, where he remained until discharged on March 6, 1987. Police were notified on February 28, 1987 that Yanez had been shot and was in Ben Taub hospital, but made no effort to apprehend him or interview him at Ben Taub until long after he was discharged.

89. By March 11, 1987, despite the fact that he had been identified by two eyewitnesses as the second perpetrator of the February 24 rape, police had not entered Yanez as a person wanted in connection with a criminal investigation in the computerized systems used by the Houston Police Department.

90. On March 11, 1987, in connection with the shooting at the bar on Liberty Road (incident number 014899287), defendant Gonzalez found that Yanez had a local HPD ID number, but no indication that Yanez was wanted in connection with any investigation.

91. On March 11, 1987, nearly two weeks after being notified that Yanez was at Ben Taub hospital, officers Tobar and Clappart finally went there to look for Yanez in connection with the February 24, 1987, crime. Yanez had been discharged five days earlier. Officers Tobar and Clappart interviewed Oscar Enriguez as a possible suspect in the February 24, 1987 rape. Officers Tobar and Clappart reported that they eliminated Enriguez as a suspect in part based on his size, which was 5'8" in height and 180 pounds in weight.

92. In February 1987, George Rodriguez was 5'8" tall and weighed about 185 pounds.

93. If police had properly investigated the February 24, 1987 abduction and rape, they would have entered Yanez as a person wanted in connection with a criminal investigation in the computerized systems used by the Houston Police Department and would have apprehended him shortly after the crimes while he was a patient at Ben Taub hospital from February 28 to March 6, 1987.

J. One Witness Who Initially Identified George Rodriguez Subsequently Could Not Identify Him And Admitted He Lied To Police

94. On March 30, 1987, officers Clappart and Tobar twice showed Marco Saldana a videotaped depiction of the show up that included George Rodriguez. Saldana did not recognize anyone in the show up as one of the victim's attackers.

K. Police Learned Yanez Was A Suspect In A Similar Rape And Abduction Case

95. On April 8, 1987, Harris County Assistant District Attorney Edward Porter told defendant Clappart that Porter was prosecuting an abduction and rape case similar to the February 24, 1987, case, and that the defendant in Porter's case, Frank Campos, said that Yanez had organized and was his accomplice in those crimes.

96. Police, including defendants Clappart and Tobar, thought the details of the abduction and rape for which Campos was being prosecuted were very close to the details of the abduction and rape on February 24, 1987.

97. Police, including defendants Clappart and Tobar, thought Yanez was a viable suspect in the February 24, 1987 abduction and rape case on and before April 8, 1987.

98. Police, including defendants Clappart and Tobar, doubted George Rodriguez's guilt on and before April 8, 1987.

99. Police, including defendants Clappart and Tobar, never showed the victim a photograph of Yanez in an array or other setting that did not also include a photograph of George Rodriguez because they feared that the victim would identify Yanez as her attacker if they did so, thereby compromising her previous identification of George Rodriguez. Police, including defendants Clappart and Tobar, never put Yanez in a show up for the victim because the police feared that the victim would identify Yanez as her attacker if they did so, thereby compromising her previous identification of George Rodriguez.

L. Yanez Tried To Avoid Arrest And Altered His Appearance

100. Officers Clappart and Tobar arrested Yanez on April 22, 1987 on outstanding traffic warrants. When they did so, they found Yanez standing by his green and white Chrysler Cordoba outside his mother's house at 4101 Vaughn Street.

101. When officers Clappart and Tobar detained and questioned Yanez on April 22, 1987, Yanez hid his drivers license. Yanez told them his name was Alphonso Yanez, and showed them a birth registration card in the name of Alphonso Yanez. Alphonso Yanez is Isidro Yanez's brother. Yanez continued this deception until after police fingerprinted him at the police station and used those fingerprints to identify him positively as Isidro Yanez.

102. Police took hair, blood, and saliva samples from Yanez on April 22, 1987.

M. Yanez Confirmed That Police Had Mistaken George Rodriguez For Yanez

103. Yanez told officers Clappart and Tobar he loaned his car to Beltran the day before the abduction and rape, and that he knew Beltran had used it in the crime. Yanez also told them he retrieved the car from Beltran at Beltran's home the next day.

104. Clappart and Tobar stated in a police report on or about April 22, 1987 that Yanez had attempted to alter his appearance by shaving off his moustache and cutting his hair.

N. Police Coached The Victim To Convict George Rodriguez

105. By April 23, 1987, police, including defendants Clappart and Tobar, knew there were differences between George Rodriguez's appearance and the victim's concept of her attacker. Nevertheless, police, including defendants Clappart and Tobar, decided to steer the

investigation and the victim's recollection in the direction of George Rodriguez and away from Yanez, notwithstanding Yanez's likely culpability.

106. On April 23, 1987, officers Clappart and Tobar decided to manipulate the victim's recollection to eliminate differences between her description of the suspect and George Rodriguez.

107. On April 23, 1987, officers Clappart and Tobar deliberately coached the victim in order to eliminate differences between her conception of the suspect and George Rodriguez.

108. Defendants Clappart and Tobar did not disclose in their report of this meeting that they had coached the victim in order to eliminate differences between her conception of the suspect and George Rodriguez. Rather, Clappart and Tobar prepared a police report of their meeting with the victim that falsely stated that details concerning the suspect's physical description and voice had originated with the victim. But the details in the report originated with Clappart and Tobar. Clappart and Tobar did not disclose in their report of this meeting that they had provided these details to the victim. Nor did they tell prosecutors that they had provided these details to the victim.

109. On April 23, 1987, officers Clappart and Tobar showed the victim photographs of approximately 100 Hispanic men, including a photograph of George Rodriguez and a photograph of Yanez.

110. The photograph of Yanez police showed the victim on April 23, 1987 was a photograph taken after police reported that Yanez had tried to alter his appearance.

111. On April 23, 1987, the victim said both the photograph of Yanez and the photograph of George Rodriguez looked like her attacker.

112. On April 23, 1987, officers Clappart and Tobar reported that the victim again identified George Rodriguez as her attacker.

113. On information and belief, defendants Clappart and Tobar employed unduly suggestive techniques in order to induce the victim to identify George Rodriguez instead of Isidro Yanez, including but not limited to manipulating the photographic viewing process to ensure that the victim identified George Rodriguez, and not Isidro Yanez, as her attacker, providing overt and implicit suggestion to the victim concerning the physical appearance of George Rodriguez as opposed to the physical appearance of Isidro Yanez, and providing other overt and implicit suggestion and encouragement to the victim before, during, and after her selection of George Rodriguez as her attacker.

114. The false and unconstitutionally suggestive April 23 identification was used against George Rodriguez at trial.

115. Defendant Clappart and Tobar failed to document and disclose to prosecutors the unduly suggestive circumstances of the April 23 identifications, which was material, exculpatory and impeachment evidence.

O. Police Arrested George Rodriguez Based On Hair Identification By Defendant Hilleman

116. On April 29, 1987, crime lab technician Reidun Hilleman reported orally to defendant Clappart that she had located one hair from the victim's underwear that was consistent

with hair samples from George Rodriguez. Defendant Hilleman included the same information in a police report that she prepared on May 11, 1987.

117. Police filed charges against George Rodriguez on April 30, 1987, and arrested him on May 1, 1987.

P. Police Arrested Yanez For Another Rape While George Rodriguez Was Awaiting Trial – And Failed To Disclose It

118. On July 19, 1987, while George Rodriguez was awaiting trial, Yanez was arrested by the HPD in connection with yet another rape investigation. Yanez's mother, Olivia Hernandez, told police on July 11, 1987 that her son had raped and assaulted Angelita Pantalion, her pregnant live-in housekeeper. Olivia Hernandez told police she "wants charges filed against her son because he, on several occasions, had assaulted women and nothing has ever been done to him," and that he needed to be stopped.

119. The police report for the Pantalion rape identified suspect Yanez's car as a 1978 green and white Chrysler.

120. The police report for the Pantalion rape indicates that a towel with blood and possible semen stains was recovered from the crime scene and tagged as evidence.

121. Yanez was arrested for the Pantalion rape on July 19, 1987 when HPD officer Larry Woods found Yanez asleep inside Yanez's 1978 green and white Chrysler Cordoba, which was parked in the driveway of a vacant house at 6807 Texarkana. Woods had been involved in looking for Yanez in connection with the February 24, 1987, rape, and knew that Yanez had been a suspect in both rapes.

122. The police failed to disclose any information concerning the Pantalion rape to the prosecutors handling the case against George Rodriguez or to his defense counsel, including the fact that Yanez was arrested for committing the brutal rape, that Olivia Hernandez told the police that Yanez had assaulted women on several previous occasions and that nothing had ever been done to him, that the identified vehicle was the same 1978 green and white Chrysler used in the February 24, 1987 rape, and that a towel containing blood and possible semen stains from Yanez was recovered from the crime scene and tagged as evidence.

Q. The Crime Lab Fabricated Police Reports And Lab Notes To Support The Erroneous Conclusions Used To Convict George Rodriguez

123. Crime lab criminalist Christy Kim made reports (dated September 24, 1987 and October 1, 1987) stating that the crime lab received samples taken from Yanez on March 10, 1987.

124. Crime lab technician Reidun Hilleman's bench notes state that, on March 10, 1987, she examined hairs taken from Yanez.

125. No hairs were taken from Yanez on March 10, 1987. No hairs were taken from Yanez until April 22, 1987.

126. Defendant Hilleman's bench notes state that, on March 10, 1987, she examined hairs from George Rodriguez and from the victim's clothing on March 10, 1987.

127. Defendant Hilleman's bench notes dated March 10, 1987, also state that she had compared hairs taken from the victim's underwear to pubic hairs from George Rodriguez and found one pubic hair from the underwear that was "microscopically consistent with the known pubic hairs of G. Rodriguez."

128. Defendant Hilleman had reported to defendant Clappart on March 11, 1987, however, that she had not located any hairs that she could place as coming from George Rodriguez.

129. Defendant Hilleman's bench notes dated "10 March 1987" were prepared long after March 10, 1987, and were fraudulently backdated. They were created to give the false appearance that Hilleman had followed basic scientific and police procedures in discovering and documenting inculpatory evidence against George Rodriguez, when in fact she had not done so. Defendant Hilleman never disclosed her fabrication of this scientific evidence to prosecutors, and prosecutors never disclosed this fabrication of evidence to George Rodriguez or his counsel.

130. Evidence of Hilleman's fabrication of bench notes supporting her conclusions would have impeached Hilleman's trial testimony against George Rodriguez about those conclusions. The evidence of fabrication was material exculpatory and impeachment evidence that should have been disclosed to George Rodriguez or his counsel.

131. Post-conviction DNA testing established that the hair Reidun Hilleman said was consistent with hair samples taken from George Rodriguez did not come from George Rodriguez.

132. Post-conviction DNA testing established that the hair Reidun Hilleman said was consistent with hair samples taken from George Rodriguez almost certainly came from Yanez.

133. Defendant Kim's report dated September 24, 1987, was amended after September 24, 1987. In the original report, Kim stated that she received hair, blood, and saliva samples from Yanez on March 10, 1987. The amended report states that the hair, blood, and saliva

samples received March 10, 1987, came from George Rodriguez. The report, as amended, was introduced in evidence against George Rodriguez at his trial. Upon information and belief, the original report was not disclosed to prosecutors or to George Rodriguez or his counsel.

134. The amended report was a fabrication. George Rodriguez did not give any blood samples to police on March 10, 1987. The report was fabricated for the purpose of making it falsely appear that police had generated blood evidence inculcating George Rodriguez and exculpating Yanez before arresting George Rodriguez.

135. On information and belief, defendant Kim failed to disclose the original September 24, 1987 report to prosecutors. That version of the report would have impeached the serology evidence offered against George Rodriguez, and therefore was material, exculpatory and impeachment evidence.

136. Also introduced at trial against George Rodriguez were bench notes defendant Kim prepared, purportedly on April 22, 1987, which falsely represented that Kim had analyzed a sample of George Rodriguez's blood and determined that he was a blood type "O" non-secretor. These bench notes were also a fabrication. Police had not taken any blood samples from George Rodriguez on or before April 22, 1987.

137. On information and belief, the fact that defendant Kim's April 22, 1987 bench notes were a fabrication was not disclosed to prosecutors. This fact would have impeached the serology evidence offered against George Rodriguez, and therefore was material, exculpatory and impeachment evidence.

138. On information and belief, defendant Bolding, as Kim's supervisor, reviewed her bench notes and reports prior to trial, and failed to disclose to prosecutors material, exculpatory and impeachment material contained in those notes and reports, including evidence that Kim had amended and backdated her August 24, 1987 report, and had fabricated her April 22, 1987 bench notes.

139. Reidun Hilleman was promoted from the position of Criminalist I to the position of Criminalist II in 1984, even though she was deficient in the lab experience required for the position of Criminalist II. Her promotion was part of the City's "civilianization" plan for the Houston Police Department Crime Laboratory. Reidun Hilleman was promoted from Criminalist II to Criminalist III in 1986, even though she was deficient in the lab experience required for the position of Criminalist III. Her promotion was again part of the City's "civilianization" plan for the Houston Police Department Crime Laboratory.

140. Christy Kim sought a promotion from the position of Criminalist I to the position of Criminalist II during 1986. On September 23, 1986, the City of Houston Police Department hiring representative recommended against promoting Christy Kim because of her job performance and the evaluation by the head of the crime lab, Peter Christian. Despite this negative evaluation, Christy Kim was promoted to Criminalist II in October 1986. Her promotion was part of the City's "civilianization" plan for the Houston Police Department Crime Laboratory.

Q. Defendants Bolding And Kim Botched Fundamental Blood Analysis Multiple Times In Multiple Ways And Misled The Prosecutor And The Court

141. James Bolding was hired into the crime lab in 1979. He had no formal training in serology. He was promoted to Criminalist II on November 14, 1981. On September 4, 1982,

James Bolding was promoted to Criminalist III even though he did not meet the experience requirements for the position of Criminalist III. Most of James Bolding's serology training was self-study at home, and at the time of his promotion to Criminalist III he had minimal experience in serology. James Bolding's promotions were part of the City's "civilianization" plan for the Houston Police Department Crime Laboratory. *See* Third Report of the Independent Investigator for the Houston Police Department Crime Laboratory and Property Room, at 16 (June 2005), available at <http://www.hpdlabinvestigation.org/reports/050630report.pdf> ("Third HPD Lab Report"). James Bolding was defendant Kim's supervisor.

142. By 1987, loss of trained staff and increased work loads had a devastating effect on the proficiency of the serology section of the Houston Crime Lab. (Third HPD Lab Report, at 16).

143. On September 24, 1987, defendant Kim reported that George Rodriguez was a Type O non-secretor and could have contributed to the semen recovered from the victim and that Yanez was a Type O secretor and was not among those who could have contributed to the semen recovered from the victim. Before George Rodriguez's November 1987 trial, defendant Bolding met with prosecutors and told them that George Rodriguez was a Type O non-secretor and could have contributed to the semen recovered from the victim, and that Yanez was a Type O secretor and could not have contributed to the semen recovered from the victim. Defendant Bolding repeated these conclusions at trial under questioning from the prosecutor and Mr. Rodriguez's defense attorney. Based on these conclusions, the prosecutor in George Rodriguez's case told the jury that the scientific evidence proved "beyond a doubt Isidro Yanez could not have committed the offense" and that "the H.P.D. crime lab cleared for us once and for all whether or not Isidro Yanez could have been involved."

144. Defendants Bolding and Kim apparently justified their exclusion of Yanez and refusal to exclude George Rodriguez by reasoning that a Type O secretor could be excluded as a contributor to the semen recovered from the victim after the two-person rape because the crime lab identified Type A characteristics but no Type O characteristics in the semen. By contrast, Bolding and Kim said George Rodriguez could not be excluded as a contributor to the semen because, although the crime lab also typed George Rodriguez as blood type O, the crime lab typed him as a non-secretor. A non-secretor's blood type cannot be determined from the non-secretor's other bodily fluids because non-secretors do not secrete their blood group markers in their other bodily fluids. Bolding and Kim's reasons for excluding Yanez as a possible contributor were contrary to basic scientific principles known to minimally competent serologists.

145. Within the ABO genetic marker system, there are four possible blood types: A, B, AB, and O. People who are blood type O possess only what is called the H blood group substance. The H blood group substance is the precursor on which the A, B, and AB blood group substances are built. People who are blood type A, B, or AB, therefore possess the H blood group substance in addition to the appropriate other blood group substance. A minimally competent serologist knows that when blood group substance A, B, or AB is detected, there will always also be blood group substance H present, even when it is not detected in conventional serology analyses. For this reason, when there may have been more than one contributor to semen, a minimally competent serologist knows that a Type O secretor can never be eliminated as a possible contributor.

146. A panel of world-renowned forensic experts advised prosecutors and the Harris County state district court in 2004 that defendant Kim and Bolding's apparent reasoning was

completely flawed and without any scientific basis. The panel said that Kim “knew or should have known” that the conclusions contained in her report were fundamentally unsound. The panel also concluded that Bolding’s trial testimony against George Rodriguez contained egregious misstatements of conventional serology that indicated either that Bolding “lacked a fundamental understanding of the most basic principles of blood typing analysis or he knowingly gave false testimony to support the State’s case against George Rodriguez.”

147. Moreover, defendant Bolding knew that when there may have been more than one contributor to semen, a Type O secretor can never be eliminated as a possible contributor. In *State v. McFarland*, Cause No. 643,611, in the 184th District Court in Harris County, Texas, Bolding testified that semen recovered from the rape complainant showed Type A blood group substances, and that the defendant McFarland was a Type O secretor. Bolding testified that based on that information – which was the same information that applied to the case against Yanez – the defendant McFarland could not be excluded as a contributor to the semen.

148. Not only were Bolding and Kim’s scientific conclusions wrong, their serological test results were also wrong. In reality, contrary to the two separate analyses of Yanez’s blood and saliva performed by Bolding and Kim in 1987, Yanez is a Type O non-secretor, not a Type O secretor.

149. In 2004, the State of Texas, acting through the Harris County District Attorney, had an independent lab type Yanez’s blood and saliva. The independent lab, National Medical Services, performed the analysis on September 29, 2004, and determined that Yanez is a Type O non-secretor.

150. Following Yanez's arrest for the July 1987 Pantalion rape, crime lab employee James Bolding again reported that analysis of Yanez's blood and saliva showed him to be a Type O secretor.

151. If defendants Kim and Bolding had properly performed blood type analysis on the samples from George Rodriguez and Yanez, it would have been perfectly obvious that both of them had the same blood type and secretor characteristics and therefore the blood evidence provided no basis for inculcating George Rodriguez while exculpating Yanez.

R. Bolding And Kim Have Repeatedly Used Fabricated Evidence Against Defendants And Failed To Disclose Exculpatory Forensic Results

152. Bolding's egregious conduct is not limited to his fabrication of evidence against George Rodriguez.

153. In a 1988 sexual assault and kidnapping case, Bolding determined that the victim was a type A secretor and the HPD's suspect, Dwight Riser, was a type AB secretor. Bolding also determined that the vaginal swab from the victim's rape kit demonstrated type A activity. But Bolding did not report this finding. Instead, Bolding falsely reported that the vaginal swab demonstrated both type A and type B activity. (Fourth HPD Lab Report, at 24-28).

154. In 1988, Bolding did serologic testing in connection with the investigation of the murders of Forrest Henderson and Richard Wrottenbury. Bolding knew the HPD's initial suspect was Calvin Dorne, and determined that Henderson and Wrottenbury were both blood type A, while Dorne was blood type O. Bolding's 1988 worksheets show he detected blood type B activity, which was foreign to both the HPD suspect and the victims, in some of the bloodstains at the scene of the murders, but he failed to reveal this information in his report. Six years later,

the HPD developed a new suspect, Derrick Jackson, and Bolding determined that Jackson was blood type B. At that time, without doing any further testing and without dating his amendments and changes, Bolding altered his report to indicate that he had found blood type B activity in the bloodstains. See Fifth Report of the Independent Investigatory for the Houston Police Department Crime Laboratory and Property Room, at 24–28 (May 2006), available at <http://www.hpdlabinvestigation.org/reports/060511report.pdf> (“Fifth HPD Lab Report”).

155. In 1989, Bolding did serologic testing in connection with the investigation of a sexual assault in which Roy Qualls was a suspect. Bolding determined that Qualls was a type B secretor, but falsely reported that Qualls was a type A secretor. Bolding also determined that the blood group activity on a vaginal swab from the victim’s sexual assault kit was negative for type A activity, but falsely reported it to be positive for type A activity. (Fifth HPD Lab Report, at 32–33.)

156. On June 18, 2002, Bolding testified that the crime lab never had a false positive when testing for the presence of P-30 (a protein found in seminal fluid but also in a variety of other fluids and tissues in both women and men) as a consequence of P-30 being present in female urine. Bolding had no basis for this sworn claim because, unaware of the literature demonstrating that P-30 routinely is found in women as well as men, the crime lab did not regularly test women to exclude them as the source for identified P-30. Bolding also testified that the condition that causes the presence of P-30 in women is extremely rare and found primarily in women with tumors, that there was a one-in-a-million chance that a woman’s urine would test positive for P-30, and that even if P-30 was present in a woman’s urine, it could not cause a false positive on serological P-30 testing. All of these statements were demonstrably false.

157. Bolding has also testified falsely concerning his educational qualifications. According to the Fourth Report of the Independent Investigator, Bolding testified at the 1988 Riser trial that he had earned “a Ph.D. in biochemistry from the University of Texas.” This was false. Bolding does not have a Ph.D. degree. Bolding was enrolled in a doctoral program at the University of Texas School for Biomedical Sciences for one year, but Bolding dropped out of the program in 1977 or 1978 because he was having difficulty with the coursework. In *State v. Grimes*, Cause Nos. 889126, 873295, and 884017 in the 232nd District Court in Harris County, Texas, Bolding again testified falsely that he had earned “a Doctorate” in biochemistry from the University of Texas. Bolding’s practice of giving false testimony concerning his educational qualifications was the subject of a rare judicial investigation in 2004. Texas state District Judge Dean Rucker was appointed to convene the court of inquiry into Bolding’s claims about his education. Ultimately, Judge Rucker concluded that no perjury or aggravated perjury charges could be brought against Bolding because the statute of limitations had expired. (Fourth HPD Lab Report, at 26–27.)

158. Defendant Kim’s egregious conduct similarly is not limited to her fabrication of evidence against George Rodriguez.

159. In a 1986 sexual assault case, after HPD identified suspects Francis and Mao, Kim determined that the victim was a type O secretor, that Mao was type O, and that Francis was type B. In her report, however, Kim did not disclose the victim’s blood group status (type O secretor), but only that Mao was type O, Francis was type B, and type O activity was detected on the vaginal swab from the sexual assault kit. By failing to report that the victim was a type O secretor, Kim failed to report that no semen donor could be excluded as a contributor. Furthermore, although the crime lab had identified type A bloodstains on the victim’s sneakers,

Kim's report never mentioned this result, which indicated that someone other than Francis and Mao may have been involved in the assault. (Fifth HPD Lab Report, at 30.)

160. In March 1987, while investigating a November 1986 sexual assault, defendant Kim found semen and type B blood group activity present on both the vaginal and cervical swabs contained in the victim's rape kit. In August 1987, defendant Kim tested known blood and saliva reference samples from both the victim and then-suspect Charles Hodge. Kim's testing showed the victim was a type B non-secretor and that Hodge was a type AB secretor. Hodge therefore could not have contributed to the semen sample found on the vaginal and cervical swabs tested by Kim, because they demonstrated only type B activity and no type A activity. Nevertheless, Kim's report concluded that "[b]y these findings the defendant could have contributed semen on the vaginal and cervical swabs." In reality, as the Fourth Report of the Independent Investigator points out, "Ms. Kim's ABO testing actually supported the opposite conclusion – that Mr. Hodge should have been eliminated as a possible contributor of the samples obtained from the vaginal and cervical swabs." (Fourth HPD Lab Report, at 15–29.)

161. In a 1987 sexual assault investigation in which Gordon Wayne Hairrell was a suspect, defendant Kim determined that the victim was a type A secretor and that Hairrell was a type-O non-secretor, but falsely reported that Hairrell was a type O secretor. Kim identified type A, B, and possible O activity in a semen stain on the victim's clothes, but failed to report that the type B activity detected in the semen stain found on the victim's shorts was foreign to both the victim (type A) and Hairrell (type O). Thus even if Hairrell (whether because he was a non-secretor or because he was a type O secretor) could not be excluded as a potential donor, Hairrell could not have been the sole donor of the semen, meaning that someone other than Hairrell and

the victim was necessarily associated with the semen stain found on the victim's shorts. (Fourth HPD Lab Report, at 21–22.)

162. In a 1989 sexual assault case, in which HPD had identified Profino Ayarzagoitia as a suspect, Kim determined that the victim and Ayarzagoitia were both type O secretors, and that the vaginal swab from the victim's sexual assault kit showed type A activity, meaning that someone other than Ayarzagoitia had contributed to the semen from the vaginal swab. Kim did not report her actual findings, however, but instead falsely reported she had found "no activity" on the vaginal swab. (Fifth HPD Lab Report, at 55.)

163. In a 1990 sexual assault case, in which the HPD had identified Roland Salazar as a suspect, Kim determined that the victim, her boyfriend, and Salazar were all blood type A and that the boyfriend and Salazar were secretors. Kim's testing showed that Kim detected type A and type B activity in semen stains from the scene of the assault, but she did not report these findings, even though they indicated (and DNA testing later proved) that someone other than the suspect identified by HPD had contributed to the semen recovered at the scene. (Fifth HPD Lab Report, at 28–29.)

S. The City Of Houston And Harris County Caused The Wrongful Conviction Of George Rodriguez

164. George Rodriguez was convicted of aggravated sexual assault on a child and aggravated kidnapping on October 26, 1987, in the 230th Judicial District Court, Harris County, Texas. He was sentenced to sixty years imprisonment.

165. George Rodriguez defended against the charges with evidence that he was at work at the time of the crimes and that Yanez was the real perpetrator.

166. At his trial, the State of Texas argued that crime laboratory work on the blood type found in the semen contradicted George Rodriguez's defense that the real perpetrator was Yanez, saying that it proved "beyond a doubt Isidro Yanez could not have committed the offense." The State also argued that Reidun Hilleman's determination that a hair found in the victim's underwear was consistent with hair from George Rodriguez "nails this man to the wall even more than [the victim's] description does." The blood type and hair analysis evidence, which was the only physical evidence purporting to tie George Rodriguez to the crime and exclude Yanez, was utterly false evidence.

167. The conduct of the crime lab in falsely excluding Yanez as a possible contributor to the semen recovered from the victim based on egregiously wrong science, in falsely characterizing Yanez as a secretor, in falsely characterizing the hair from the victim's underwear as consistent with hair from George Rodriguez, in falsely excluding Yanez as a possible source of that hair, and in falsely failing to characterize the hair from the victim's underwear as consistent with hair from Yanez, was inexcusable. Given George Rodriguez's alibi defense, the substantial evidence linking Yanez to the crimes, the victim's minimal opportunity to view her attacker, and the true characteristics of the physical evidence wrongly analyzed by defendants Bolding, Kim, and Hilleman, there is no question that the reckless or deliberate misstatements of science reported before and during trial by Bolding, Kim, and Hilleman caused George Rodriguez's conviction.

168. The conduct of Bolding, Kim, and Hilleman in fabricating evidence related to the testing and source of physical evidence used to convict George Rodriguez, and the failure to disclose that fabrication, caused George Rodriguez's conviction.

169. The conduct of Bolding, Kim, and Hilleman in failing to disclose material, exculpatory and impeachment evidence concerning the testing conducted by the crime lab in relation to George Rodriguez and Isidro Yanez caused George Rodriguez's conviction.

170. But for the conduct of police in fabricating the victim's statement concerning the name of one of her attackers, conducting unduly suggestive identification procedures, manipulating the show up on March 10, 1987, coaching the victim in order to eliminate differences between her conception of the suspect and George Rodriguez, and failing to disclose to the prosecution that police had fabricated evidence, conducted unduly suggestive identification procedures, manipulated the show up, and coached the victim, there is an extremely substantial likelihood that George Rodriguez would never have been convicted.

171. The conduct of police in failing to take custody of Yanez's car when they located it on February 27, 1987, and to examine it for evidence, in failing to put Yanez on their list of people wanted in connection with the investigation of the February 24, 1987 crimes, in failing to apprehend Yanez while he was in Ben Taub hospital for the week immediately following the February 24, 1987 crimes and while his location and identity were known to police, in failing to question him about his whereabouts at the time of the crimes when he was apprehended on April 24, 1987, in failing to show the victim and Saldana a photograph of Yanez as soon as the Beltran brothers identified him as a participant in the crimes, and in failing to ask the victim and Saldana to try to identify Yanez in a show up, were all examples of the reckless or deliberate failure of police to investigate the true perpetrator, Yanez, and resulted in the wrongful conviction of George Rodriguez.

172. During and prior to 1987, the City deliberately and systematically failed adequately to train or supervise its employees in the crime lab. This failure resulted in the wrongful conviction of George Rodriguez.

173. During and prior to 1987, the City's crime lab routinely failed to follow generally accepted forensic science practices prevailing at the time, including failing to understand and report the significance of its blood typing work, failing to use either substrate or positive and negative controls in blood typing, failing to disclose exculpatory results of forensic testing, fabricating tests and results, failing to conduct administrative and technical reviews of serologists' work, failing to create and implement written standard operating procedures for lab work, and failing to create and implement generally accepted documentation and evidence control procedures. These failures resulted in the wrongful conviction of George Rodriguez.

174. During 1987 and before, Harris County systematically failed adequately to train and supervise its District Attorneys with respect to their duty to disclose to defense counsel all material exculpatory and impeachment evidence.

175. But for the County's routine failure to train and supervise its District Attorneys, material exculpatory and impeachment evidence would have been disclosed to George Rodriguez's defense counsel. This undisclosed evidence includes the fact that police conducted unduly suggestive identification procedures, manipulated the show up, coached the victim, and engaged in other improper conduct to steer the investigation toward George Rodriguez and away from Yanez. It also includes the fact that Bolding, Kim, and Hilleman fabricated critical evidence related to the testing and source of physical evidence used to convict George

Rodriguez. Had such evidence been disclosed, there is an extremely substantial likelihood that George Rodriguez would never have been convicted.

T. George Rodriguez Proved His Innocence After 17 Years In Prison

176. George Rodriguez remained in custody from his arrest on May 1, 1987 until his conviction on October 26, 1987. From then until October 8, 2004, George Rodriguez was confined by the Texas Department of Corrections as a felon wrongfully convicted of aggravated kidnapping and aggravated sexual assault on a child.

177. George Rodriguez continually maintained his innocence of the crimes.

178. Shortly after the Texas Legislature provided a mechanism for obtaining post-conviction DNA testing in 2001, George Rodriguez filed a *pro se* motion seeking DNA testing to clear him of the crimes.

179. George Rodriguez was ultimately permitted to obtain DNA testing of biological material related to the crimes.

180. On May 10, 2004, Mitotyping Technologies, LLC reported to the Presiding Judge of the 230th District Court in Harris County, Texas, that mitochondrial DNA testing excluded George Rodriguez as a possible contributor of the hair recovered from the victim's underwear.

181. On July 22, 2004, Mitotyping Technologies, LLC reported to the Presiding Judge of the 230th District Court in Harris County, Texas, that mitochondrial DNA testing showed that the hair recovered from the victim's underwear and hair from Yanez "share a common nucleotide at every position common to and compared" and therefore Yanez was not excluded as

a contributor of the hair recovered from the victim's underwear. Mitotyping Technologies further reported that the mitochondrial DNA profile observed in the hair from the victim's underwear and in the hair from Yanez was a sequence that had not previously been observed in the SWGDAM database, which included 4,839 sequences of North American forensic significance.

182. On October 6, 2004, National Medical Services reported to the Harris County District Attorney's Office that analysis of samples of blood and saliva taken from Yanez showed him to be a Type O non-secretor.

183. On October 8, 2004, the 230th District Court in Harris County, Texas, found that George Rodriguez was denied due process in his 1987 trial "based on the admission of material inaccurate serological evidence during his trial," recommended that he be granted a new trial, and released him on a personal bond and under the supervision Harris County Pretrial Services.

184. On August 31, 2005, the Texas Court of Criminal Appeals vacated George Rodriguez's convictions for aggravated sexual assault of a child and aggravated kidnapping and remanded for a new trial because George Rodriguez was denied due process in his 1987 trial. The Court relied on the findings of the trial court that testimony from defendant Bolding was inaccurate scientific evidence.

185. On September 29, 2005, the 230th District Court in Harris County, Texas, dismissed all charges against George Rodriguez arising from the February 24, 1987 crimes.

CAUSES OF ACTION

186. With respect to each cause of action, George Rodriguez incorporates by reference each paragraph of this Complaint.

Count I: 42 U.S.C. § 1983 Against James R. Bolding, Christy Kim, and Reidun Hilleman for Violating George Rodriguez's Fourteenth Amendment Due Process and Fair Trial Rights by Fabricating Evidence

187. James R. Bolding and Christy Kim intentionally or recklessly fabricated inculpatory evidence that caused the wrongful conviction of George Rodriguez when they falsely reported in written reports and other pretrial disclosures to prosecutors that Yanez was excluded as a donor of the semen recovered from the victim after the rape. The fabricated evidence was inculpatory because George Rodriguez's defense was that Yanez had been the second rapist, not George Rodriguez.

188. Bolding or Kim intentionally fabricated evidence by creating police reports and other official documents, and by making representations to prosecutors prior to trial, that police had submitted a blood sample taken from George Rodriguez to the crime lab on March 10, 1987, that Kim had analyzed a blood sample from George Rodriguez on or before April 22, 1987, and that the results of testing on that blood sample indicated that George Rodriguez was a type O non-secreter. The fabricated evidence was later introduced at trial and was inculpatory because it purported to support the conclusion that George Rodriguez's blood had been sampled and tested, and the sample and test had been documented, in accordance with standard scientific procedures, and that the test showed that George Rodriguez could not be excluded as a participant in the crime.

189. Kim and Bolding's fabrication of evidence denied George Rodriguez due process and as a proximate result of their unconstitutional actions, George Rodriguez sustained damage.

190. Reidun Hilleman intentionally or recklessly fabricated inculpatory evidence that caused the wrongful conviction of George Rodriguez when she falsely reported that George Rodriguez's hair was consistent with a hair recovered from the victim's underwear, and fabricated backdated bench notes to support this evidence. The fabricated evidence was introduced against George Rodriguez at trial, and was inculpatory because George Rodriguez's defense was that Yanez had been the second rapist, not George Rodriguez.

191. Hilleman intentionally fabricated inculpatory evidence that on March 10, 1987, she determined that hairs taken from George Rodriguez were consistent with hairs recovered from the victim's underwear, when in fact she had reached no such conclusion. The evidence was fabricated because it purported to support the conclusion that George Rodriguez's hair had been sampled and tested when it in fact had not, and that the sample and test had been documented, in accordance with standard scientific procedures, when in fact it had not, and that the test showed that George Rodriguez could be connected to the crime by physical evidence, when in fact he could not be.

192. Hilleman's fabrication of evidence denied George Rodriguez liberty without due process of law and as a proximate result of her unconstitutional actions, George Rodriguez sustained damage.

Count II: 42 U.S.C. § 1983 Against James R. Bolding, Christy Kim, and Reidun Hilleman for Violating George Rodriguez's Fourteenth Amendment Right to a Fair Trial by Failing to Disclose Material Exculpatory and Impeachment Evidence

193. James R. Bolding, Christy Kim, and Reidun Hilleman fabricated inculpatory evidence that caused the wrongful conviction of George Rodriguez as alleged above. Each of them failed to disclose to prosecutors or to George Rodriguez and his counsel that they had fabricated evidence as alleged above. The fabrications would have impeached trial testimony of, inter alia, Bolding and Hilleman, and would have undermined the prosecutor's argument that scientific evidence refuted George Rodriguez's alibi.

194. James R. Bolding and Christy Kim also failed to disclose material, exculpatory and impeachment evidence concerning exculpatory results obtained through serological testing, including that serology testing revealed that 100% of the population, including Yanez, could have been that "fat" attacker. This evidence was exculpatory because it corroborated George Rodriguez's contention that Yanez was the "fat" attacker, and undermined the prosecutor's argument that scientific evidence refuted Yanez's culpability.

195. James R. Bolding, Christy Kim, and Reidun Hilleman each had a clearly established duty to disclose to prosecutors their fabrication of evidence and their exculpatory test results and analysis so that prosecutors would disclose it to George Rodriguez and his counsel. Their deliberate failure to make the required disclosures denied George Rodriguez liberty without due process of law, and as a proximate result of their unconstitutional actions, George Rodriguez sustained damage.

Count III: 42 U.S.C. § 1983 Supervisory Liability Against James R. Bolding

196. James R. Bolding, in his supervisory capacity in the Crime Lab, failed adequately to train and supervise defendant Christy Kim with respect to basic forensic practices, including understanding and reporting the significance of blood typing work, using substrate or positive and negative controls in blood typing, reporting the results of testing and probative findings, using written standard operating procedures for lab work, and using generally accepted documentation and evidence control procedures, as well as the duty to document and disclose material exculpatory and impeachment evidence to prosecutors and defense counsel.

197. Bolding, in his supervisory capacity, knew, or in the absence of his deliberate or reckless indifference should have known, that in the course of performing bloody typing work and preparing bench notes and reports in George Rodriguez's case defendant Christy Kim fabricated evidence, failed to document and disclose material, exculpatory and impeachment evidence, and had reached utterly wrong scientific conclusions.

198. Bolding failed adequately to train and supervise Kim with deliberate indifference to the known and obvious consequences that deprivations of due process would result.

199. As a direct and proximate result of Bolding's failure to train and supervise Kim, George Rodriguez was denied due process when Kim fabricated inculpatory evidence that was used against him at trial and failed to disclose to prosecutors material exculpatory and impeachment evidence.

200. Bolding's failure to supervise denied George Rodriguez liberty without due process of law, and as a proximate result, George Rodriguez sustained damage.

Count IV: 42 U.S.C. § 1983 Against Jose J. Gonzalez, Eraldo Garcia, Jr., Genaro Naranjo, Stephen L. Clappart, Russell E. Sisk, and Mary D. Tobar for Violating the George Rodriguez's Fourteenth Amendment Due Process and Fair Trial Rights by Procuring Unconstitutionally Suggestive Identifications, Fabricating Inculpatory Evidence, Concealing Exculpatory Evidence and Conduct from Prosecutors and Defense Counsel, Coaching Witness, and Deliberately Failing to Pursue Known and Exculpatory Investigative Leads

201. Jose J. Gonzalez deprived George Rodriguez of his right to a fair trial under the Fourteenth Amendment Due Process Clause by fabricating an inculpatory witness statement and failing to disclose the material, exculpatory and impeachment circumstances behind that witness statement. Specifically, on February 25, 1987 Gonzalez fabricated the victim's statement to make it appear that the fact that one of the rapists was named "George" had emanated from her recollection, rather than from suggestion and coaching provided by Gonzalez. Gonzalez's coaching of the victim to change her original account that the victim's name was not George was material, exculpatory and impeachment evidence that was not disclosed to prosecutors.

202. Genaro Naranjo and Eraldo Garcia, Jr. deprived George Rodriguez of his right to a fair trial under the Fourteenth Amendment Due Process Clause by deliberately conducting unconstitutionally suggestive photographic identification procedures with the victim and Marco Saldana on or about February 25, 1987. On information and belief, the unconstitutionally suggestive conduct of Naranjo and Garcia included, but was not limited to, preparing an unduly suggestive array, providing suggestion and encouragement to the victim and Marco Saldana that they select George Rodriguez's photograph, and explicitly or implicitly affirming that the victim's and Marco Saldana's selection of George Rodriguez's photograph was correct.

203. The identifications procured by Naranjo and Garcia under unconstitutionally suggestive circumstances were used against George Rodriguez at trial.

204. Genaro Naranjo and Eraldo Garcia, Jr. deprived George Rodriguez of his right to a fair trial under the Fourteenth Amendment Due Process Clause by deliberately failing to document and disclose to prosecutors material exculpatory and impeachment evidence concerning those identification procedures.

205. Stephen L. Clappart, Russell E. Sisk, and Mary D. Tobar deprived George Rodriguez of his right to a fair trial under the Fourteenth Amendment Due Process Clause by deliberately conducting an unduly suggestive show up identification procedure on March 10, 1987. On information and belief, the unconstitutional suggestion employed by Clappart, Sisk, and Tobar, individually and in concert, in order to prompt the victim to identify George Rodriguez from the lineup included but was not limited to the following;

- a. Requiring George Rodriguez to enter the show up in a pre-determined position;
- b. Requiring only George Rodriguez, and not any “fillers” to speak multiple times during the show up;
- c. Providing other overt and implicit suggestion and encouragement to the victim before, during, and after her selection of George Rodriguez as her attacker.

206. The identification procured by Clappart, Sisk, and Tobar under unduly suggestive circumstances was used against George Rodriguez at trial.

207. Stephen L. Clappart, Russell E. Sisk, and Mary D. Tobar deprived George Rodriguez of his right to a fair trial under the Fourteenth Amendment Due Process Clause by fabricating inculpatory evidence when they prepared a supplemental offense report documenting

the March 10, 1987 show up and falsely reported that George Rodriguez chose his own spot in the show up and that each person in the show up spoke one time.

208. Stephen L. Clappart, and Mary D. Tobar deprived George Rodriguez of his right to a fair trial under the Fourteenth Amendment Due Process Clause by deliberately conducting an unduly suggestive show up identification procedure on April 23, 1987, and deliberately manipulating the victim's recollection of her attacker so as to eliminate differences between the victim's recollection and the appearance of George Rodriguez. On information and belief, the unconstitutional suggestion employed by Clappart, and Tobar, individually and in concert, in order to prompt the victim to identify George Rodriguez's photograph included but was not limited to the following;

- a. Manipulating the photographic viewing process to ensure that the victim identified George Rodriguez, and not Isidro Yanez, as her attacker;
- b. Providing overt and implicit suggestion to the victim concerning the physical appearance of George Rodriguez as opposed to the physical appearance of Isidro Yanez;
- c. Providing other overt and implicit suggestion and encouragement to the victim before, during, and after her selection of George Rodriguez as her attacker.

209. Stephen L. Clappart, and Mary D. Tobar deprived George Rodriguez of his right to a fair trial under the Fourteenth Amendment Due Process Clause by fabricating a supplemental report of the April 23, 1987 interview to make it appear that the victim had an independent memory about distinguishing physical feature of George Rodriguez, and that

George Rodriguez, and not Isidro Yanez, was her attacker, when in fact those details had been suggested to her by Clappart and Tobar.

210. Stephen L. Clappart, Russell E. Sisk, and Mary D. Tobar violated George Rodriguez's right to a fair trial under the Fourteenth Amendment Due Process Clause when they deliberately failed to disclose to prosecutors the material, exculpatory and impeachment evidence of their fabrications and of their unduly suggestive conduct during the March 10, 1987 show up procedure and the April 23 interview and identification procedure.

211. Stephen L. Clappart and Mary D. Tobar violated George Rodriguez's right under the Fourteenth Amendment not to be deprived of liberty without due process of law by deliberately conducting a constitutionally inadequate investigation, including (a) coaching eyewitnesses to identify George Rodriguez, (b) failing to document and disclose material evidence tending to prove his innocence or to prove the guilt of the real rapist, Yanez, (c) fabricating evidence against George Rodriguez and in favor of Yanez, and (d) utterly failing to investigate Yanez even while believing him to be a viable suspect.

212. Defendants Gonzalez, Naranjo, Garcia, Clappart, Sisk, and Tobar violated their clearly established duties under the Fourteenth Amendment to disclose material, exculpatory and impeachment evidence, and not to fabricate evidence, conduct unduly suggestive identification procedures, and conduct constitutionally inadequate investigations. No reasonable police officers in 1987 would have believed that the deliberate violations of those duties undertaken by the defendants was lawful.

213. As a proximate result of the unconstitutional actions of defendants Gonzalez, Naranjo, Garcia, Clappart, Sisk, and Tobar, George Rodriguez sustained damage.

Count V: 42 U.S.C. § 1983 Against Stephen L. Clappart, Mary D. Tobar, and Others Unknown At This Time For Conspiracy to Violate George Rodriguez's Fourteenth Amendment Due Process and Fair Trial Rights by Procuring Unconstitutionally Suggestive Identifications, Fabricating Inculpatory Evidence, Concealing Exculpatory Evidence and Conduct from Prosecutors and Defense Counsel, Coaching Witnesses, and Deliberately Failing to Pursue Known and Exculpatory Investigatory Leads

214. Stephen L. Clappart, Mary D. Tobar, and others unknown at this time conspired to and did fabricate inculpatory evidence that caused the conviction of George Rodriguez when they conducted the show up on March 10, 1987, required George Rodriguez to enter the show up in a pre-determined position, and required only George Rodriguez to speak multiple times during the show up, resulting in the victim identifying George Rodriguez as her attacker.

215. Stephen L. Clappart, Mary D. Tobar, and others unknown at this time conspired to and did conceal this conduct from prosecutors and defense counsel when they prepared a supplemental offense report that falsely claimed that George Rodriguez chose his own spot in the show up and that each person in the show up spoke one time.

216. Stephen L. Clappart, Mary D. Tobar, and others unknown at this time conspired to and did fabricate inculpatory evidence that caused the conviction of George Rodriguez when they coached the victim on April 23, 1987 and reported that, contrary to the victim's initial statement to the police on the night she was attacked that she believed "George" was a false name, the victim now recalled that the attacker addressed as "George" got angry and told the other attacker not to use his name again. This report was false because Clappart and Tobar knew that the name "George" had been suggested to the victim by the police, who had coached her to change her initial, truthful account.

217. Stephen L. Clappart, Mary D. Tobar, and others unknown at this time conspired to and did fabricate inculpatory evidence that caused the conviction of George Rodriguez when, on April 23, 1987, they reported that the victim selected the photograph of George Rodriguez as her attacker when, in fact, the victim said both the photograph of Yanez and the photograph of George Rodriguez looked like her attacker. This report was false because Clappart and Tobar knew that the victim's selection of George Rodriguez was not, in fact, a positive identification.

218. The concerted fabrication of evidence through unduly suggestive show up procedures, false inculpatory reports concerning the show up photo-array, and witness coaching by Stephen L. Clappart, Mary D. Tobar, and others unknown at this time denied George Rodriguez liberty without due process of law.

219. The concerted failure by Stephen L. Clappart, Mary D. Tobar, and others unknown at this time to disclose to prosecutors their evidence fabrications and their unduly suggestive show up procedures, in violation of their clearly established duty under the Fourteenth Amendment to disclose such material, exculpatory and impeachment evidence, denied George Rodriguez liberty without due process of law.

220. Stephen L. Clappart, Mary D. Tobar, and others unknown at this time acted in concert to fabricate inculpatory evidence that caused the conviction of George Rodriguez through unduly suggestive show up procedures, false inculpatory reports concerning the show up and photo-array, non-disclosure of a witness's failure to identify George Rodriguez in a videotaped show up, and witness coaching with the illegal objective of creating inculpatory evidence and concealing material exculpatory and impeachment evidence to support the case against George Rodriguez.

221. Stephen L. Clappart, Mary D. Tobar, and others unknown at this time acted in concert to deliberately conduct a constitutionally inadequate investigation, including (a) coaching eyewitnesses to identify George Rodriguez, (b) failing to document and disclose material evidence tending to prove his innocence or to prove the guilt of the real rapist, Yanez, (c) fabricating evidence against George Rodriguez and in favor of Yanez, and (d) utterly failing to investigate Yanez even while believing him to be a viable suspect, all in violation of George Rodriguez's right under the Fourteenth Amendment not to be deprived of liberty without due process of law.

222. As a proximate result of the concerted, unconstitutional actions of defendants Clappart and Tobar, and others unknown at this time, George Rodriguez sustained damage.

Count VI: 42 U.S.C. § 1983 Supervisory Liability Claim Against John Doe and Jane Doe, Supervisors in the Houston Police Department

223. Defendant supervisors in the HPD, collectively referred to as John Doe and Jane Doe, failed adequately to train and supervise defendants Jose J. Gonzalez, Eraldo Garcia, Jr., Genaro Naranjo, Stephen L. Clappart, Russell E. Sisk, and Mary D. Tobar with respect to fundamental investigative techniques and duties, including conducting constitutionally permissible identification procedures, the duty to avoid coaching witnesses, the duty to disclose manipulation of witness recollections, the duty to disclose material exculpatory and impeachment evidence to prosecutors and defense counsel, proper methods of securing evidence, and proper methods of locating suspects and pursuing known and exculpatory leads.

224. John Doe and Jane Doe failed adequately to train and supervise Jose J. Gonzalez, Genaro Naranjo, Eraldo Garcia, Jr., Stephen L. Clappart, Russell E. Sisk, and Mary D. Tobar

with deliberate indifference to the known and obvious consequences that deprivations of due process would result.

225. John Doe and Jane Doe knew, or in the absence their deliberate or reckless indifference should have known, that in the course of investigating George Rodriguez their subordinates, defendants Gonzalez, Naranjo, Garcia, Clappart, Sisk, and Tobar conducted unduly suggestive identification procedures, manipulated the victim's recollection of her attacker so as to eliminate differences between George Rodriguez and the victim's recollection of her attacker, deliberately or recklessly failed to pursue and apprehend Yanez in time to give the victim a fair opportunity to identify him as her attacker before he changed his appearance, failed to secure and search Yanez's car for evidence when police located it immediately after the crimes, and failed to document and disclose to prosecutors and defense counsel material evidence tending to prove George Rodriguez's innocence or to prove the guilt of the real rapist, Yanez

226. As a direct and proximate result of John Doe's and Jane Doe's failure to train and supervise these officers, George Rodriguez was denied due process when these officers conducted unduly suggestive identification procedures, manipulated the victim's recollection of her attacker so as to eliminate differences between George Rodriguez and the victim's recollection of her attacker, deliberately or recklessly failed to pursue and apprehend Yanez in time to give the victim a fair opportunity to identify him as her attacker before he changed his appearance, failed to secure and search Yanez's car for evidence when police located it immediately after the crimes, and failed to document and disclose to prosecutors and defense counsel material evidence tending to prove George Rodriguez's innocence or to prove the guilt of the real rapist, Yanez.

227. As a proximate result of the actions of defendants John Doe and Jane Doe, George Rodriguez sustained damage.

Count VII: 42 U.S.C. § 1983 Claim Against the City Of Houston for Its Policies and Customs with Respect to the Crime Laboratory

228. During 1987 and before, the City maintained a policy, custom, and practice of operating a substandard crime laboratory that failed to provide reliable forensic analysis, and in which forensic evidence was fabricated and material impeachment and exculpatory evidence was not disclosed to prosecutors.

229. The City's official policies and customs were to hire and promote employees with inadequate forensic education and experience in an effort to fill technical positions with cheap labor, and to withhold from forensic employees adequate supervision or training in basic forensic practices, including understanding and reporting the significance of blood typing work, using substrate or positive and negative controls in blood typing, reporting the results of testing and probative findings, conducting administrative and technical reviews of serologists' work, using written standard operating procedures for lab work, and using generally accepted documentation and evidence control procedures.

230. The City's final policymakers knew of these policies and customs, and implemented them with deliberate indifference to the likelihood that wrongful convictions would result from them.

231. The City's policies and customs were the moving force of the production of false or fabricated hair examination and serological tests in the case of George Rodriguez, the production of fabricated reports, bench notes, and other documents related to such tests, and the

failure to disclose the fabrications to prosecutors or to George Rodriguez and his counsel. The crime laboratory's false and fabricated scientific evidence was used to wrongly convict George Rodriguez of aggravated kidnapping and aggravated sexual assault of a child on October 29, 1987, in violation of his due process rights as determined by the Texas Court of Criminal Appeals.

232. George Rodriguez has been damaged as a proximate result of the City's policies and customs with respect to the crime laboratory.

Count VIII: 42 U.S.C. § 1983 Claim Against the City Of Houston for Its Policies And Customs with Respect Training and Supervision of Police Officers

233. During 1987 and before, the City's official policies and customs were to employ police officers who were inadequately trained and supervised with respect to fundamental investigative techniques and duties, including techniques with respect to witness identification procedures, the duty to avoid coaching witnesses, the duty to disclose manipulation of witness recollections and exculpatory evidence to prosecutors and defense counsel, proper methods of securing evidence, and proper methods of locating suspects and following up on leads.

234. The City's final policymakers knew of these policies and customs, and implemented them with deliberate indifference to the likelihood that wrongful convictions would result from them.

235. The City's policies and customs were a moving force behind the denial of due process to George Rodriguez in that they directly caused to police improprieties and errors in the investigation, including conducting unduly suggestive identification procedures, manipulating the victim's recollection of her attacker so as to eliminate differences between George Rodriguez

and the victim's recollection of her attacker, failing to pursue and apprehend Yanez in time to give the victim a fair opportunity to identify him as her attacker before he changed his appearance, failing to secure and search Yanez's car for evidence when police located it immediately after the crimes, and failing to report exculpatory matter to prosecutors and defense counsel.

236. George Rodriguez has been damaged as a proximate result of the City's policies and customs to employ police officers who were inadequately trained and supervised with respect to fundamental investigative techniques and duties.

Count IX: 42 U.S.C. § 1983 Claim Against Harris County and Charles A. Rosenthal, Jr. in His Official Capacity for Failure to Train and Supervise District Attorneys' with Respect to Disclosing to Defense Counsel All Material Exculpatory Evidence and Impeachment Evidence

237. During 1987 and before, Harris County's official policies and customs were to employ Assistant District Attorneys who were inadequately trained and supervised with respect to their duty to disclose to defense counsel all material exculpatory and impeachment evidence.

238. The County's final policymakers, including the District Attorney, knew or in the absence of deliberate or reckless indifference should have known of these policies and customs, and implemented them with deliberate indifference to the likelihood that deprivations of due process, including wrongful convictions, would result from them.

239. During 1987 and before, the County's final policymakers, including the District Attorney, knew or in the absence of deliberate or reckless indifference should have known that the County's "open file policy," as implemented by its Assistant District Attorneys, routinely failed to achieve disclosure of material exculpatory and impeachment evidence to the defense.

240. The County's policies and customs were a moving force behind the denial of due process to George Rodriguez in that they directly contributed to the failure of the prosecutors to disclose to defense counsel material exculpatory and impeachment evidence, including (a) exculpatory serological tests results as alleged above, (b) material exculpatory and impeachment evidence concerning the fabrication of evidence by defendants Bolding, Kim, and Hilleman as alleged above, (c) material exculpatory and impeachment evidence concerning the unduly suggestive identification procedures conducted by the police as alleged above, (d) material exculpatory and impeachment evidence concerning the witness coaching conducted by the police as alleged above, and (e) material exculpatory evidence tending to prove George Rodriguez's innocence or the guilt of the real rapist, Yanez, as alleged above, including the fact that Yanez was a suspect in a subsequent rape and that his own mother told police he had committed several previous rapes without being prosecuted for them.

241. George Rodriguez has been damaged as a proximate result of the County's policies and customs to employ District Attorneys who were inadequately trained and supervised with respect to their duty to disclose to defense counsel all material exculpatory and impeachment evidence.

PRAYER

242. Plaintiff George Rodriguez requests that defendants be cited to appear and answer, and that on final trial plaintiff recover:

- d. Compensatory damages;
- e. Punitive damages against the non-municipal defendants;

- f. Costs of suit, including reasonably attorneys' fees under 42 U.S.C. § 1988;
- g. Prejudgment and postjudgment interest as allowed by law; and
- h. Such other and further relief to which plaintiff justly may be entitled.

Respectfully submitted,



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Certificate of Service

I certify that on November 30, 2006, this document properly was served on the following counsel of record via email (where possible) and regular mail in accordance with FRCP.

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A handwritten signature in black ink, appearing to read "Mark L.D. Wawro", written over a horizontal line.

Mark L.D. Wawro