

State of New York
Office of the Inspector General



Report of Investigation
of the State University of New York College of
Environmental Science & Forestry

July 2013

Catherine Leahy Scott
Inspector General

STAFF FOR THIS INVESTIGATION AND REPORT

SPENCER FREEDMAN

Executive Deputy Inspector General

MICHAEL C. CLARKE

Chief of Staff and Counsel

BERNARD COSENZA

Deputy Inspector General for Investigations

JEFFREY HAGEN

Investigative Counsel

CHARLES TIRONE

Investigator

MAREN ROBINSON

Investigator

FELISA HOCHHEISER

Director of Investigative Reporting (New York City)
Special Counsel

STEPHEN DEL GIACCO

Director of Investigative Reporting (Albany)

EXECUTIVE SUMMARY

In April 2013, the Inspector General received allegations from the New York State Commission on Forensic Science that the State University of New York College of Environmental Science and Forestry (SUNY ESF), in conjunction with the Syracuse Police Department, may be conducting gunshot residue analysis on forensic casework in violation of New York State Executive Law.

Upon conducting an investigation of these allegations, the Inspector General found that Syracuse Police Detective Terrence McGinn conducted forensic casework at a SUNY ESF laboratory without proper authorization, in effect operating an unaccredited forensic laboratory. McGinn's activities may have violated New York State Executive Law § 995-b. McGinn ceased casework at SUNY ESF after concerns were raised by Onondaga County District Attorney William Fitzpatrick.

The Inspector General further found that SUNY ESF appointed McGinn an adjunct professor and permitted him to use its facility without performing due diligence, which should have identified the legal and other ramifications of McGinn's activities. SUNY ESF, however, does not appear to have violated New York State Executive Law § 995-b. SUNY ESF did not operate a forensic laboratory within the meaning of the Executive Law. Rather, SUNY ESF staff believed that McGinn's limited casework was done in his capacity as a Syracuse police officer, and no SUNY ESF staff participated in the casework.

The Inspector General recommended that SUNY ESF review its current adjunct professor appointments to ensure that no such appointee is performing work that requires accreditation or any other authorization by law. SUNY Chancellor Nancy L. Zimpher advised the Inspector General that this recommendation will be implemented.

The Inspector General is providing these findings to the Commission on Forensic Science and the New York State Attorney General's Office.

INTRODUCTION AND BACKGROUND

The State University of New York College of Environmental Science and Forestry, located in Syracuse, is an educational and research institution focused on the study of the environment and the development of renewable technologies. The college offers 24 undergraduate and 30 graduate degree programs in sciences, engineering, forestry, and landscape architecture, among others. Approximately 1,650 undergraduate students and 600 graduate students are enrolled at SUNY ESF.¹ SUNY ESF does not operate a forensic laboratory.

Forensic analysis is an essential part of the criminal justice system. To ensure that forensic analysis is performed with the highest degree of integrity, New York

¹ www.esf.edu/welcome/fact.htm

Executive Law empowers the Commission on Forensic Science to “develop minimum standards and a program of accreditation” for all forensic laboratories in New York State.² The law defines a “forensic laboratory” as “any laboratory operated by the state or unit of local government that performs forensic testing on evidence in a criminal investigation or proceeding or for purposes of identification [other than latent fingerprints by police agencies].”³ As a state entity, SUNY ESF, if it were to operate a forensic laboratory, would be subject to the accreditation requirements established by the Commission on Forensic Science that all forensic laboratories must be accredited by the American Society of Crime Laboratory Directors/ Laboratory Accreditation Board (ASCLD/LAB).⁴

The Inspector General received allegations from the Commission on Forensic Science that SUNY ESF may be conducting gunshot residue analysis on forensic casework in violation of New York State Executive Law Article 49-B, § 995-b, which requires that such casework be performed only at accredited laboratories.

As a State University of New York college, SUNY ESF is subject to the jurisdiction of the Inspector General. This investigation was conducted pursuant to the Inspector General’s statutory authority under Article 4-A of the New York State Executive Law. In addition, the Inspector General has been designated by the Commission on Forensic Science, pursuant to federal law, as the governmental entity responsible for conducting independent, external investigations into “allegations of serious negligence or misconduct substantially affecting the integrity of forensic results committed by employees or contractors of any forensic laboratory system.” Although the alleged conduct in this case did not occur in an accredited forensic laboratory receiving federal funding, the Commission on Forensic Science referred this matter to the Inspector General.

THE INSPECTOR GENERAL’S INVESTIGATION FOUND THAT SYRACUSE POLICE DETECTIVE USED SUNY ESF FACILITY FOR FORENSIC CASEWORK WITHOUT PROPER AUTHORIZATION

SUNY ESF Commenced Gunshot Residue Research in 1998

SUNY ESF’s involvement in the field of gunshot residue has been largely limited to the research of Professor David L. Johnson, Ph.D.⁵ In 1998, Johnson, a member of the Chemistry Department, began researching the use of a scanning electron microscope/energy dispersive x-ray spectrometer to perform gunshot residue testing. At that time, Johnson became acquainted with Syracuse Police Detective Terrence McGinn. McGinn holds a bachelor’s degree in chemistry from Lemoyne College and has been

² N.Y. Executive Law § 995-b(1)

³ N.Y. Executive Law § 995(1)

⁴ 9 NYCRR 6190.3

⁵ Johnson taught analytical and environmental chemistry at ESF for 35 years prior to retiring in 2010. He is currently a professor emeritus at SUNY ESF, where he maintains an office and has access to the college’s research facilities.

employed by the Syracuse Police Department since 1990. From 1999 to 2002 McGinn was assigned to the Onondaga County Center for Forensic Sciences as a chemist. The Onondaga County Center for Forensic Sciences has been accredited by ASCLD/LAB and the Commission on Forensic Science since the inception of the requirement, and has undergone routine accreditation inspections by ASCLD/LAB.

Since 1998, McGinn has also served as a forensic detective in the police department's crime scene unit. In this capacity, his primary responsibilities are to process crime scenes and collect physical evidence including trace evidence and gunshot residue evidence. Johnson and McGinn discussed gunshot residue-related issues including obtaining samples, primarily from shooting ranges, for research purposes. In 1998, McGinn then began working with Johnson on the research, and Johnson taught McGinn how to use the ESF electron microscope to analyze samples.

Johnson advised the Inspector General that after 2008 he discontinued most of his gunshot residue research. McGinn, however, continued to conduct such research at ESF. According to Johnson, McGinn was primarily looking at the methodology of collecting gunshot residue samples by vacuum method. Johnson stated that at that point his role in the research was limited to discussing with McGinn research results and potential ways to develop scientific experiments.

While this joint research was occurring, SUNY ESF, acting on a proposal from Johnson, appointed McGinn an adjunct professor to facilitate his gunshot residue research. As an adjunct professor, McGinn was issued ESF identification, a key to the laboratory, and access to the electron microscope. According to McGinn, he held a series of similar appointments throughout the research period. The most recent appointment, which was dated October 24, 2008 for the adjunct professorship that ran from December 1, 2008 to December 1, 2011, advised McGinn, "While this position carries with it no remuneration, and while you would not accumulate any legal rights or privileges, we believe that your association with the College will be mutually beneficial." According to McGinn, this appointment was a continuation of previous similar appointments.

McGinn Conducted Forensic Casework in Active Criminal Investigations at the SUNY ESF Laboratory

After having conducted gunshot residue research at SUNY ESF since 1998, McGinn, in 2006, also began to use the ESF laboratory to perform forensic casework in active criminal investigations. McGinn testified to the Inspector General that he taught classes on evidence handling procedures and the operation of the Onondaga County Center for Forensic Sciences. In this training, he discussed gunshot residue and other trace evidence analysis. As a result, law enforcement agencies, including the Syracuse Police Department, contacted him with requests for such testing. McGinn provided a spreadsheet to the Inspector General listing 11 cases in which he performed the forensic casework from late 2006 to early 2011. McGinn said he believed he conducted forensic analysis in a 12th case during this period, but he could not recall the specifics. According

to McGinn, these were the only cases in which he conducted forensic analysis at SUNY ESF.

McGinn's spreadsheet showed that the 11 requests for forensic casework came from three law enforcement agencies: five cases from the Syracuse Police Department, four from the Onondaga County District Attorney's Office, and two from the Town of DeWitt Police Department. McGinn stated that the possible 12th case was requested by the Onondaga County District Attorney's Office. The Syracuse Police Department, McGinn's employer, was aware that McGinn was conducting gunshot residue testing. In addition to requesting the gunshot residue analysis in the five cases, the Syracuse Police Department paid approximately \$3,600 from 2010 to 2012 for the purchase of liquid nitrogen for the operation of the SUNY ESF electron microscope.⁶ The Onondaga County Center for Forensic Sciences, the accredited forensic laboratory for the area, does not perform this type of testing, and does not possess an electron microscope.⁷

In two of the cases for which he conducted gunshot residue testing, McGinn testified about his analysis in criminal trials. In those cases, he mentioned his research work at SUNY ESF with regard to his qualifications, but offered the testimony in his capacity as a member of the Syracuse Police Department's crime scene unit. In one case he stated, "And I often am called upon by our department for the, or the DA's Office, to run firearms discharge residue analyses or gunshot residue analyses on various items of evidence that are collected from crime scenes."⁸

Johnson advised the Inspector General that he knew that McGinn conducted forensic casework in the SUNY ESF laboratory, but believed it was acceptable because McGinn did so as a member of the Syracuse Police Department. Despite knowledge that McGinn was conducting forensic casework in active criminal investigations, SUNY ESF conducted no due diligence to identify potential legal or other issues arising from McGinn's use of its laboratory for this purpose.

Johnson stated that other than discussing the results of the casework analysis with McGinn in terms of what it meant for the research that was being conducted, he did not participate in any aspect of McGinn's analysis, nor did any other SUNY ESF employee. Johnson explained that this was a deliberate decision on his part because he did not feel he nor anyone else at SUNY ESF should be conducting casework as they were not members of the Syracuse Police Department.

McGinn also stated that he performed the casework without assistance from SUNY ESF personnel. He stated that Johnson made clear to him that he did not want to participate in casework other than to be available to consult with McGinn if needed. McGinn further stated that he conducted the forensic work during his work hours with the

⁶ SUNY ESF provided three invoices for \$1,200 each that it sent to the Syracuse Police Department for the use and maintenance of the chemicals used in operation of the electron microscope.

⁷ The Onondaga County Crime Laboratory does perform non-primer GSR examinations primarily to determine muzzle-to-target distances.

⁸ *People v. Dwight Delee*, Onondaga County Court (2009), p. 426.

Syracuse Police Department, and that the casework was separate from the research. When asked by the Inspector General if he performed the work on the cases in question in his capacity as a Syracuse police officer or as a researcher at SUNY ESF, McGinn stated, “ESF was nothing more than the jumping ground or the stage which allowed me to utilize this technology. They by no means . . . cared that I was doing it, nor did they encourage me to do it. They were there to just help law enforcement in whatever way they could. They didn’t care about the result, the names, or the information, or anything like that.”

McGinn Ceased Casework at SUNY ESF After Onondaga County District Attorney Raised Concern

In or about June 2011, Onondaga County District Attorney William Fitzpatrick became aware that McGinn was conducting gunshot residue forensic casework at SUNY ESF. As a result, Fitzpatrick convened a meeting to discuss the matter on June 14, 2011. In addition to Fitzpatrick, participants in the meeting included McGinn, Syracuse Police Deputy Chief Shawn Broton, other Syracuse Police Department representatives, Director of the Onondaga County Center for Forensic Sciences Kathleen Corrado, and Michael Dujanovich, the head of the Onondaga County Center for Forensic Sciences firearms section. In addition to their positions as Onondaga County District Attorney and Director of the Onondaga County Center for Forensic Sciences respectively, both Fitzpatrick and Corrado, as members of the Commission on Forensic Science, are fully aware of the accreditation requirements and procedures for forensic laboratories in New York State. At the meeting, Fitzpatrick advised McGinn that forensic casework should be conducted only in an accredited laboratory and discussed the applicable law.⁹

When interviewed by the Inspector General, Fitzpatrick denied ever requesting gunshot residue testing from McGinn or authorizing such testing. Fitzpatrick acknowledged that in three instances, assistant district attorneys in his office requested gunshot residue analysis without his knowledge. With regard to the fourth instance, Fitzpatrick’s office provided a memorandum in which the assistant district attorney stated that he did not request the testing. McGinn acknowledged that the requests he received were from assistant district attorneys and that he did not discuss his gunshot residue testing with Fitzpatrick. McGinn further noted to the Inspector General that he agreed at that meeting not to conduct any further gunshot residue casework without first consulting with the District Attorney’s Office. He added that he has not done any such casework since then, at SUNY ESF or elsewhere, and has also ceased gunshot residue research at SUNY ESF.

The Inspector General also questioned McGinn about SUNY ESF’s accreditation status. McGinn responded that he was aware that the SUNY ESF laboratory was not accredited by ASCLD/LAB or any other forensic body. However, he believed that because SUNY ESF was a state laboratory with credentials, ASCLD/LAB accreditation was not required. McGinn further asserted that he believed SUNY ESF was not able to receive accreditation because it was not a “municipal lab.” Notwithstanding,

⁹ Executive Law 49-B, § 995-b

accreditation is not limited to municipal laboratories; any laboratory in New York State can be accredited to perform forensic work. McGinn testified to the Inspector General that he did not consider accreditation an issue until it was raised by District Attorney Fitzpatrick in 2011. Despite this admission, McGinn also testified that he had consulted with a private attorney who advised him that the SUNY ESF laboratory did not require such accreditation. McGinn further acknowledged that he went through two ASCLD/LAB certifications while he worked at the Onondaga County Forensic Laboratory.

As noted above, New York State Executive Law defines a “forensic laboratory” as “any laboratory operated by the state or unit of local government that performs forensic testing on evidence in a criminal investigation or proceeding or for purposes of identification. . . .” The Executive Law further requires that all such laboratories be accredited by the Commission on Forensic Science and ASCLD/LAB. By conducting gunshot residue testing in active criminal investigations, McGinn effectively operated an unaccredited forensic laboratory at SUNY ESF. His assertions above notwithstanding, McGinn knew or should have known that the testing he performed required the use of an accredited forensic laboratory, and that the SUNY ESF facility was not such a facility. As such, the Inspector General has determined that McGinn may have violated New York State Executive Law § 995-b.

SUNY ESF, in contrast, did not violate New York State Executive Law § 995-b. Although SUNY ESF should have exercised due diligence to identify potential legal or other issues arising from McGinn’s use of its laboratory, SUNY ESF did not operate a forensic laboratory within the meaning of the Executive Law. SUNY ESF faculty and administration believed that the limited casework that was conducted using the SUNY ESF electron microscope was being done by McGinn in his capacity as a Syracuse police officer. Johnson emphasized that he made a conscious decision that no student or faculty member would participate in the forensic casework. McGinn confirmed that he performed the casework alone and during his work hours as a member of the Syracuse Police Department.

Commission on Forensic Science Representatives Contacted SUNY ESF and the Syracuse Police Department Regarding McGinn’s Casework

In June 2012, Gina Bianchi, General Counsel of the New York State Division of Criminal Justice Services (DCJS) and then Acting Director of DCJS’s Office of Forensic Services, the administrative arm of the Commission on Forensic Science, contacted the Syracuse Police Department after receiving information about McGinn’s work at SUNY ESF.¹⁰ Bianchi advised the Inspector General that she spoke with Deputy Chief Broton and advised him that the SUNY ESF laboratory lacked accreditation necessary to conduct forensic work. In addition, at that time Onondaga County Center for Forensic Sciences Director and Commission on Forensic Science member Corrado contacted SUNY ESF President Cornelius Murphy, advising him of the accreditation requirements. Murphy

¹⁰ Reference to McGinn’s work at SUNY ESF had been included in a press release issued by a United States senator concerning a SUNY ESF application for a federal research grant.

told the Inspector General that he had only recently learned that McGinn was conducting casework at SUNY ESF and that he was unaware of the accreditation requirements until Corrado's call.

As a further follow-up to this matter, in a February 27, 2013 letter, Brian J. Gestring, the Director of the DCJS's Office of Forensic Services, also advised Murphy that SUNY ESF, as a publicly funded institution, must be accredited to perform forensic testing. In response, Murphy that same day directed SUNY ESF Vice-Provost for Research Neil H. Ringler to inform all SUNY ESF faculty members about this issue. In his written communication, Ringler advised staff to "be aware that according to Executive Law Article 49-B, section 995-b analysis on forensic casework must be performed in facilities that are accredited from both ASCLD/LAB and the [Commission on Forensic Science]." Ringler further noted that SUNY ESF does not have such accreditation for any of its laboratories.

FINDINGS AND RECOMMENDATIONS

The Inspector General found that Syracuse Police Detective Terrence McGinn conducted forensic casework at a SUNY ESF laboratory without proper authorization, in effect operating an unaccredited forensic laboratory, during the period 2006-2011. McGinn's activities may have violated New York State Executive Law § 995-b. McGinn ceased casework at SUNY ESF after concerns were raised by Onondaga County District Attorney William Fitzpatrick in June 2011.

The Inspector General further found that SUNY ESF appointed McGinn an adjunct professor and permitted him to use its facility without performing due diligence, which should have identified the legal and other ramifications of McGinn's activities. SUNY ESF, however, does not appear to have violated New York State Executive Law § 995-b. SUNY ESF did not operate a forensic laboratory within the meaning of the Executive Law. SUNY ESF staff believed that McGinn's limited casework was done in his capacity as a Syracuse police officer, and no SUNY ESF staff participated in the casework.

The Inspector General recommended that SUNY ESF review its current adjunct professor appointments to ensure that no such appointee is performing work that requires accreditation or any other authorization by law. SUNY Chancellor Nancy L. Zimpher advised the Inspector General that this recommendation will be implemented.

The Inspector General is providing these findings to the Commission on Forensic Science and the New York State Attorney General's Office.