



NEWS

From New York State Inspector General
Ellen N. Biben

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Inspector General Biben Finds Systemic Failures in Nassau Crime Lab Procedures, Management and Oversight

Inconsistencies found in at least 10 percent of drug tests with more criminal cases likely to be affected

New York State Inspector General Ellen Biben today released an investigative report that found systemic problems at the Nassau County Police Department's Forensic Evidence Bureau (a crime lab) went largely undetected, ignored, or were not properly addressed due to failures at all levels of the lab's management and oversight – from the laboratory itself, up through the Nassau County Police Department, Nassau County leadership, and ultimately the agency charged with forensic laboratory oversight in New York State, the Commission on Forensic Science.

The Inspector General's investigation – conducted pursuant to Governor Andrew Cuomo's February 25, 2011 Executive Order which directed the Inspector General to investigate the oversight and operation of the crime lab – found these compound failures enabled a substandard lab to operate for far too long.

The report found that since its creation in 2003, the lab suffered from weak leadership, a dysfunctional quality management system, analysts with inconsistent training and qualifications, and outdated and incomplete testing equipment and procedures. As a result, in a four-year period, the lab was twice placed on probation by a private accrediting agency, a sanction unprecedented among forensic laboratories in New York State.

"The chronic failures of the Nassau County crime lab deprived Nassau County, the criminal justice system, and the public of their right to have complete and unfettered confidence in forensic testing," said Inspector General Biben. "We have recommended an expanded review of the lab's results – along with other recommendations - to restore that confidence."

An extensive retesting plan of the lab's drug chemistry results developed by Nassau County officials and overseen by the Inspector General, revealed preliminary results that found inconsistencies in more than 10 percent of the cases – an unacceptable amount for a forensic lab. Most, if not all, of these involved inconsistencies that should have been detected by lab personnel, but were not. Some of the problems uncovered so far have impacted charges in criminal cases, and that trend is likely to continue.

Consequently, and in the exercise of caution, the Inspector General has recommended a broader review of every area at the lab to ensure the reliability of the laboratory's conclusions. Any issues identified that affect individual criminal cases have been and will continue to be handled by the Nassau County District Attorney's Office within the criminal justice system.

The Inspector General's investigation found that the Nassau County Police Department should have paid more attention to the lab. When the Police Department's leadership did learn about the poor inspection results and probation, they took little if any action and did not inform the Nassau County District Attorney's Office or the County Executive, as they should have.

Thomas Suozzi, the County Executive at the time, had deputies with direct supervisory authority over the Police Department, including its lab, and the other two non-police labs in the County. However, the County Executive and his deputies left the oversight of the forensic lab to the Police Department's leadership – a dependence which proved unreliable. As a result, the County Executive was not appropriately informed about significant lab issues, including the poor inspection reports or the lab's probation in 2006.

District Attorney Kathleen Rice was also uninformed regarding the lab's problems, including its 2006 probation. Until first learning of the lab's significant problems in December 2010, District Attorney Rice and her office took for granted the reliability of the evidence produced at the lab, a confidence that was misplaced.

Once District Attorney Rice and current County Executive Edward Mangano learned of the lab's problems, they acted promptly and appropriately by calling for the lab's closure and for certain retesting efforts, which are ongoing.

Finally, the Forensic Commission failed to provide the assistance and monitoring that the lab desperately needed. Instead, the Inspector General found that Forensic Commission abdicated most if not all of its responsibilities for oversight of the Nassau County lab and other forensic laboratories across the State to a private accrediting agency.

The confluence of these failures has led Nassau County to commit to a significant retesting effort, which has been and will continue to be a financial burden on an already fiscally strained County.

As a result, the report recommends changes to the management and operation of forensic laboratory testing in Nassau County as well as oversight of forensic laboratories across the State, to restore the public's confidence and reestablish the State's preeminence in forensic testing.

Westchester District Attorney Janet DiFiore, president of the District Attorneys Association of the State of New York, said, "The revelations contained in the Inspector General's report outlining the systemic failure that resulted in the closure of the Nassau County Police Department's Forensic Evidence Bureau are startling. The fact that particular lab struggled to continue to maintain its accreditation throughout its existence is unprecedented for New York State, which prides itself as a national leader in the field of forensic sciences. District attorneys throughout the State know and understand the importance of accurate forensic testing and have taken a proactive role in insuring the integrity of forensic analysis. This report will assist us in the implementation of that goal and I want to thank Inspector General Biben and her office for the comprehensive analysis done in this report."

The investigation of the Nassau County Police Department Forensic Evidence Bureau was conducted by Special Deputy Inspector General Philip F. Foglia, Director of Investigative Reporting Felisa Hochheiser, Investigative Counsel Jessica E. Silver, Deputy Inspector General for Investigations Bernard Cosenza, Chief Investigator Robert Werner, Deputy Chief Investigator Robert Addolorato, Investigator William Gleeson, Investigator Donnalynn Gazza, and Investigative Auditor Ilene Gates.

RECOMMENDATIONS

- Nassau County should expand the review of the forensic laboratory's casework to include every discipline. A plan for this expanded review should be prepared by the current lab director and submitted to the County Executive, District Attorney and the Inspector General within 30 days of the issuance of this report.
- The future Nassau County forensic laboratory must meet certain minimum requirements such as: (1) an effective quality assurance program must be implemented and maintained; (2) management and staff must be appropriately qualified; (3) ongoing training and education should be mandatory; (4) staffing levels should be responsive to expected case volumes; (5) the physical plant must be conducive to forensic testing; and (6) the laboratory must communicate directly and effectively with the County Executive and District Attorney to keep them apprised of lab-related issues.
- The State Forensic Commission should set clearer standards for forensic laboratory accreditation as it is empowered to do under Executive Law. For example: (1) it should set minimum standards for testing in each scientific discipline; (2) it should set minimum standards for quality assurance, quality control managers and lab directors; (3) it should require statewide uniform reporting templates for laboratories to use in sending test results for use in the criminal justice system; and (4) it should implement mandatory continuing education and certification for all forensic analysts.
- The Forensic Commission should establish regulations to improve the effectiveness of laboratory inspections.
- Encourage transparency in the accreditation process by (1) mandating that laboratories report impending inspections, results, remediation, and any other relevant information to the prosecutorial agencies they serve and the counties which provide their funding; and (2) implementing a process for the Forensic Commission itself to report to those same agencies.
- Mandate direct communication between accrediting organizations and the Forensic Commission instead of the current practice in which only the labs themselves are issued reports of the findings of inspections.
- The Office of Forensic Services, the administrative arm of the Forensic Commission, should be empowered to better monitor forensic laboratories and be directed by a scientist knowledgeable across many scientific disciplines and conversant in the structure of the criminal justice system.
- To the extent not already established, all district attorneys should designate liaisons within their offices to monitor issues relating to laboratory analysis, accreditation, and matters before the Forensic Commission. The lab liaison would be expected to stay

informed regarding issues of laboratory accreditation, inquire about inspection dates, inspection results, and remediation.

- If they have not already implemented educational programs, district attorneys across the state should consider mandatory continuing legal education courses in their offices on the specifics of reading and deciphering laboratory reports, forensic testing in general, and the forensic laboratory accreditation process. Moreover, the public and private defense bar should take steps to educate themselves about forensic oversight in New York State, lab accreditation, and the underlying forensic testing. In this way, the legal community at large will be better able to evaluate the reports and underlying information and will thereby provide yet another check on the results reported by laboratories.

The Accreditation History of the Nassau County Police Department **Forensic Evidence Bureau**

2003

- **January 6, 2003:** The Forensic Evidence Bureau (FEB) was established in 2003, a consolidation of the Scientific Investigation Bureau (SIB) and the Technical Services Bureau, to conduct forensic testing in Nassau County. Lt. James Granelle is appointed as Commanding Officer and Lab Director of the FEB.
- **January 30, 2003:** ASCLD/LAB's initial accreditation inspection of FEB finds nonconformances in 15 Essential criteria, 9 Important criteria and 2 Desirable criteria.
- **July 14, 2003:** Chauncey Parker, Chair of the NYS Commission of Forensic Science, sent a letter to James Lawrence, Commissioner of Police, Nassau County Police Department, expressing the Commission's concerns regarding the 2003 inspection report.
- **August 22, 2003:** Lawrence responded to Parker's letter stating that all Essential criteria had been remediated and explained that the high number of nonconformances were, in large part, a result of the recent consolidation.
- **October 6, 2003:** The ASCLD/LAB Board voted to re-accredit the FEB.

2004

- **2004:** FEB's annual self accreditation audit report reported nonconformance in 0 Essential criteria, 3 Important criteria and 1 Desirable criteria.

2005

- **October 6, 2005:** ASCLD/LAB's inspection report, concerning the September 19-23, 2005 accreditation inspection, revealed the FEB was noncompliant in 18 Essential criteria and 10 Important criteria.
- **December, 2005:** FEB Lab Director Granelle placed Melanie McMillin, a civilian, as Quality Assurance Manager.

2006

- **August 10, 2006:** FEB jettisoned hair and fire debris analyses following numerous failed attempts to remediate and to maintain ASCLD/LAB accreditation

- **August 14, 2006:** Ten months after the initial inspection, the ASCLD/LAB Board placed the FEB on probation due to the unacceptably high number of noncompliances found during the September 2005 inspection, and its self audit which was inconsistent with the inspection. However, the Board, having accepted the FEB's remediation, the Board also reaccredited the lab at the same time.
- **2006:** FEB's annual self accreditation audit reported nonconformances in 3 Essential criteria, 7 Important criteria and 0 Desirable criteria.

2007

- **April 20, 2007:** The Forensic Commission disseminated to all New York State laboratory directors the recently adopted DAASNY "Guidelines for Notification of District Attorneys in Cases of Laboratory Error or Misconduct by Laboratory Personnel."
- **May 17, 2007:** ASCLD/LAB Board lifted FEB's probation.
- **July 1, 2007:** Lawrence Mulvey was appointed Nassau County Police Commissioner.
- **October 22-26, 2007:** ASCLD/LAB inspection found the FEB was noncompliant in 8 Essential, 8 Important and 1 Desirable criteria.

2008

- **April 28, 2008:** Forensic Commission Chair Denise O'Donnell drafted a letter which, among other things, expressed concern about the historically high number of noncompliances cited by ASCLD/LAB in the 2007 report and over the previous four years, and requested that Nassau County officials contact her to arrange a meeting to discuss the issues at the lab. The letter, however, was never sent.
- **2008:** FEB's annual self accreditation audit reported nonconformances in 4 Essential criteria, 7 Important criteria and 1 Desirable criteria.

2009

- **2009:** FEB's annual self accreditation audit reported nonconformances in 2 Essential criteria, 8 Important criteria and 1 Desirable criteria.

2010

- **December 3, 2010:** ASCLD/LAB placed the FEB on probation as a result of noncompliances in 15 Essential, 10 Important and 1 Desirable criteria during the November 7-11, 2010 accreditation inspection.
- **December 10, 2010:** Granelle was removed as commanding officer of FEB and replaced by Pasquale Buffolino, Ph.D. on December 13, 2010.
- **December 17, 2010:** Nine questionable MDMA purity cases, conducted between 2003 and 2010, were sent to the Suffolk County Crime Laboratory for re-analysis. The results differed significantly from FEB analysis and affected criminal charges in three of the nine cases.

2011

- **February 10, 2011:** County officials announced the closure of the drug chemistry section due to problems with MDMA testing.

- **February 18, 2011:** District Attorney Rice and County Executive Mangano, based on the information that laboratory management may have known about the MDMA testing problems as early as September 2010, closed the full lab.

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A copy of the report can be found by clicking [here](#)

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