

**State of New York  
Office of the Inspector General**



**Investigation into the Nassau County Police  
Department  
Forensic Evidence Bureau**

**November 2011**

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I.	SUMMARY OF INVESTIGATION .....	1
II.	INTRODUCTION .....	8
A.	THE CLOSURE OF THE FEB AND THE RESULTING INVESTIGATION .....	8
B.	INVESTIGATIVE METHODOLOGY .....	12
III.	BACKGROUND.....	13
A.	LABORATORY OVERSIGHT IN NEW YORK STATE.....	14
1.	The New York State Commission on Forensic Science .....	15
2.	The Office of Forensic Services .....	20
B.	AMERICAN SOCIETY OF CRIME LABORATORY DIRECTORS/LABORATORY ACCREDITATION BOARD (ASCLD/LAB) .....	22
IV.	INVESTIGATION.....	28
A.	THE FORMATION OF THE FORENSIC EVIDENCE BUREAU (FEB) .....	28
B.	THE 2003 ASCLD/LAB INSPECTION OF THE FEB.....	31
1.	Irremediable Noncompliances at the FEB.....	32
2.	FEB Becomes Re-accredited in October 2003 .....	35
3.	Communication with the District Attorney’s Office and the County Executive Regarding the 2003 Inspection.....	36
4.	Response by the Forensic Commission and the Office of Forensic Services to the 2003 Inspection.....	39
a.	Forensic Commission Discusses the FEB’s 2003 Inspection Report.....	39
b.	Chair Parker’s Communication with the Nassau County Police Department about the FEB .....	41
c.	No Policy to Notify Prosecutorial Agencies or Local Leadership of Issues with Their Laboratories... ..	45
C.	THE 2005 ASCLD/LAB MID-CYCLE INSPECTION OF THE FEB .....	46
1.	Preparing for the Inspection .....	46
2.	Proposed Hiring of Civilians for the FEB .....	48
3.	The 2005 Mid-cycle Inspection Unfavorable Results .....	51
a.	The Lack of an Effective Quality Assurance Manager and Manual .....	52
b.	Failure to Utilize Corrective Actions.....	55
c.	Other Noncompliances Found During the 2005 Inspection.....	56
4.	Reporting the 2005 Inspection Results up the Police Department Chain of Command .....	57
5.	Response to the Unfavorable 2005 Inspection Report by the Forensic Commission .....	63
6.	No Notification to the District Attorney’s Office or the County Executive Regarding the Unfavorable 2005 Inspection Report .....	69
7.	The FEB’s Remediation Plan in Response to the 2005 ASCLD/LAB Inspection Report.....	71
a.	A New Civilian Quality Assurance Manager .....	71
b.	Problems in Obtaining Qualified Analysts at the FEB .....	75
D.	ASCLD/LAB IMPOSES PROBATION ON THE FEB IN 2006 .....	77
1.	ASCLD/LAB Probation Imposed 10 Months After the Initial Inspection .....	79
2.	The November 9, 2006 Forensic Commission Meeting .....	83
3.	No Notice of the FEB’s 2006 Probation to the Nassau County District Attorney or the County Executive .....	87
a.	The Nassau County District Attorney’s Office.....	87
b.	The County Executive’s Office .....	91
E.	NEW DCJS COMMISSIONER AND CHAIR OF THE FORENSIC COMMISSION APPOINTED IN 2007 .....	92
F.	ASCLD/LAB REMOVES FEB’S PROBATIONARY STATUS IN MAY 2007 .....	98
G.	LAB DIRECTOR GRANELLE CONSIDERS RETIREMENT .....	100
H.	THE 2007 REACCREDITATION INSPECTION OF THE FEB.....	102
I.	A 2008 LETTER REQUESTING A MEETING BETWEEN THE FORENSIC COMMISSION CHAIR AND NASSAU COUNTY OFFICIALS REGARDING THE FEB’S TROUBLED HISTORY WAS DRAFTED BUT NEVER SENT.....	105
J.	THE FEB ENCOUNTERS A PROBLEM WITH ECSTASY TESTING IN SEPTEMBER 2010.....	109
K.	THE FEB QUALITY ASSURANCE MANAGER SEEKS OTHER EMPLOYMENT .....	119
L.	THE 2010 ASCLD/LAB INSPECTION AND RESULTING PROBATION.....	120

1.	Lab Director Granelle Minimizes the ASCLD/LAB Inspection Citations to Some Superiors and Neglects to Inform Others.....	130
2.	District Attorney Rice First Learns of the FEB’s Probation and Poor Accreditation History in December 2010.....	133
3.	December 7, 2010 Forensic Commission Meeting.....	134
M.	PROBLEMS DISCOVERED IN NINE MDMA CASES RESULT IN THE CLOSURE OF THE DRUG CHEMISTRY SECTION AND ULTIMATELY THE ENTIRE LAB.....	136
N.	PLAN DEVELOPED TO REVIEW FEB’S DRUG CHEMISTRY, BLOOD ALCOHOL AND LATENT PRINTS TESTING.....	139
1.	Scope of the Retesting Plan.....	139
2.	Initial Results.....	141
V.	FINDINGS AND RECOMMENDATIONS.....	145
A.	FINDINGS.....	148
1.	The Forensic Evidence Bureau.....	148
2.	The Nassau County Police Department.....	151
3.	Nassau County Executive.....	152
4.	Nassau County District Attorney.....	154
5.	The Forensic Commission and the Office of Forensic Services.....	155
B.	RECOMMENDATIONS.....	157
1.	The Future Nassau County Forensic Laboratory Must Meet Certain Minimum Requirements.....	157
2.	The County Should Expand the Review of FEB’s Casework to Include Every Discipline.....	158
3.	The Forensic Commission Should Set Clearer Standards for Accreditation in New York State.....	159
a.	Set Minimum Standards for Each Scientific Discipline.....	159
b.	Set Minimum Standards for Quality Assurance, Quality Assurance Manager and Laboratory Director.....	160
c.	Require Uniform Reporting.....	161
d.	Implement Mandatory Continuing Education and Certification of all Forensic Analysts.....	161
4.	Improve Effectiveness of Laboratory Inspections.....	162
5.	Encourage Transparency in the Accreditation Process.....	163
6.	Mandate Direct Communication between Accrediting Organizations and the Forensic Commission.....	164
7.	The Office of Forensic Services Should be Empowered to Better Monitor the Forensic Laboratories.....	164
8.	District Attorneys Should Establish Liaisons with their Respective Laboratories and the Forensic Commission.....	165
9.	District Attorneys Should Establish Mandatory Education of their Staff Regarding Scientific Analysis.....	166
C.	CONCLUSION.....	166
VI.	APPENDIX.....	
A.	The Accreditation History of the Nassau County Police Department Forensic Evidence Bureau.....	1
B.	Article 49-B. Commission on Forensic Science and Establishment of DNA Identification Index.....	3

## **I. SUMMARY OF INVESTIGATION**

On February 18, 2011, the Nassau County Police Department Forensic Evidence Bureau (FEB), a forensic laboratory, was closed due to grave concerns about the integrity of testing being performed at the lab. This closure followed a series of public reports about problems at the laboratory, including the fact that the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) had placed the lab on probation on December 3, 2010, on the heels of a scathing inspection report. This was the FEB's second ASCLD/LAB probation in four years – a dubious distinction making it the only forensic laboratory in the state to have been subject to such a sanction once, let alone twice.

Weeks before the FEB's closure, information surfaced that the lab had engaged in flawed analyses in testing for MDMA, the illegal substance commonly known as "Ecstasy," and that this information affected criminal cases prosecuted by the Nassau County District Attorney's Office. Questions immediately arose as to the extent of the problems at the lab and whether these problems impacted the integrity of other lab results.

In response to these questions and to protect the public's confidence in the criminal justice system, on February 25, 2011, Governor Andrew M. Cuomo issued Executive Order No. 9, which directed the Inspector General to investigate "the oversight and operation of the Forensic Evidence Bureau." Pursuant to this Executive Order, the Inspector General conducted an investigation, which included a comprehensive examination of the FEB's history and operation, as well as the regulatory requirements

and systems to which it was subject. The following report documents the findings and recommendations of the Inspector General's investigation.<sup>1</sup>

Forensic laboratories test different types of evidence and the findings are often used in the investigation, prosecution and defense of criminal cases. Forensic testing is an essential and reliable tool in the criminal justice system, facilitating the just and fair resolution of cases: as has been demonstrated repeatedly, forensic evidence can be as valuable to incriminate as it can be to exonerate a criminal defendant. Given these significant implications, the public deserves to have unshakable confidence in the integrity of forensic testing, an objective which demands the careful monitoring of forensic laboratories to ensure the reliability of their results.

To that end, New York was at the forefront of monitoring forensic testing, when, in 1994, it became the first state to create a commission to oversee all forensic laboratories within the state, the New York State Commission on Forensic Science (Forensic Commission). Executive Law § 995-a created the Forensic Commission, a 14-member board empowered with, among other things, “develop[ing] minimum standards and a program of accreditation for all forensic laboratories in New York State.” Pursuant to this legislative mandate, the Forensic Commission requires that all forensic laboratories in New York State be accredited by a private accrediting agency, ASCLD/LAB.<sup>2</sup> Currently, the Forensic Commission oversees 22 forensic laboratories in New York State.

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<sup>1</sup> Attached to this report as appendices are a timeline of relevant events in the history of the FEB accreditation process, and the text of Executive Law §995.

<sup>2</sup> The Forensic Commission permits a laboratory that is performing only toxicology analysis to be accredited by either ASCLD/LAB or the American Board of Forensic Toxicology, Inc. (ABFT).

The FEB, prior to its closure was one of the laboratories subject to Forensic Commission oversight. Since its formation in 2003, the FEB was housed within and operated by the Nassau County Police Department and provided forensic evidence for prosecutorial agencies within Nassau County. From the beginning, however, the FEB struggled to maintain the requirements necessary for its accreditation. In every one of its mandatory inspections, ASCLD/LAB cited the FEB for an exceedingly high number of problems ranging from smaller technical issues to more significant ones, such as the absence of an effective quality assurance system. As a result, from 2006-2010, the FEB was twice placed on probation by ASCLD/LAB.

The FEB was purportedly subject to multiple layers of oversight including laboratory management, the Nassau County Police Department, the County Executive's Office, and the Forensic Commission. The investigation revealed, however, that the FEB was plagued with significant and pervasive problems that were allowed to persist due to failures at each level of this oversight.

The failure at the laboratory level was profound. Over its eight-year history, the FEB suffered from weak leadership, a dysfunctional quality management system, analysts with inconsistent training and qualifications, and outdated and incomplete testing procedures. As a result, the laboratory operated absent the rigors and precision necessary in scientific testing, which created an environment where mistakes were more likely to occur and less likely to be detected. Not surprisingly, testing mistakes did in fact occur. Specifically, recent retesting of certain drug chemistry analyses by FEB has not yet been completed, but preliminary results indicate that more than 10 percent of the laboratory's drug chemistry results had some inconsistencies in testing that should have been detected

by lab personnel. Notably, some of the issues identified thus far affect charges in criminal cases, a pattern that is, unfortunately, likely to continue. Overall, the Inspector General found problems at the lab that not only affected the drug chemistry section but also had the potential to affect every other discipline in the laboratory. Consequently and in the exercise of caution, the Inspector General has recommended a broader review of testing results to include every discipline at the lab to ensure the reliability of the FEB's conclusions. Any testing issues that affect individual criminal cases have been and continue to be handled by the Nassau County District Attorney's Office within the criminal justice system.

The FEB's problems were exacerbated by failures on the part of the Nassau County Police Department, within which the FEB operated. The Police Department should have been, but was not, appropriately attentive to the FEB. While the Inspector General determined that important information about the FEB was minimized as it was reported up the chain of the Police Department hierarchy, when Police Department leadership did learn of the numerous unfavorable accreditation reports, they took little if any action with respect to the issues raised in the reports. Furthermore, the Police Department did not communicate the results of the unfavorable inspections or the probationary status to either the Nassau County District Attorney's Office or the County Executive, as it should have.

These failures continued up through the County level. The County Executive's Office had supervisory authority over the Police Department as well as the three Nassau County labs, of which FEB was one. However, Thomas Suozzi, the County Executive for the relevant period, deferred the oversight of and responsibility for the FEB to the

Police Department because the County Executive viewed the FEB as merely a small part of the larger police organization. In this way, the County Executive rendered his office entirely dependent on the Police Department for information about the County's forensic crime laboratory. This dependence proved to be unreliable and, as a result, the County Executive was not appropriately informed about significant lab issues, including the unfavorable inspection reports or the FEB's probation in 2006.

While not charged with the oversight of the FEB, the Nassau County District Attorney – who often predicated criminal charges on FEB's testing – was similarly uninformed about the lab's problems. In January 2006, District Attorney Kathleen Rice succeeded Denis Dillon as District Attorney, and she was reelected to that office in November 2009. During her tenure, the FEB continued to have problems, including being placed on probation by ASCLD/LAB in August 2006. However, District Attorney Rice did not learn of any of these problems until December 2010, after she received an unofficial call from a Forensic Commission member informing her of a scathing ASCLD/LAB inspection report and the resulting probation of her County forensic laboratory. Until December 2010, according to her own testimony, District Attorney Rice was unaware of problems at the lab, the accreditation process, or the existence of the Forensic Commission. Up to that point, she and her office took for granted the reliability of the evidence provided by the FEB – a confidence that, in this instance, was misplaced.

The Inspector General notes, however, that when current County Executive Edward Mangano, who assumed office in January 2010, and District Attorney Rice were made aware of the problems at the laboratory, they responded appropriately and closed the FEB. In addition, the County Executive, the District Attorney's office and the Police

Department have been properly attentive to the ongoing retesting effort; and, plans for a new civilian state-of-the-art forensic laboratory proposed by County Executive Mangano and endorsed by District Attorney Rice and the Police Department are in development.

Finally, oversight at the state level failed to identify and effectively address the magnitude of the FEB's problems, as it should have. The Forensic Commission, and by extension its administrative arm – the Office of Forensic Services – within the Division of Criminal Justice Services, has broad authority and discretion in the oversight of forensic laboratories. However, the Forensic Commission disregarded its mandate by failing to provide the FEB the assistance and monitoring it desperately needed. In particular, the Forensic Commission failed to impose its own sanctions once it learned that the FEB was placed on probation in 2006 by ASCLD/LAB; it neglected to conduct its own inquiry into the reasons for the probation, or even take the minimal step of notifying County Officials of the lab's continued precarious status. Moreover, although the Forensic Commission possesses the authority to set forth requirements specifically tailored to promote uniformity, quality and excellence among forensic laboratories in New York State, it failed to do so. Instead, the Forensic Commission abdicated most, if not all, of its responsibility for oversight of the FEB and other forensic laboratories across the state to a private accrediting agency, ASCLD/LAB.

The confluence of these failures in oversight enabled the FEB to operate as a substandard laboratory for far too long. In so doing, these failures deprived Nassau County, the criminal justice system, and the public of their right to have complete and unfettered confidence in forensic testing. These failures have also now required the County to commit to a retesting effort, which has been and will continue to be a financial

burden on an already fiscally strained County. Accordingly, this report and the accompanying recommendations seek to prevent repetition of these failures and to reinvigorate the existing system of forensic laboratory oversight in order to restore public confidence and maintain New York State's preeminence in forensic testing.

## **II. INTRODUCTION**

### **A. The Closure of the FEB and the Resulting Investigation**

On November 7-11, 2010, the Nassau County Police Department laboratory, referred to within the Police Department as the Forensic Evidence Bureau (FEB), was inspected by an international accrediting body, the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB), as required by the New York State Commission on Forensic Science. Following the inspection, ASCLD/LAB sent a formal report dated December 3, 2010, to FEB Commanding Officer Det./Lt. James Granelle informing him that the laboratory had been placed on probation for failing to meet ASCLD/LAB criteria in 26 areas. When the probation was imposed, the FEB was the only forensic laboratory in the country under this ASCLD/LAB sanction. Even more noteworthy, this was the second time in four years that this extraordinary measure was instituted against the FEB.

On December 10, 2010, the Nassau County Police Department removed Granelle as commanding officer of the laboratory, and on December 13, 2010, Nassau County Executive Edward Mangano placed Pasquale Buffolino, Ph.D., director of forensic genetics at the Nassau County Medical Examiner's Office, as acting director of the FEB. Peter Pizzola, Ph.D., a consultant and former director of the New York City Police Department Crime Laboratory, was also recruited to assist in correcting deficiencies at the laboratory. Among their first actions, Buffolino and Pizzola met periodically with FEB analysts and supervisors.

During one of these meetings in December, the drug chemistry section supervisor, Det./Sgt. Charles Conti, and Deputy Commanding Officer Det./Sgt. Michael Cole

informed Buffolino that the lab had encountered unusual results from a purity determination of MDMA<sup>3</sup> (Ecstasy) for a pending prosecution, and had ceased MDMA quantitation, or purity, testing until additional MDMA standard (laboratory-produced pure MDMA used for comparison purposes) could be obtained. The pure MDMA standard would assist the drug chemists in determining the source of the problem. Conti related to Buffolino his suspicions that another compound might be co-eluting, or not separating, from the MDMA thereby skewing the determination of the MDMA's purity – a required measurement for certain charges under the New York State Penal Law. Upon learning this information, Buffolino instructed Conti and Cole to review past MDMA quantitation cases to determine whether any needed to be sent to another lab for re-analysis.

Conti and Cole reviewed approximately 35 MDMA purity cases from 2003 through 2010 and determined, based on the reported test results contained in each file, that nine cases should be re-analyzed. On or about December 17, 2010, these nine cases were sent to the Suffolk County Crime Laboratory for re-analysis which revealed significantly different results; in one case, Suffolk's test results produced a 70 percent lower purity determination than the FEB's. The different results affected the criminal charges in three of the nine cases.<sup>4</sup> On January 26, 2011, Buffolino presented the nine re-analyzed cases to the Nassau County District Attorney's Office. Upon receipt of these results, Nassau County District Attorney Kathleen Rice called for the closure of the drug chemistry section of the laboratory, and, on February 10, 2011, county officials

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<sup>3</sup>MDMA is an acronym for methylenedioxyamphetamine.

<sup>4</sup> These individual cases have been handled by the District Attorney's Office within the criminal justice system.

announced the drug chemistry section's indefinite closure due to errors in MDMA testing.

On February 16, 2011, after the drug chemistry section had already been closed, Buffolino spoke to FEB's former Quality Assurance Manager, Melanie McMillin, regarding the calibration of the instrument and the aforementioned MDMA quantitation findings. McMillin then forwarded Buffolino a September 22, 2010 e-mail from Conti to her and Granelle regarding the cessation of MDMA purity testing. As this e-mail predated by several months Conti's and Cole's discussion with Buffolino regarding problems in MDMA purity testing, it caused Buffolino to question what was known in the lab regarding MDMA testing and when it was known. He brought this e-mail to the attention of the District Attorney's Office. Based on the aforementioned disclosure, on February 18, 2011, District Attorney Rice and County Executive Mangano announced that, due to the above revelations that police supervisors were aware of problems with Ecstasy testing as far back as September, the entire FEB was being closed.

Upon learning about the closure of the drug chemistry section and the entire FEB from the media, the Inspector General immediately commenced an investigation to determine if misconduct or malfeasance contributed to the closure of the FEB as alleged, pursuant to Executive Law Article 4-A and Coverdell jurisdiction.<sup>5</sup>

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<sup>5</sup> The federal Paul Coverdell Forensic Science Improvement Program, of which New York State is a grantee, requires grant recipients to designate an independent entity with authority to investigate allegations of serious negligence or misconduct by laboratory personnel substantially affecting the integrity of the forensic results. The New York State Commission on Forensic Science, which oversees public forensic laboratories in New York, has designated the State Inspector General as the independent entity to investigate such allegations in laboratories under its jurisdiction. Furthermore, because the FEB receives funding from New York State, the Inspector General also possesses jurisdiction under Executive Law Article 4-A to investigate allegations of fraud, criminal activity, conflicts of interest and abuse in the laboratory and to review laboratory procedures in regard to prevention and detection of such.

In addition, on February 25, 2011, Governor Andrew M. Cuomo issued Executive Order No. 9, which directed the Inspector General to investigate the operations of the FEB. Executive Order No. 9 acknowledged the Inspector General's aforementioned dual bases for jurisdiction over laboratories in New York State. Governor Cuomo then specifically expanded the Inspector General's powers to "allow for a more comprehensive and independent investigation of the oversight and operation of the Forensic Evidence Bureau" as follows:

Pursuant to section six of the Executive Law, I hereby appoint Ellen Biben, the New York State Inspector General, to study, examine, investigate, review and make recommendations with respect to forensic testing practices and procedures of the Nassau County Police Department Forensic Evidence Bureau including, but not limited to, compliance with relevant law, standards, and protocols.

Accordingly, the Inspector General's office broadened the investigation.

This investigation examined the many factors ultimately resulting in the closure of the FEB. Following the imposition of probation, the District Attorney's Office and Buffolino formulated a plan to reanalyze or review cases in disciplines which received the most criticism from ASCLD/LAB. Following the closure of the laboratory, however, the number of cases to be reanalyzed and reviewed was increased to thousands of FEB cases; as such, retesting of cases is still ongoing. Although the Inspector General was involved in monitoring the reanalysis, this investigation did not focus on the individual retested cases. Rather, the Nassau County District Attorney's office was notified (and continues to be notified) regarding retesting results, and any issues with respect to individual cases are being handled by that office and the criminal justice system. Instead, the Inspector General conducted an investigation, which included a comprehensive examination of the FEB's history and operation, as well as the regulatory requirements

and systems to which it was subject both within Nassau County and New York State. Set forth below are the findings of this investigation.

## B. Investigative Methodology

Pursuant to Executive Law Article 4-A, “covered agencies” within the Inspector General’s jurisdiction including “all executive branch agencies, departments, divisions, officers, boards and commissions, public authorities (other than multi-state or multinational authorities) and public benefit corporations, the heads of which are appointed by the governor and which do not have their own inspector general by statute,” are required to provide documents and witnesses to the Inspector General without resort to a subpoena. The Inspector General also possesses the authority to issue subpoenas in furtherance of an investigation. Indeed, this authority is explicitly enumerated in Executive Law § 54, which provides the Inspector General with the power to “subpoena and enforce the attendance of witnesses” and “require the production of any books and papers deemed relevant or material to any investigation, examination or review.”

In addition, Executive Order No. 9 issued by Governor Cuomo on February 25, 2011, directing the Inspector General to investigate the operations of the FEB, empowered the Inspector General to subpoena and enforce the attendance and examination of witnesses under oath, and require the production of any related materials. Accordingly, the Inspector General issued 140 letter requests and subpoenas to both governmental and private entities.

The Inspector General employed an array of investigative techniques in the inquiry that resulted in this report. The Inspector General requested and reviewed all relevant

documents and materials: FEB staff computer hard drives, and tens of thousands of document pages and e-mails spanning 2003 to the present. The Inspector General also conducted more than 100 interviews. Further, staff members from the Inspector General's office toured the Nassau County FEB laboratory numerous times and, with the assistance of the Nassau County Police Department, secured all of its contents. Additional site visits included other New York State forensic laboratories for comparison and educational purposes.

### **III. BACKGROUND**

Forensic laboratories test different types of evidence and the findings are often used in the investigation, prosecution and defense of criminal cases. Forensic laboratories are divided by discipline relating to the type of evidence analyzed: for example, typically, the drug chemistry discipline identifies and analyzes illegal or illicit substances; toxicology, a subdiscipline of drug chemistry, analyzes the concentration of alcohol, drugs or other chemicals in blood and urine; the firearms and tool marks discipline determines the operability of a weapon and conducts microscopic analysis of bullets; the latent prints discipline identifies finger, palm and foot prints; the trace evidence discipline examines and identifies small quantities of evidence, such as hair, fire debris, footwear impressions, etc.; and the questioned documents discipline identifies the source of handwritten or printed text and uncovers alterations, additions, or deletions to documents.

In order to explain fully the circumstances which resulted in the closure of the FEB and the Inspector General's findings and recommendations, an overview of the

different parties that play a role in oversight and accreditation of New York State forensic laboratories is required.

#### A. Laboratory Oversight in New York State

New York was the first state to require accreditation of its laboratories and to create a body to oversee them.<sup>6</sup> On August 2, 1994, Executive Law § 995-a created the Commission on Forensic Science (“Forensic Commission”), a 14-member board empowered with “develop[ing] minimum standards and a program of accreditation for all forensic laboratories in New York State, including, establishing minimum qualifications for forensic laboratory directors and such other personnel as the commission may determine to be necessary and appropriate, and approval of forensic laboratories for the performance of specific forensic methodologies.”<sup>7</sup> Currently, the Forensic Commission oversees 22 forensic laboratories in New York State.<sup>8</sup>

The Forensic Commission is comprised of fourteen non-paid members and is statutorily required to meet at minimum four times per year. In order to effectively

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<sup>6</sup> Three other states, Missouri, Texas and Oklahoma have since implemented a similar requirement. Tex. Gov’t Code Ann. §411.0205 (2003); Mo. Rev. Stat. §650.060 (2010); Okla. Stat. §74-150.37 (2003).

<sup>7</sup> McKinney’s N.Y. Exec. Law § 995-b. A copy of the Executive Law § 995 can be found in the Appendix.

<sup>8</sup> Erie County Department of Central Police Services Forensic Laboratory; Erie County Medical Examiner’s Office Forensic Toxicology Laboratory; Monroe County Public Safety Laboratory; Monroe County Office of the Medical Examiner Forensic Toxicology Laboratory; Nassau County Office of the Medical Examiner Toxicology Laboratory; Nassau County Department of Forensic Genetics DNA Laboratory; New York City Police Department Police Laboratory; New York City Office of the Chief Medical Examiner Department of Forensic Biology; New York City Office of the Chief Medical Examiner Forensic Toxicology Laboratory; New York State Police Forensic Investigation Center; New York State Police Mid-Hudson Regional Laboratory; New York State Police Southern Tier Regional Laboratory; New York State Police Western Regional Laboratory; Niagara County Sheriff’s Department Forensic Laboratory; Onondaga County Center for Forensic Sciences; Onondaga County Health Department Forensic Toxicology Laboratory; Suffolk County Crime Laboratory; Suffolk County Office of the Chief Medical Examiner Toxicology Laboratory; Westchester County Department of Laboratories and Research - Division of Forensic Sciences; Westchester County Department of Laboratories and Research - Division of

implement the mandates of Executive Law § 995, the Office of Forensic Services (OFS) was established within the New York State Division of Criminal Justice Services (DCJS). OFS is responsible for administrative oversight of the New York State DNA Databank and, relevant to the instant investigation, for maintaining a forensic laboratory accreditation program for forensic laboratories under the authority of the Forensic Commission. OFS then acts as a conduit of information between New York State laboratories and Forensic Commission members.

## **1. The New York State Commission on Forensic Science**

The 14 Forensic Commission members are specified in Executive Law §995. The statute designates the commissioner of DCJS as chair of the Forensic Commission. The statute also provides that the commissioner of the New York State Department of Health or his or her designee serve as an ex-officio member. The remaining 12 members are appointed by the governor for a three-year term, and some maintain specific titles requiring their appointment: the chair of NYCLAC – New York State Crime Laboratory Advisory Committee, an organization comprised of all the laboratory directors in New York State – is designated as a member; another member is selected from among the directors of forensic laboratories located in New York State; the OFS director is designated a member; two members must be scientists with experience in the area of laboratory standards or quality assurance regulation and monitoring and are appointed upon the recommendation of the commissioner of the Department of Health; one member must be a representative of a law enforcement agency upon the recommendation of the

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Forensic Toxicology; Westchester County Department of Public Safety Crime Laboratory; Yonkers Police

commissioner of DCJS (while not required, the New York State Police Superintendent has generally served in this capacity); one member must be a representative of prosecution services recommended by the commissioner of DCJS; one member represents the public criminal defense bar upon the recommendation of an organization representing public defense services; one member must be a representative of the private criminal defense bar upon the recommendation of an organization of the criminal defense bar; two members are members-at-large, one of whom is recommended by the temporary president of the New York State Senate and the other of whom is recommended by the Speaker of the New York State Assembly; and, the final member must be an attorney or judge with a background in privacy issues and biomedical ethics upon the recommendation of the Chief Judge of the New York State Court of Appeals.

The current Forensic Commission is comprised of the following members as reflected in the below chart:<sup>9</sup>

<b>Position</b>	<b>Member</b>
DCJS Commissioner - Chairperson	<b>Sean M. Byrne, Esq.</b> 2/10 – Current
Commissioner DOH (or designee) - ex-officio (non-voting) member	<b>Dr. Nirav R. Shah</b> 1/11 – Current
New York State Crime Laboratory Advisory Committee (NYCLAC) – Chairperson	<b>Dr. Kathleen Corrado</b> 12/09 – Current <i>Term Expires 12/12</i>
NYS Forensic Laboratory Director	<b>Dr. Marina Stajic</b> 1/04 – Current <i>Term Expires 12/12</i>

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Department Forensic Science Laboratory & Criminal Identification Unit.

<sup>9</sup> A number of the Forensic Commission members’ terms have expired, but they remain active members.

DCJS Office of Forensic Services Director	<b>Gina L. Bianchi, Esq.</b> 3/10 – Current <i>Term Expires 9/12</i>
Scientist (having experience in areas of laboratory standards or quality assurance regulation & monitoring) to be appointed on the recommendation of the DOH Commissioner	<b>Dr. Richard Jenny</b> 6/05 – Current <i>Term Expires 9/13</i>
Scientist (having experience in areas of laboratory standards or quality assurance regulation & monitoring) to be appointed on the recommendation of the DOH Commissioner	<b>Dr. Ann Willey</b> 9/95 – Current <i>Term Expires 9/13</i>
Representative of a law enforcement agency (to be recommended by DCJS Commissioner)	<b>NYSP Superintendent Joseph D’Amico</b> 4/11 – Current <i>Term Expires 12/12</i>
Representative of prosecution services (to be recommended by DCJS Commissioner)	<b>Honorable William Fitzpatrick</b> Onondaga Co. DA 12/99 – Current <i>Term Expires 12/12</i>
Representative of the public criminal defense bar (on the recommendation of an organization representing public defense services)	<b>Marvin Schechter, Esq.</b> 7/10 – Current <i>Term Expires 5/13</i>
Representative of the private criminal defense bar (on the recommendation of an organization of such bar)	<b>Peter Neufeld, Esq.</b> 12/94 – Current <i>Term Expires 12/12</i>
Member-at-large (appointed on the recommendation of the temporary president of the Senate)	<b>Honorable James Murphy</b> Saratoga Co. DA 11/05 – Current <i>Term Expires 7/11</i>
Member-at-large (appointed on the recommendation of the speaker of the Assembly)	<b>Barry Scheck, Esq.</b> 12/94 – Current <i>Term Expired 12/97</i>
Attorney or judge with a background in privacy issues and biomedical ethics (to be appointed on the recommendation of the chief judge of the Court of Appeals)	<b>Honorable Peter McQuillan [Retired]</b> 9/95 – Current <i>Term Expired 9/01</i>

The composition of the Forensic Commission reflects an intent to ensure discussion and information sharing between members of the scientific community with knowledge of forensic science and the attorneys and members of law enforcement who are engaged in prosecutions based on those forensics. Indeed, Executive Law § 995 (2)(c) expressly states as one of its objectives to “promote increased cooperation and coordination among forensic laboratories and other agencies in the criminal justice system.”

Notwithstanding this mandate, the Forensic Commission does not notify prosecutorial agencies or county leadership of its meetings, even when the laboratory in their jurisdiction or from which they receive evidence is being discussed. While the meetings have been webcasted since April 2008 and are available on the DCJS Web site, as are future meeting dates, it is presumed that the laboratory directors notify the respective prosecutorial agencies and county leadership of an issue with their laboratory.

### *Executive Law §995 and the Powers of the Forensic Commission*

Executive Law § 995 establishes the following minimum criteria for the program of forensic laboratory accreditation: “(a) an initial laboratory inspection, and routine inspections, as necessary, to ensure compliance with accreditation requirements; (b) routine internal and external proficiency testing<sup>10</sup> of all laboratory personnel involved in forensic analysis . . . ; (c) quality control and quality assurance protocols, a method validation procedure and a corrective action and remedial program; and (d) annual certification to the commission by the forensic laboratories of their continued compliance

with the requirements of the accreditation program . . .” In response to this mandate, the Forensic Commission instituted regulations requiring that all forensic laboratories in New York State be accredited by ASCLD/LAB.<sup>11</sup>

In order to facilitate the accreditation program, New York State provides grants to laboratories to assist with the costs associated with maintaining accreditation. The Supplemental Aid to Localities (Crime Laboratories) Program was specifically developed to grant public forensic laboratories with the funds necessary to pay for inspection and accreditation fees as required by ASCLD/LAB.<sup>12</sup> In addition, as noted earlier, New York State is a recipient of federal Paul Coverdell Forensic Science Improvement Program grants, which provide funding to states and local governments to help improve the quality of forensic science. The FEB received funding from both the federal Paul Coverdell grant and state Aid to Localities grant initiatives. Since 2006, the FEB received an annual average of approximately \$46,000 in Coverdell grant funds and an annual average of approximately \$285,000 in Aid to Locality grant funds.<sup>13</sup>

As to the Forensic Commission’s powers, Executive Law § 995-b(3)(e) authorizes the Forensic Commission to revoke, suspend or otherwise limit the accreditation of any laboratory found to be in non-compliance of any accreditation criteria; guilty of misrepresentation in obtaining its accreditation; rendering a report in its name actually

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<sup>10</sup> A proficiency test is a periodic examination completed by scientists to determine and confirm their ongoing competence to conduct analyses.

<sup>11</sup> 9 NYCRR 6190.3(a). The regulation permits a laboratory that is performing only toxicology analysis to be accredited by either ASCLD/LAB or the American Board of Forensic Toxicology, Inc. (ABFT).

<sup>12</sup> The New York State Aid to Localities is administered by DCJS. In addition to accreditation, Aid to Locality grant money may be applied to the following budget categories, provided the expenditure is consistent with the general objectives as set forth in Executive Law §995-b: personnel, consultant and contract services, equipment, supplies, travel and subsistence, alteration and renovation of laboratory facilities, and other expenses. The Firearms Backlog Reduction Initiative provided additional assistance to the FEB to reduce their firearms backlog by funding overtime costs.

prepared by another forensic laboratory; or “show[ing] a pattern of excessive errors in the performance of forensic laboratory examination procedures.” Prior to engaging in any such actions, the Forensic Commission must hold a hearing and serve, at least 21 days prior, written notice on the offending laboratory of the alleged violation(s) and the hearing date. The laboratory is required to file a written answer to the charges not less than five days prior to the hearing.

Notwithstanding this broad legislative mandate, in the history of the Forensic Commission, no laboratory has ever been served with a notice of alleged violations. Moreover, with regard to the accreditation process, the Forensic Commission historically has deferred entirely to the inspection findings of ASCLD/LAB.

## **2. The Office of Forensic Services**

OFS currently employs 11 people, but has employed as many as 14. The majority of employees monitor the DNA database, and approximately four employees oversee lab accreditation. In May 2000, John Hicks assumed the position of OFS Director. Prior to that, Hicks rose through the ranks of the Federal Bureau of Investigation Laboratory in Quantico, Virginia, and reached the level of director of its laboratory division. During his tenure there, he spent considerable time coordinating the development of DNA technology in law enforcement. He then became the Deputy Director of the Department of Forensic Sciences for the State of Alabama, where his primary responsibilities were assisting in the establishment of a DNA testing program, a forensic testing program, and

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<sup>13</sup>The average FEB’s annual budget from 2003 – 2010 was approximately \$1.7 million excluding grant funds.

a DNA databank. Based on his extensive forensic and DNA background, Hicks was asked to join OFS as its director.

During Hicks's tenure, OFS established a working relationship with NYCLAC, New York State Crime Laboratory Advisory Committee, an association of lab directors from across the state who meet to exchange information about issues which arise in their respective laboratories and advise DCJS regarding legislation. In or about 2001, OFS also established Technical Working Groups, or TWGs.<sup>14</sup> The individual TWGs are comprised of laboratory analysts from across the state who work in each specific discipline. Of note, attendance at the TWGs is voluntary, even though they are funded by DCJS and, therefore, do not require the laboratories to incur additional costs to participate. The TWGs, which meet approximately twice a year, elect a chair who sets the agenda subject to additions by OFS. Currently, 10 TWGs exist in the following disciplines: arson, biology, controlled substances, digital evidence, firearms, latent prints, trace evidence, toxicology, quality assurance and questioned documents.

Another member of OFS is Forensic Science Coordinator Cathryn Levine who, since August 2000, has been tasked with administering lab accreditation. Levine testified that she personally attends most TWG and NYCLAC meetings. Like Hicks, she has an extensive background in forensics, having worked in the New York State Police Laboratory from 1985-2000. She and other OFS staff monitor accreditation, receive documents from the laboratories and ASCLD/LAB, and prepare packets of documents

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<sup>14</sup> According to the OFS Web site, "With general guidance from NYCLAC, TWGs have been established for each forensic discipline and for quality control managers to promote uniform analytical protocols and quality assurance procedures, to identify technical training needs, and to provide technical consultation services to the Commission on Forensic Sciences in the evaluation of laboratories' performance on proficiency tests and conformance with accreditation standards."

and summaries for Forensic Commission members in anticipation of the quarterly meetings.

After serving as director for approximately eight years, Hicks retired in 2008, and DCJS has yet to fill the position of director. Former DCJS Commissioner Denise O'Donnell testified that during her tenure (March 2007 to March 2010), DCJS conducted several unsuccessful searches for a new director, and even consulted with the Civil Service Commission to increase the salary for that position to attract a larger pool of qualified candidates. In the interim, O'Donnell asked DCJS Deputy Commissioner and Counsel Gina Bianchi to assume the position of OFS Acting Director until a new director could be recruited.

To date, Bianchi, an attorney by training, still holds the position of OFS Acting Director in addition to her other counsel duties. Although Bianchi has been attending Forensic Commission meetings since 2005 in her position as DCJS counsel, she lacks forensics and DNA experience, and OFS, and by extension, the Forensic Commission, has suffered by not having a person with a scientific background dedicated full time to its mandate. For instance, Hicks provided newly inducted Forensic Commission members with an orientation regarding the enabling law, regulations and responsibilities of the Forensic Commission; no such orientation has occurred since his departure.

**B. American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB)**

In 1973, in order to improve forensic science, a group of 47 crime laboratory directors was invited to meet with the FBI director and staff to initiate dialogue between the laboratories around the country and the FBI. This meeting led to an agreement that

an organization of laboratory directors should be formed. As such, in 1974, the American Society of Crime Laboratory Directors (“ASCLD”) – a nonprofit professional society of crime laboratory directors and forensic science managers – was formally created and enacted bylaws.

During the mid 1970s, a voluntary proficiency testing study was commenced by the Forensic Science Foundation. This study revealed disturbing results regarding the reliability of work performed in some of the nation’s crime laboratories, and made front-page headlines in newspapers throughout the United States. In reaction to these revelations, the recently formed ASCLD established a committee tasked with creating a series of professional and scientific standards to which laboratories could voluntarily conform and thereby earn the confidence of the communities and justice systems they serve. On February 4, 1988, the laboratory accreditation board was formally incorporated as an independent and self-governing, non-profit entity with its own board of directors. Despite this formal split from ASCLD, the board retained its original name, American Society of Crime Laboratory Directors – Laboratory Accreditation Board, or ASCLD/LAB.<sup>15</sup>

Initially, ASCLD/LAB was an all-volunteer organization, administered by members of forensic laboratories. However, the program grew to such an extent that, in 1995, a full-time staff was required to manage the administrative responsibilities associated with the accreditation program. With offices located in North Carolina,

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<sup>15</sup> ASCLD continues to function as a separate entity of lab directors. According to its Web site, it is “a nonprofit professional society of crime laboratory directors and forensic science managers dedicated to providing excellence in forensic science through leadership and innovation. The purpose of the organization is to foster professional interests, assist the development of laboratory management principles and techniques; acquire, preserve and disseminate forensic based information; maintain and improve communications among crime laboratory directors; and to promote, encourage and maintain the highest standards of practice in the field.”

ASCLD/LAB employs approximately 24 people under Executive Director Ralph Keaton.<sup>16</sup> ASCLD/LAB currently accredits most of the federal, state, and local crime laboratories in the United States and forensic laboratories in six other countries. No other forensic laboratory accrediting body of its size and expertise exists.

As memorialized in its bylaws, ASCLD/LAB includes the following objectives:

- to improve the quality of laboratory services provided to the criminal justice system;
- to offer to the general public and to users of laboratory services a means of identifying those crime laboratory facilities which satisfy accreditation criteria;
- to develop and maintain criteria which can be used by a laboratory to assess its level of performance and strengthen its operation; and
- to provide an independent, impartial and objective system by which laboratory facilities can benefit from a total organizational review.

Laboratories engaging in forensic testing may apply for ASCLD/LAB accreditation. To sustain accreditation, laboratories must adhere to ASCLD/LAB standards. For instance, laboratories must conduct annual reviews (consistent with full ASCLD/LAB inspections) and submit annual reports to ASCLD/LAB; each analyst working in the lab must participate in an annual proficiency test in each discipline in which casework is performed; a designated percentage of analysts' case results must be subject to technical review by qualified peers and administrative review by supervisors; and laboratories must notify ASCLD/LAB of deviations from the standards and criteria, and the resulting corrective actions taken by the laboratories.

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<sup>16</sup> Keaton was employed for 30 years with the North Carolina State Bureau of Investigation as a forensic scientist, engaging in, among other disciplines, drug chemistry, fire debris, and blood alcohol analyses. Upon his retirement in 1995, he held the title of deputy assistant director of that laboratory. Keaton has been involved with ASCLD from its inception, serving on its board of directors, as an inspector, as a lead inspector for many years, and as its part-time executive secretary. In 1995, when it was determined that a

Laboratories are charged fees for ASCLD/LAB accreditation: an inspection fee for the manpower to prepare and complete the inspection; an assessment fee for the travel, hotel and per diem costs for the inspectors; and an annual accreditation fee for the administration of the ASCLD/LAB accreditation. Fees vary based on the number of employees at the laboratory.<sup>17</sup>

Until 2004, ASCLD/LAB accredited laboratories under a program entitled the “Legacy Program.” The Legacy Program adheres to certain standards and principles and lists certain criteria to which accredited laboratories must adhere, which are assigned the following ratings:

- **Essential** - Standards which directly affect and have fundamental impact on the work product of the laboratory or the integrity of the evidence.
- **Important** - Standards which are considered to be key indicators of the overall quality of the laboratory but may not directly affect the work product or the integrity of the evidence.
- **Desirable** - Standards which have the least effect on the work product or the integrity of the evidence but which nevertheless enhance the professionalism of the laboratory.

Under the Legacy Program, a laboratory must achieve not less than 100 percent of the “Essential,” 75 percent of the “Important,” and 50 percent of the “Desirable” criteria.

Laboratories accredited under the Legacy Program are re-inspected every five years. These inspections are scheduled with the laboratories well in advance to allow them to prepare. Under the Legacy Program, laboratory analysts are required to select

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full-time staff was needed to operate ASCLD/LAB, Keaton assumed the full-time position of executive secretary, a position that changed in title to executive director in 2000, which he still holds today.

<sup>17</sup> The accreditation application fee is based on the number of proficiency tested personnel (including vacancies) in each lab: \$2,000 for a laboratory comprised of 25 or fewer proficiency tested personnel; \$3,000 for a laboratory having between 25 and 50 proficiency tested personnel; \$4,000 for laboratories having greater than 50 proficiency tested personnel; and a maximum of \$8,000 for a laboratory system. The annual fee, which supports the administrative and compliance monitoring operations of ASCLD/LAB, also varies based on size from \$1,000 to \$35,000. Where an interim inspection or assessment is required or requested, either by the laboratory or ASCLD/LAB Board of Directors, additional fees apply.

five case files from among those in each discipline for review by the inspectors.<sup>18</sup>

Between inspections, ASCLD/LAB relies on laboratories to maintain compliance with established standards and accreditation criteria, and conduct yearly self audits. However, in 2005, the Forensic Commission mandated a mid-cycle inspection that would take place two-and-a-half years after accreditation for forensic laboratories in New York State. This mandate was imposed in response to Forensic Commission members' concerns about the five-year lapse between ASCLD/LAB inspections and the ineffectiveness of the annual self-assessments to present a true and accurate status of the laboratories. These mid-cycle inspections are conducted by ASCLD/LAB inspectors and are identical to the regular cycle inspections.<sup>19</sup>

In 2004, ASCLD/LAB implemented a dual-track accreditation program. It continued to inspect and accredit laboratories under the Legacy Program, but it also initiated a second program, ASCLD/LAB-*International*, which incorporated additional, more rigorous requirements. All new applications for accreditation must be submitted under the ASCLD/LAB-*International* Accreditation Program.<sup>20</sup>

Both the Legacy and *International* Programs mandate that laboratories maintain a system whereby non-conformances are addressed through corrective actions. Instances of significant non-compliance must be disclosed in writing to ASCLD/LAB within 30

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<sup>18</sup> This method is used in the *International* Program as well.

<sup>19</sup> When John Hicks became the Director of the Office of Forensic Services, he and others at that office considered developing a program of mini-audits of certain disciplines or areas of laboratories that would occur more frequently than the full inspections every five years. However, the idea was rejected because of the costs associated with gathering people with the appropriate expertise, and lab directors across the state were averse to the idea. This idea transformed into the mid-cycle inspection required in New York State by the Forensic Commission that is conducted by ASCLD/LAB.

<sup>20</sup> At all times relevant to this investigation, the FEB was accredited under the Legacy Program; therefore, the more stringent *International* Program standards were inapplicable.

days of discovery, with a statement of corrective action taken by the laboratory.

Specifically, ASCLD/LAB requires a laboratory to:

- determine the root cause of the problem
- determine who may have been impacted by the occurrence(s)
- notify those who are potentially impacted by the occurrence(s), and
- appropriately correct and/or eliminate the cause of the occurrence.

In addition, laboratories must include all corrective actions in their required annual reports to ASCLD/LAB.

Laboratories which fail to take appropriate and timely corrective actions may be subject to the following sanctions.

- **Probation** for a specific time during which the laboratory must comply with specific requirements and/or conditions.
- **Suspension** for a specific time during which the laboratory must demonstrate that the problem has been remedied.
- **Revocation** for a specific time after which the laboratory may submit a new application for accreditation.

ASCLD/LAB-imposed probation allows a laboratory to continue to conduct testing during the probationary period. However, a laboratory may be subject to specific requirements or conditions of the probation: it must remediate; and it will be re-inspected within a short period. Executive Director Keaton informed the Inspector General that historically, these sanctions are “not extremely common.” In his 30 years with ASCLD/LAB, Keaton could recall only one instance of revocation, a small number of suspensions, and only eight to 10 instances of probation. What follows is an examination of the creation of the FEB by the Nassau County Police Department and an analysis of its history with regard to ASCLD/LAB and accreditation.

## **IV. INVESTIGATION**

### **A. The Formation of the Forensic Evidence Bureau (FEB)**

The Nassau County Police Department Forensic Evidence Bureau was established in 2003. Prior to 2003, forensic testing in Nassau County was conducted by the Scientific Investigation Bureau (SIB), the precursor to the FEB, although the physical location and basic personnel of the laboratory remained the same. With the creation of the FEB in 2003, Det./Lt. James Granelle, who had spent most of his career in the SIB laboratory, was chosen to be Lab Director and Commanding Officer.

As early as 1969, Granelle was employed in the SIB laboratory in the biology section. Soon thereafter, Granelle was promoted to sergeant and became the biology section supervisor; he was then promoted to lieutenant and became the SIB Deputy Commanding Officer, the second in command, a position with broad supervisory powers. In 1985, Granelle was transferred to the Technical Services Bureau, which included the crime scene unit, latent fingerprints, photo section, rogue's gallery<sup>21</sup> and electronic squad, to be its Commanding Officer.

When Granelle was transferred from SIB, then Captain Scott Wanlass replaced Granelle as Deputy Commanding Officer of the SIB. Prior to this position, commencing in 1975, Wanlass worked in the SIB drug chemistry section, the biology section, and then became the supervisor of the biology section. In 1993, then Det./Lt. Wanlass assumed the position of SIB commanding officer, and, as a lab director, became a member of ASCLD. In 1998, under Commanding Officer Wanlass, SIB first obtained ASCLD/LAB accreditation, as mandated by Executive Law § 995 and the Forensic Commission.

A few years later, in 2002, when Thomas Suozzi was elected Nassau County Executive, Nassau County had just been rated the worst run county in America, and, despite a wealthy population paying high property taxes, the county was close to bankruptcy. Accordingly, Suozzi called upon the Police Department to reduce staff and overtime. In response, Deputy Chief of Detectives Paul Tully, among others, was tasked with administering a staffing reduction plan to consolidate smaller commands to account for an anticipated reduction in supervisory staff.

Among other consolidations, effective January 2003, the SIB and the Technical Services Bureau were incorporated into a newly created Forensic Evidence Bureau – the FEB. Wanlass had been the Commanding Officer of SIB; however, in 2001, he had been promoted to Deputy Inspector, a title that usually involved supervising many commands, and hence was considered to be too high in rank to continue as the commanding officer of the lab. Therefore, Det./Lt. Granelle, the former Commanding Officer of the subsumed Technical Services Bureau, was given the command of the FEB, and Deputy Inspector Wanlass was promoted to the Detective Division. Under this newly formed structure, Det./Lt. Granelle reported to Deputy Inspector Wanlass, who reported to Deputy Chief of Detectives Tully.

Although Granelle had experience working in the lab, his expertise and involvement in scientific analysis was limited. Michael Cole, then drug chemistry section supervisor and the deputy commanding officer immediately prior to its closure, related:

**Question:** What was Lieutenant Granelle’s involvement, what was he doing?

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<sup>21</sup> A rogue’s gallery is a compilation of mug shots for identification purposes by victims of and witnesses to crimes.

**Cole:** He was just acting as a commanding officer.

**Question:** Was he hands on?

**Cole:** Hands on in the sections, no. He was not a scientist.

**Question:** Did he ever perform scientific analysis?

**Cole:** Probably did back in the 60s and 70s, probably.

**Question:** Did he understand science?

**Cole:** Some I believe he did.

**Question:** Let's talk about some examples you can recall. Did you ever go to him with an issue, scientific issue regarding the narcotics testing?

**Cole:** He wouldn't understand a scientific issue, but I don't really recall going to him about anything.

**Question:** Was he familiar with how to use the instruments?

**Cole:** Absolutely not.

**Question:** Was he familiar with the reports they produced?

**Cole:** He would look at the reports but he didn't get many of the Drug Chemistry reports. That's the only section that was able to be signed off by the Section Supervisor as an administrative supervisor so they could be forwarded directly to court right away. Most of the other sections the reports went forward to Lieutenant Granelle to . . . administratively sign off. Drug Chemistry didn't do that.

As will be discussed in this report, the FEB, a busy laboratory, was greatly affected by this weak leadership. Since the FEB's formation in 2003, the caseload has increased steadily from approximately 7,700 cases in 2003 to approximately 22,000 cases in 2009.<sup>22</sup> The drug chemistry section, the FEB's busiest discipline, handled the largest caseload: 12,074 in 2009, more than half the FEB's total cases. Prior to its closure in 2011, the FEB performed forensic analysis in the following disciplines: trace evidence,

latent prints, drug chemistry, toxicology (blood alcohol), firearms and tool marks, and questioned documents. The FEB also engaged in evidence accessioning<sup>23</sup> to catalog and then send evidence to outside laboratories for disciplines in which the FEB did not engage in testing.

**B. The 2003 ASCLD/LAB Inspection of the FEB**

Having been accredited in 1998 as the SIB, the FEB was required to become re-accredited by 2003, the end of the five-year accreditation period. The ASCLD/LAB inspection had been scheduled for January 20-24, 2003, by then SIB Commanding Officer Wanlass, but was now the responsibility of FEB Commanding Officer Granelle. However, Granelle was unfamiliar with ASCLD/LAB requirements because the Technical Services Bureau had not been considered a forensic laboratory and therefore was not subject to accreditation.

In order to prepare for the impending ASCLD/LAB inspection, Granelle reviewed the previous 1998 ASCLD/LAB report, met with Deputy Inspector Wanlass, interviewed members of the laboratory who had been present and prepared for the previous inspection, and attempted to conform the latent prints section – now considered part of the forensic laboratory – to ASCLD/LAB standards. Nevertheless, Granelle testified that he was provided little guidance with regard to the upcoming inspection and that he felt “pretty much left to [his] own devices.”

The January 2003 ASCLD/LAB inspection for accreditation under the Legacy Program resulted in findings of nonconformances with regard to 15 Essential criteria,

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<sup>22</sup> The caseloads reported herein represent the number of cases submitted to the FEB in a given year

nine Important criteria, and two Desirable criteria. However, regarding the 15 Essential nonconformances, many of the criteria included citations to multiple disciplines within the FEB, thereby raising the actual number of Essential nonconformances to 29. As noted earlier in this report, to maintain ASCLD/LAB accreditation, a laboratory must maintain 100 percent compliance with Essential criteria. Of note, some of the 15 Essential nonconformances related to basic and necessary laboratory procedures: no training program existed for blood-alcohol analysis; no technical procedures were designated for use by the latent print and questioned document sections; many of the sections were cited for not maintaining case records with items to support the conclusions; the latent prints section lacked documented technical and administrative review; and not all analysts over a number of disciplines had completed proficiency testing in 2001.

## **1. Irremediable Noncompliances at the FEB**

While ASCLD/LAB does not require total conformance regarding Desirable and Important criteria, some nonconformances of these criteria are worthy of mention because they persisted for every subsequent inspection and reflect inherent flaws at the FEB.

### *Union Proscribed Personnel Evaluations*

ASCLD/LAB lists as a Desirable criterion that laboratories possess “clearly written and well understood procedures for personnel evaluations and objectives.”

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together with backlogged cases.

Notwithstanding this standard, the contracts between the police unions and Nassau County do not permit personnel evaluations of police officers and detectives. Therefore, analysts (who are sworn officers) in the Nassau County laboratory may not be evaluated for competence in testing except for the mandated annual proficiency tests. This nonconformance appeared on each inspection report up to and including the 2010 report, which ultimately led to the closure of the laboratory.

Former Nassau County Police Department Commissioners James Lawrence and Lawrence Mulvey both attested to their frustration at the unions' intransigence in opposing employee evaluations. Lawrence, who was the Nassau County Commissioner of Police from June 2002 until his retirement in July 2007, questioned the ability to properly run an organization without something as basic as an evaluation system. As such, he testified that his administration repeatedly attempted to reach an agreement with the unions regarding employee evaluations, but the unions "just blocked everything we did." Mulvey, Lawrence's successor, similarly testified that this proscription has long existed and, as commissioner, he made many attempts to obtain permission from the union to conduct evaluations to no avail. Mulvey proclaimed: "The notion that supervisors can't formally evaluate their personnel is just crazy." As a result of what they characterized as this non-negotiable union prohibition, the FEB and by extension the Nassau County Police Department were resigned to repeatedly receiving this citation from ASCLD/LAB, a nonconformance which can limit a laboratory's ability to properly assess its analysts.

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<sup>23</sup> Evidence accessioning is the processing of evidence for analysis by an external laboratory.

### *The FEB's Physical Plant*

An Important criterion lists as a preference that “the physical design [of the laboratory] permits the efficient flow of evidence from the time of its acceptance until its proper disposal.” However, the FEB did not occupy a contiguous space: a good portion of the laboratory was on one floor of the building, but the firearms section was located two floors below the main laboratory, and the latent print section was located on a different floor from the other sections. A contiguous laboratory is important because it assists in maintaining the integrity of the evidence. While the inspection made no finding that evidence was actually compromised by this lack of contiguity, nevertheless, it is a safeguard which ASCLD/LAB deemed important enough to list as a criterion.

Former County Executive Thomas Suozzi<sup>24</sup> reported that he was aware of the scattered layout of the FEB. Suozzi explained that the physical plants throughout Nassau County were in terrible condition and, therefore, his administration attempted to consolidate and improve the county offices. To that end, his administration sold excess property and withdrew from leases; it then took the money generated by those two endeavors and used it to improve the remaining plants. With regard to the Police Department, Suozzi wanted to move the headquarters to a warehouse in Westbury, wherein a new state-of-the-art forensic laboratory would be built. Suozzi stated, however, that the police unions opposed the move claiming they did not want to leave Mineola, where headquarters was and remains located.

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<sup>24</sup> Suozzi's tenure as County Executive began in January 2002 and concluded on December 31, 2009.

## **2. FEB Becomes Re-accredited in October 2003**

As required by ASCLD/LAB policy, Granelle forwarded a remediation plan to the ASCLD/LAB lead inspector for the 2003 inspection, and to the Office of Forensic Services within DCJS. Following up on the FEB's progress of its remediation, the ASCLD/LAB team leader re-inspected the laboratory in September 2003.

Despite the FEB's shortcomings and owing to the remediation plan, by correspondence dated October 6, 2003, ASCLD/LAB Executive Director Keaton informed Granelle that the Board had voted and that the FEB had been awarded re-accreditation. ASCLD/LAB employed a process whereby the Board did not vote on the accreditation until the full remediation plan had been accepted by the lead inspector. Therefore, while the inspection took place in January 2003, the Board did not review the findings until approximately 10 months later. This method of delayed review can be problematic and in fact was so during a later 2005 inspection, as will be explored later in this report.

When the FEB was re-accredited in October 2003, Granelle generated an "Internal Correspondence Through Official Channels" reporting that fact to Commissioner Lawrence and those in the chain of command.<sup>25</sup> Unlike civilian laboratories that operate under the leadership of a director who bears ultimate responsibility for the operations of the lab, a police laboratory is part of a division of the Police Department, and the laboratory director must answer to and report up a chain of command. In the Nassau County Police Department, reporting is accomplished through

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<sup>25</sup> Granelle similarly had reported in an Internal Correspondence Through Official Channels to Commissioner of Police James Lawrence, dated March 3, 2003, each Essential noncompliance from the 2003 ASCLD/LAB inspection report and his proposed remediation. Lawrence testified, however, that he never saw the actual 2003 ASCLD/LAB inspection report.

informal oral discussions and formal written reporting. The formal reporting is primarily by Internal Correspondence Through Official Channels. Essentially, if Commanding Officer Granelle wished to inform the Police Commissioner of the 2003 ASCLD/LAB findings, remediation or accreditation status, he would orally report to his immediate supervisor, and he would prepare a formal report that was reviewed and approved (with signatures) by all members of the chain of command above him until it reached the Commissioner. Granelle was required to report up through this chain of command, and was prohibited from directly communicating to the District Attorney or County Executive about laboratory issues and accreditation.

### **3. Communication with the District Attorney's Office and the County Executive Regarding the 2003 Inspection**

At the time of the 2003 ASCLD/LAB inspection, Denis Dillon served as District Attorney of Nassau County.<sup>26</sup> When queried as to the FEB's communication with the District Attorney's Office, Det./Lt. Granelle reported that to his knowledge, no formal communication was made regarding the impending inspection or its results. However, Granelle noted that if a member of the District Attorney's office asked for lab results during the inspection, Granelle would have explained that there would be a delay due to the inspection. Further, while Granelle alerted those above him in the chain of command regarding the results of the inspection, he had no knowledge as to whether that information was provided to either the District Attorney's office or the County Executive.

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<sup>26</sup> Dillon served as Nassau County District Attorney from 1974 until 2005, when he was defeated by current Nassau District Attorney Kathleen Rice. Dillon passed away on August 15, 2010, prior to the commencement of this investigation.

Commissioner Lawrence reported that he spoke to District Attorney Dillon maybe “two or three times” in his entire tenure as commissioner. However, he noted that the Chief of the Department and the Detective’s Division had regular contact with the District Attorney’s office. Nevertheless, when queried as to whether any discussions had taken place within the Police Department to inform the District Attorney’s office about the accreditation issues, Lawrence responded that he could recall no such discussions.

He explained:

No, I don’t remember any discussion about that they should know anything. And the reason being is because the things that were brought up in those inspections were sort of in-house procedural type things that, you know, there wasn’t anything that would make me think that there was some problem with what they were doing as far as the science or the analysis of evidence. There were things that, you know, that we should have been able to correct ourselves, and I didn’t think they were things that would impact the DA’s office.

Lawrence stated that he would have based this assessment on information received from Tully or Chief of Detectives Herbert Faust. Lawrence did note that the FEB members and the Detective Division were dealing routinely with the District Attorney’s office about matters like case backlog, and Lawrence expected that accreditation issues would have been discussed as well.

Members of the District Attorney’s office did not recall being notified about either the 2003 inspection or its results by members of the lab, Nassau County Police Department, OFS, or DCJS. Furthermore, based on a review of all the documents relating to the FEB from 2003 to the present produced by the aforementioned entities, the Inspector General did not uncover any written communication to the District Attorney’s office regarding the 2003 inspection. However, members of the District Attorney’s Office during these years reported that Assistant District Attorney Robert Biancavilla

routinely attended Forensic Commission meetings and reported on the matters discussed therein.

As discussed later in this report, Forensic Commission member William Fitzpatrick testified that he spoke to District Attorney Dillon regarding the 2003 inspection during a winter meeting of the District Attorneys Association of the State of New York (DAASNY), who responded that the unfavorable report was a result of the transition to the FEB, and the lack of personnel and funding. Dillon's response, however, suggests that he had been previously informed about the results of the 2003 inspection.

Former County Executive Suozzi was questioned as to his knowledge of the 2003 inspection. Suozzi testified that during his tenure as County Executive, he did not recall being aware of any problems at the FEB. Suozzi delegated the oversight of the police department to his Deputy County Executive for Public Safety, a position held by four different people during Suozzi's tenure. Accordingly, then Commissioner James Lawrence reported to the Deputy County Executive for Public Safety, but Suozzi related that he would also speak to and meet with Lawrence at times. Notably, the Deputy County Executives for Public Safety also oversaw the two other non-police County laboratories: the Nassau County Medical Examiner and the Nassau County Division of Public Health Laboratories. However, with respect to these non-police labs, the deputies met directly with the lab directors. In contrast, the Deputy County Executives did not meet directly with the FEB Lab Director because the FEB was viewed as merely a small part of the larger police organization. In this way, however, Suozzi's office was entirely dependant on the Police Department for information about the FEB.

Suozzi testified that he did not recall being aware of the unfavorable 2003 ASCLD/LAB inspection results. Asked if he believed he should have been told about the report, Suozzi replied: “I really can’t say based upon looking at a Monday morning quarterback now. The reputation of the police department was always top notch, professional run organization. I never really ever had concerns about the professionalism of the department.”

#### **4. Response by the Forensic Commission and the Office of Forensic Services to the 2003 Inspection**

##### *a. Forensic Commission Discusses the FEB’s 2003 Inspection Report*

On June 17, 2003, the Forensic Commission met for a regularly scheduled meeting during which, the Forensic Commission discussed, among other topics, the 2003 inspection report of the Nassau County FEB, as reflected in the meeting minutes. OFS’s practice is to provide all documentation related to the meeting to the Forensic Commission members in advance for their review. Although Granelle’s presence was requested at the meeting via e-mail, he did not attend. Granelle explained that during the transition to the FEB, he had a problem with his e-mail and only received the e-mail notification a few months after the meeting when his e-mail account was remedied. It appears, however, that upon receiving no response from Granelle via e-mail, nobody at OFS attempted to contact him by telephone to secure his attendance.

At the meeting, John Hicks, the then Director of OFS, reported on the re-accreditation status and inspections that had occurred among certain New York State

accredited forensic laboratories. In considering laboratories with Essential criteria nonconformances, Ann Willey, Ph.D., J.D., a Department of Health representative and member of the Forensic Commission, observed that prior annual self-assessments conducted by some laboratories did not detect deficiencies noted in the ASCLD/LAB inspection reports. Willey was referring to the annual self-assessments required by ASCLD/LAB between inspections which consistently reported Nassau's lab and others across the state to be in compliance with all Essential criteria. In point of fact, Dr. Willey's comment reflected a widely held concern among the Forensic Commission members that the five-year period between accreditation inspections was too long given the ineffectiveness of the annual self-assessments to present a true and accurate status of the laboratories. This sentiment resulted in the proposal for an amendment<sup>27</sup> requiring ASCLD/LAB accredited laboratories to undergo a full accreditation inspection sometime during the third year of their five-year cycle. A motion was made to accept this rule change which passed unanimously.

It was noted that ASCLD/LAB Executive Director Keaton had already informed the Forensic Commission that ASCLD/LAB was prepared to support these additional interim inspections. The projected cost for the interim inspections was an aggregate annual cost of \$120,000 for the next five years, which would vary based on the number of laboratories undergoing inspection in a given year and the size of the laboratory. However, state funding assistance was made available to the laboratories when the accreditation mandate went into effect, and the Supplemental Aid to Crime Laboratories program<sup>28</sup> description was revised in 2003 to permit labs to seek full reimbursement from

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<sup>27</sup>Title 9 NYCRR Section 6190.5(b).

<sup>28</sup>The Aid to Crime Laboratories Program is a New York State grant administered by DCJS.

the state for all costs associated with accreditation. Therefore, the costs for these interim inspections as well as the re-accreditation inspections would be (and continues to be) borne by the state.

With regard to the high number of Essential nonconformances received by a number of New York State laboratories, the members of the Forensic Commission also discussed whether laboratories were sufficiently diligent in conducting self-assessments; and, whether laboratory management and the agencies to which they report were appropriately responsive to inspection findings. To address this apparent problem, a decision was made to offer the expertise of NYCLAC on behalf of the Forensic Commission to assist laboratories in the prompt resolution of their nonconformance to Essential criteria. The Forensic Commission voted to send letters offering assistance to Nassau County Commissioner of Police Lawrence regarding the FEB, and to two other New York State accredited forensic laboratories which had also received relatively high numbers of Essential noncompliances at their last inspections. That letter was sent to the FEB on July 14, 2003.

*b. Chair Parker's Communication with the Nassau County Police Department about the FEB*

In the July 14, 2003 letter on behalf of the Forensic Commission, Chair and DCJS Commissioner Chauncey Parker expressed concern to Commissioner Lawrence about the 15 Essential nonconformances that the FEB received in its 2003 inspection. Then, after delineating some of the findings, Parker noted, "Of particular concern is the fact that in

annual assessments performed by the [FEB] Bureau in the years prior to the ASCLD/LAB inspection, these criteria were reported as being in compliance.”

As further requested by the Forensic Commission members, Parker stressed the importance of adhering to accreditation criteria:

In order to assure the integrity of forensic evidence and to maintain the confidence of the public and the courts, it is imperative that laboratories scrupulously adhere to the operating standards reflected in the accreditation criteria. Laboratories must have strong backing and support of their parent agencies in order to successfully maintain accredited status. There must also be unswerving commitment from management to dedicate the resources necessary not only to perform the laboratory analyses but also to maintain essential quality management practices.

It is strongly recommended that the discrepancies identified in the ASCLD/LAB report be addressed promptly and that procedures be established for regular management review to ensure adherence to accreditation criteria. The Commission recommended that the Nassau County Police Department Forensic Evidence Bureau be offered the assistance of the Office of Forensic Services (OFS), NYS Division of Criminal Justice Services, to help complete the re-accreditation process of the Forensic Evidence Bureau. I have asked John Hicks, Director of Forensic Services and a member of the Commission, to contact your office in the next few days to personally extend this offer of assistance. OFS is prepared to facilitate site visits by representatives of the NY Crime Laboratory Advisory Committee (NYCLAC) to offer consultation or training as you deem appropriate in order to help ensure Bureau operations are in full compliance with the ASCLD/LAB accreditation requirements.

While this letter apparently reflected the concerns of the Forensic Commission, Parker, its then chair and signatory of the letter, when interviewed by the Inspector General, had no memory of this letter or the issues which caused him to send it. Parker asserted that, in matters related to the crime laboratories, he deferred to OFS Director Hicks. Hicks did recall drafting the letter and, noting that such a letter was “not a routine occurrence,” explained that it was prompted by the significant number of Nassau’s nonconformances. Commissioner Lawrence also did not recall this letter.

Parker justified his lack of recall by explaining that as Director of Criminal Justice, he was the senior criminal justice policy advisor for the governor in charge of approximately seven agencies, including, but not limited to, the New York State Police, New York State Division of Parole, New York State Department of Correctional Services, and DCJS, of which one office was OFS, the administrative arm to the Forensic Commission. Although this correspondence was drafted in 2003, Parker's lack of recall of the letter and the events which led to its drafting reflects his detachment from what should have been a vigorous scrutiny of a troubled laboratory. As the closure of the FEB establishes, significant attention must be paid to the oversight of forensic laboratories, well beyond that which was paid to it by the Forensic Commission.

On August 22, 2003, Commissioner Lawrence responded in writing to Parker's letter. Initially, he noted that all 15 Essential noncompliances had been remediated. He then explained what the Nassau County Police Department believed was the source of the poor inspection results:

You may not be aware that on January 6, 2003, a significant reorganization of commands within the Nassau County Police Department took place. One component of this re-organization, the consolidation of the Technical Services Bureau and the Scientific Investigation Bureau into the Forensic Evidence Bureau, caused a major impact on the ASCLD/LAB inspection. This re-organization placed the Latent Fingerprint Section within the Crime Lab. My administrative Staff and I were well aware that, while not required, the preferred location, with the accompanying standards, for a Latent Print Section was within the Crime Lab. However, this move triggered no less than six of the fifteen non-compliant findings. At the time of my decision I was assured that we would be able to comply with the new requirements in very short order, and I believe this has been the case.

In fact, FEB personnel represented to the Inspector General that they had communicated the circumstances of the reorganization to the ASCLD/LAB inspection team at the time

of the inspection and presumed that ASCLD/LAB withheld sanctions at that time because of the explanation.

In his letter, Lawrence acknowledged Parker's assertion regarding the importance of providing support and resources for the lab, and explained that despite attrition from the lab, "efforts must be made to insure that administrative responsibilities are maintained." Lawrence then announced that he had filled the supervisory positions that had been vacant, and had authorized the outsourcing of serology in order to remain current with the cases. In response to Parker's offer of assistance, Lawrence reported that both Tully and Granelle had briefed OFS Director Hicks regarding the status of the laboratory and the remediation that had been implemented; and, despite an invitation to visit the laboratory, Hicks felt that "a visit [wa]s not necessary at this time, but he . . . offered any future assistance . . . need[ed]." When questioned by the Inspector General, Lawrence had no recollection of sending this letter; he surmised, however, given its contents, that it was probably drafted by the Detective Division, which included the FEB, and sent to Lawrence's office for approval. When shown this letter, Tully, whose commands included the Detective Division, did not recall it.

Parker similarly had no recollection of receiving the letter. However, on the copy of this August 22, 2003 letter provided to the Inspector General by OFS, there is a handwritten notation on the top right corner with an arrow drawn and the words, "copy . . . John Hicks." Parker acknowledged the notation as his and explained that, as was his general practice, he directed correspondence addressed to him to the person within any of the agencies he supervised with direct knowledge of the issue, in this instance, John Hicks. Hicks recalled this letter and, contrary to it, stated that he had gone to the FEB

and visited with Deputy Chief Tully. Hicks noted that he spoke to Tully, Granelle's superior, as opposed to Granelle himself, to indicate the gravity of the situation; specifically, that failure to comply with ASCLD/LAB criteria would place the lab's New York State accreditation in jeopardy and then "they would have to close the doors." It was Hicks's impression that Tully appreciated the seriousness of the situation, because, as Hicks related, following this meeting, he noted Tully's attendance at a number of Forensic Commission meetings. Hicks also explained that this letter would have been shared with the Forensic Commission at the next meeting.

*c. No Policy to Notify Prosecutorial Agencies or Local Leadership of Issues with Their Laboratories*

While the Forensic Commission, through OFS, was diligent in contacting laboratories deemed to have had unfavorable inspection reports, the formal notifications appear not to have gone beyond the laboratories. Parker testified that no policy existed at the Forensic Commission during his tenure to notify prosecutorial agencies or any local authorities when a laboratory received a negative evaluation of an inspection. Further, Parker had no recollection of contacting anyone himself. William Fitzpatrick, a member of the Forensic Commission and the District Attorney of Onondaga County, recalled the high number of Essential nonconformances that Nassau County had received during its 2003 inspection, but stated that he was unaware of any formal correspondence from the Forensic Commission to either the Nassau County District Attorney or the County Executive. As mentioned earlier, he did, however, report that he spoke informally with Nassau County District Attorney Denis Dillon at a winter DAASNY meeting, and Dillon

responded that the negative inspection report was the result of the transition to the FEB, and the lack of personnel and funding.

As will be explored more fully in the recommendations at the conclusion of this report, the history of the Nassau County laboratory as examined in this investigation establishes that the Forensic Commission must fully engage itself in the criminal justice system and not limit itself to minimal oversight of the laboratories. While clearly malfeasance and misconduct at a laboratory must be reported to the district attorney's office it serves (as well as to ASCLD/LAB and the Forensic Commission), to the extent that a forensic laboratory receives an unfavorable inspection report, that result should also be formally communicated to the relevant prosecutorial agencies and county leadership. Indeed, by selecting the DCJS Commissioner to chair the Forensic Commission, the Legislature acknowledged that forensic laboratories play a key role in the administration of criminal justice in New York State. The Forensic Commission should embrace this role and require communication between the laboratories and the relevant prosecutorial agencies and county leadership.

## C. The 2005 ASCLD/LAB Mid-Cycle Inspection of the FEB

### **1. Preparing for the Inspection**

In 2005, having been re-accredited in 2003, the FEB was preparing for its first mid-cycle inspection by ASCLD/LAB. In an official correspondence to the Commissioner of Police on February 17, 2005, Granelle, who characterized himself to the Inspector General as a “squeaky wheel” with regard to his constant requests for additional personnel, requested additional personnel in anticipation of the upcoming

September 2005 mid-cycle inspection. He listed a total of 12 FEB employees who had left since January 1, 2003, because of retirement, promotion, or transfer, and requested the “assignment of non-supervisory personnel, or hiring of civilian personnel to fill vacant positions” at the FEB. He then issued a dire warning: “For the time being, other members of the Laboratory have been pitching in to handle this workload but not without sacrificing their normal tasks such as; training in the respective discipline, duties of the safety manager, quality control, and quality assurance and trace analysis. Evidence control as well as these other tasks, are all considered essential criteria by ASCLD-LAB. If these needs aren’t addressed our laboratory will FAIL its Accreditation inspection.” [Emphasis in original]. The investigation did not find evidence that this internal correspondence went up the chain of command and reached the Commissioner. As detailed later in this report, Granelle’s correspondences were often edited and vetted by his immediate supervisors, Tully and Wanlass.

Around the same time, Granelle had already requested “the hiring of civilian personnel to fill vacant positions,” as the serology unit was essentially disbanded – and four analysts were transferred to other commands – because serology testing was being conducted at the recently completed DNA lab at the Nassau County Medical Examiner’s Office. An agreement had been made with the Detectives’ Association, Inc. (the detectives’ union), to use these serology positions to hire civilian scientists for other disciplines. Only one member of the serology section remained, civilian Arlene Colon, Ph.D., and her testing was limited to basic serology.<sup>29</sup>

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<sup>29</sup> Dr. Colon passed away unexpectedly in July 2010, prior to the commencement of this investigation.

## 2. Proposed Hiring of Civilians for the FEB

Granelle related that when he assumed the position of Commanding Officer of FEB, he was informed of a plan to hire civilian scientists for the entire laboratory within the hierarchy of the Police Department. Granelle explained that during his tenure as Lab Director, he often received requests to transfer a scientist out of the lab to a precinct, and, when he balked at losing personnel, his superiors raised the expectation that the lab would be hiring civilian scientists. With regard to one instance, Granelle expounded:

Basically because the entire Police Department was so understaffed they needed a detective . . . and the Chief of Detectives came to me and asked and he said, I really need somebody and we are supposed to be civilianizing here. We are supposed to be hiring, but I need somebody now, basically. After we had a discussion about it, I had to agree with him. I mean it's – Quite honestly, in the Police Department, it is more important to have a detective in a squad than it is to have someone working in a lab.

This general attitude serves as yet another basis for civilianization of the lab: the priority of staffing the laboratory was low as compared to other areas of the Police Department. Notably, as revealed in this exchange, this sentiment was even held by the Laboratory Director. Notwithstanding, both Granelle and Tully characterized the process of hiring civilians as arduous, as Civil Service titles had to be established and the finances negotiated with the County Executive's office. Tully testified regarding the eventual hire of one civilian analyst, "if you were to tell me you have documentation . . . that it took a year or a year and a half, I wouldn't be surprised. It took forever to get any civilians hired." Eventually, in July 2005, civilian Melanie McMillin was hired as an arson specialist.<sup>30</sup>

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<sup>30</sup> In November 2005, another civilian, Regina Healy began working at the FEB as a Trace Evidence analyst.

The piecemeal process of civilianization that occurred, however slowly, was fraught with other problems. A sworn member and supervisor at the FEB testified that problems naturally arose when civilian scientists making approximately \$60,000 a year were working next to sworn personnel doing exactly the same job at twice the pay. Records of salaries of FEB sworn members reveal the lowest base salary to be approximately \$119,000, and a total salary of approximately at least \$150,000 with overtime and other increases.

Issues also arose regarding overtime. For instance, state grant applications, which are drafted by the laboratory director and require specificity with regard to what the funds will be covering, often included portions dedicated to overtime so that a laboratory may have its overtime paid for with grant money. Initially, the way that many of the grant applications were drafted did not include overtime pay for civilian employees, only sworn personnel. When that problem was eased, some of the sworn personnel felt that the civilian employees were detracting from their overtime pay potential. Civilian overtime pay is less costly to the Nassau County Police Department because the pay scale relates to base salary, which, as noted, is significantly less for civilians. While one detective drug chemistry analyst testified that he, and he believed other detectives, were not concerned with the impact of civilian overtime, Laura Hammond, a civilian hired in February 2008 as a questioned documents analyst, testified that she heard detectives saying to a civilian or civilians, "You're taking my piece of pie," a criticism reflecting the sentiment that hiring civilians would reduce detective overtime.

Similarly, Margaret Fischer, a civilian who commenced employment at the FEB in December 2006 and who had worked as a drug chemist at the NYPD laboratory for

almost seven years, reported that during her first year at the FEB, she “would answer the phones, fax reports, [and] take in evidence,” but did not engage in scientific testing because no one wanted to work with her. This situation occurred even though the drug chemistry section was down to one analyst when she first arrived. Fischer testified that “The detectives made remarks. ‘What, are you trying to steal food from our mouth? You are going to take our overtime.’” Fischer related that the drug chemistry section supervisor when she began working was actively hostile to her, to the extent that she reported the behavior to her union representative many times. Fischer explained: “They wouldn’t let me join drug chemistry, and at the time there was another detective in blood alcohol who really didn’t want me there. That was a big fight. And nobody wanted me in their section. And [the detective in blood alcohol], again, wanted all the overtime for himself because he was about to retire.” Fischer related that Granelle would tell them that Fischer “can’t just be here and not do any work.” Eventually, she began conducting blood alcohol testing.

The issue of civilians functioning within the ranks of the Police Department caused other problems. Fischer related another incident where a sergeant ordered her to voucher a firearm, a task she was not authorized to do, and Granelle “called [her] down to his office. And he was like, you really can’t tell the sergeant no. . . . I know . . . you were right and that is the right procedure, but you really can’t tell a sergeant” no. In addition, many of the sworn members felt they should not have to answer to a civilian. This sentiment notwithstanding, from late 2005, the position of Quality Assurance Manager was staffed by a civilian, Melanie McMillin, which, as documented on the FEB organizational chart, was superior to the section supervisors who were all sworn

personnel. Regardless, because the sworn members viewed her as outside the chain of command, they felt no duty to accede to her authority.

### **3. The 2005 Mid-cycle Inspection Unfavorable Results**

In early September 2005, the FEB began preparing for the impending inspection. Granelle testified that they had the laboratory cleaned and the floors waxed. In addition, as required by ASCLD/LAB, the analysts preselected five cases from their caseload for review by the inspectors, a procedure that many have questioned as an acceptable inspection method. When queried as to how much actual time the laboratory spent in anticipation of the inspection, Granelle responded, “Hard to say, as much as we can, but you don’t get much time when you are short handed and you are trying to basically perform analyses and get cases out.”

From September 19-23, 2005, ASCLD/LAB conducted an inspection of the FEB. As with all ASCLD/LAB inspections, the inspectors provided daily feedback to the laboratory to afford an opportunity for response. Then, on the last day of the inspection, the inspectors conducted an exit interview with lab management, which the whole lab was invited to attend, to inform the laboratory of the findings of the inspection. Although Granelle had expressed great concern to his superiors regarding the impact of the FEB personnel deficit on the ASCLD/LAB inspection, the high number of noncompliances shocked him. Granelle reported, “I remember being floored. We got hammered pretty good.” Following review by ASCLD/LAB’s internal audit committee, on October 6, 2005, Executive Director Keaton forwarded the written inspection report to Granelle, and noted that the report had not yet been considered by the ASCLD/LAB Board. The report

revealed that the FEB was noncompliant in 18 Essential criteria and 10 Important criteria. However, several Essential and Important criteria included multiple failings, thereby raising the number of Essential nonconformances to 21 and Important to 11. More importantly, many of the nonconformances related to basic laboratory function, which should have been a priority of the Nassau County Police Department.

*a. The Lack of an Effective Quality Assurance Manager and Manual*

When the ASCLD/LAB inspectors evaluated the FEB with regard to the ASCLD/LAB Essential criterion as to whether the laboratory has a comprehensive quality assurance manual, the inspection report concluded: “The quality manual does not contain or does not completely reference the documents or policy/procedures pertaining to the following elements: [the FEB’s] place in the parent organization; the type and extent of examinations conducted by the laboratory; validations of test procedures used; handling evidence; monitoring court testimony; and dealing with complaints.” In other words, as Granelle stated succinctly, the quality assurance manual was a “mess.” The FEB was also cited for not conducting and documenting an annual review of its quality system. Both the quality manual and annual review of the quality system are integral to the position of quality assurance manager whose job it was to craft a quality assurance manual and to maintain quality assurance in the laboratory, a position in which the FEB, up to and including the 2005 inspection, maintained in name only.

These findings echoed a concern of OFS Forensic Services Coordinator Cathryn Levine, who deals with laboratory accreditation for all New York State accredited

forensic laboratories, receives all correspondence between the laboratories and ASCLD/LAB, and reviews the findings for presentation to the Forensic Commission members. Levine testified that even prior to these citations by ASCLD/LAB, she had been consistently troubled by the disregard for the importance of the quality assurance manager position at the FEB:

My concern with Nassau County was if you asked them who your QA manager was, you had a different person every year . . . there was no QA manager. If you were going to be retiring within the next six months, you were the QA manager, if you had an injury on the job you might have been the QA manager. So, prior to the hiring of Melanie McMillin in 2005, they had no QA manager. I considered that a major problem, so I was concerned about that.

And, in fact, Levine provided the Inspector General with a list she had maintained of the purported quality assurance managers at the FEB and the source of that information, which is reproduced below:

**Nassau Co. PD / QA Managers**

December 2010 - Det. Sgt. Robert Sputo (e-mail dated Dec. 17, 2010)  
December 2005 - Melanie McMillin (e-mail stating she has new QA duties)  
October 2005 - Arlene Colon attended QA-TWG<sup>31</sup>  
March 2005 - Arlene Colon attended QA-TWG  
February 2005 - Neil Delargy (04 Annual Accreditation Report)  
November 2004 - no attendance by Nassau PD  
April 2004 -  
March/April 2004 - Jim Granelle and Marc Marino attended QA-TWG meeting  
April 2003 - Mike Cole (02 Annual Accreditation Report)  
April 2002 - Nicholas Mattia (01 Annual Accreditation Report)

Of note and exemplifying the Nassau County Police Department's lack of seriousness regarding the quality assurance manager position is Inspector Neil Delargy's

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<sup>31</sup> A TWG is an acronym for technical working group, a meeting of scientists to discuss a specific discipline, in this case, quality assurance.

purported short tenure as Quality Assurance Manager. Delargy is listed in February 2005 as having been reported to be the Quality Assurance Manager in the 2004 annual accreditation report that preceded the 2005 mid-cycle inspection. In fact, Granelle testified that he had asked Delargy to assume the quality assurance manager position. Granelle claimed that Delargy “had a basic understanding of latents, et cetera. He worked for me in crime scene. He worked for me in latents and he knew what was going on with the lab pretty much. So, he was able to take that over and was doing a fine job, but then he got promoted and then you lose him and now you have to start all over again.” However, when Delargy appeared before the Inspector General, he testified that he was not aware that he had been given the title of quality assurance manager until as recently as 2011 when someone informed him of this fact.

**Question:** Was there at any point from January of ‘05 through December of ‘05 where you assumed the role of Quality Manager in title and perhaps action?

**Delargy:** I have since come to learn in title I got it. I was not made aware of that. I did not perform any particular function in that title. As far as I knew back then, it was Dr. Arlene Colon was the Quality Assurance Manager. If you would call me anything, I would be more comfortable with quality assurance supervisor, to make sure she is doing her job, to make sure she is here today doing her job, but no, I had no training in quality assurance. I found out later on that I was the Quality Assurance Manager.

**Question:** In what context did you learn that title had been assigned to you at that time?

**Delargy:** Just from checking paperwork since this investigation began in 2011.

Delargy’s testimony presents stark evidence confirming Levine’s fears.

Immediately following Delargy's departure from the FEB in December 2005, Arlene Colon, the other civilian in the laboratory who had been conducting basic serology testing, was placed in the position of Quality Assurance Manager upon the recommendation of Deputy Inspector Wanlass, because, according to Granelle, the Medical Examiner's office wished to do all its own serology testing, leaving Colon without any testing to conduct. Granelle testified that he agreed to this change in position because he admittedly did not truly grasp the significance of and the qualifications necessary to be the Quality Assurance Manager. In fact, when queried as to what qualifications are necessary for the quality assurance manager position, Granelle declared: "just basically if someone has an understanding of the lab, and that's about it, and then they need to be – a special kind of person, they need to be meticulous, neat." This statement was made even with the perspective of hindsight demonstrating the lack of appreciation for the significant role quality assurance plays in a forensic laboratory.

*b. Failure to Utilize Corrective Actions*

Another core nonconformance of the 2005 ASCLD/LAB inspection was the laboratory's failure to properly utilize the corrective action function, a laboratory's procedure to correct problems that have been identified which could affect the quality of testing as well as results. Corrective actions are intended to foster an open dialogue to constantly improve the quality of the science in a laboratory. The report stated, "The laboratory has but does not use the written corrective action procedure if there is an indication of a significant technical problem." Granelle, in his testimony before the Inspector General, accepted blame for this citation, and explained its origin:

I am as much at fault with that as anyone. I don't know if you get this about me, but I tend to like to deal with people one on one, and when there is a problem I try to go and deal with it and we talk it out and we come up with a solution and if need be we bring other people in . . . But the corrective action when you are talking to a police officer almost sounds, sounds very similar to what they go through when we call getting burnt, okay. We receive a disciplinary action and that's basically the way a lot of the detectives were taking it, so I tended to shy off from the corrective actions and I shouldn't have. I should have explained it lot better, I should have understood it a lot better. It doesn't mean that at all. You are not being disciplined. It is just showing that you found a problem and you are correcting it. So, I was as much at fault for that one as anyone. We changed our procedure and our policy, and basically anytime we found any type of a problem, a corrective action was written up and everybody grew to understand that they weren't so bad. But, believe me, in the beginning when you tell a detective we are giving you a corrective action, he is flying through the air jumping up and down and it means nothing. He thought he was being disciplined.

Granelle's explanation highlights the tension of utilizing as lab analysts, members of the police force who are unaccustomed to the mandates of a scientific operation.

c. *Other Noncompliances Found During the 2005 Inspection*

The 2005 ASCLD/LAB inspection report cited the FEB for certain other basic and necessary noncompliances, examples of which are:

- In the biology discipline, a new technical procedure has been used in casework without being scientifically validated.
- In the trace evidence discipline, conclusions of racial origin of hair were inconsistent between laboratory work notes and the laboratory case report.<sup>32</sup>
- Case related telephone conversation records are not maintained in a retrievable form except in the latent print discipline.
- The laboratory does not monitor the testimony of each examiner annually. The laboratory does not have a program to insure that the testimony of each examiner is monitored annually. The laboratory does not document giving feedback to the examiner.

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<sup>32</sup>This noncompliance related to an instance in which case notes referred to a short hair fragment as of "possible" mixed racial origin, but the report excluded the word "possible" and the item was reported as mixed racial origin.

- In the trace evidence discipline, analysts were not proficiency tested in each sub-discipline in which casework was performed.
- One latent print examiner currently listed on the professional staff roster dated 7-21-05 did not successfully complete New York State proficiency test #2 dated 6-24-05.

These nonconformances all relate to the lack of a true quality assurance manager and manual and reflect a casual attitude by the FEB management and the Nassau County Police Department inconsistent with the precision and rigor necessary in a forensic laboratory.

#### **4. Reporting the 2005 Inspection Results up the Police Department Chain of Command**

When queried by the Inspector General as to whether he reported the unfavorable results of the ASCLD/LAB inspection up the chain of command, Granelle responded, “I tried to report it through internal memorandums, internal letters and it was tough. I have a number of them here where they were just constantly crossed out, things were changed and sent back to me to retype and crossed out again.” Granelle then proceeded to demonstrate through documents he produced, the numerous edits to his memoranda by Tully which altered Granelle’s message and delayed its dissemination.

On or about November 3, 2005, for example, Granelle drafted an Internal Correspondence Through Official Channels the subject of which was “Personnel Request – Police Forensic Scientists,” to be reported up the chain of command. However, in this instance, the draft provided to the Inspector General by Granelle was heavily edited by Tully and included a note on it from Deputy Inspector Scott Wanlass which said, “Jim. Talk to me re: this request. Scott.” When questioned about this notation, Wanlass

offered that he believed that the correspondence was “poorly worded,” and that he “had concerns with the way it was written and maybe rephrased and maybe to add some additional information to it.” The correspondence begins by requesting the hiring of additional analysts for the FEB. Granelle then added, “Our recent Accreditation inspection conducted September 19-23, 2005 and reported to us October 18, 2005, points out many deficiencies in our laboratory, almost all of which are directly related to lack of personnel.” Another point in this correspondence related to the quality assurance position: “One of our immediate needs is for a Quality Assurance Manager, who should carry the rank of PFSIII [Police Forensic Scientist III]. This person will have the responsibility of updating our Quality Control Manual and setting up proper procedures for checking the quality control and safety issues in the laboratory. These are extremely important criteria, which can make or break a laboratory’s Accreditation attempt.” Granelle then outlined additional personnel requests, and concluded, “This will allow FEB to face the issues that need to be dealt with in order to successfully complete the remediation process we are now going through. Failure to address these issues will mean loss of our Accreditation.” Directly above this last statement, Tully wrote, “Be careful making this statement.” The Inspector General’s review of the endorsed internal correspondences around this date reflects that this correspondence was not sent up the chain of command beyond Tully.

Yet again, on or about December 13, 2005, Granelle drafted an Internal Correspondence Through Official Channels to Commissioner of Police Lawrence entitled “Accreditation Inspection,” in which he attempted to formally communicate to his superiors of the inspection and the proposed remediation. As with the previous

correspondence, this too was heavily edited by Tully. Lawrence testified, however, that these official correspondences supplemented oral briefings he routinely received from Tully and Chief of Detectives Herbert Faust. Granelle's original December 13, 2005 version stated, in relevant part: "Attached are the results that revealed FEB was non-compliant in eighteen different criteria. Also listed are the inspectors (sic) comments and the corrective actions necessary to remediate." Granelle clearly intended to attach a detailed listing of FEB's deficiencies and the planned remediation. Those intentions notwithstanding, Tully edited the paragraph to read, "*The inspection revealed that FEB was non-compliant in eighteen different criteria. Most of these eighteen concerned issues that either involved the Serology discipline<sup>33</sup> or were very minor technicalities that are easily corrected.*" [Emphasis supplied] Notably, Tully eliminated any attachment to the correspondence which would have provided details of the nonconformances to those in the chain of command including the Commissioner of Police. When confronted with the edits to Granelle's correspondence, Tully acknowledged authorship, stated it was his general practice to edit official correspondence from his commands, and claimed that no attachment was necessary because the Commissioner would have already seen the inspection report as he would have relayed it to the Commissioner as soon as it crossed his desk. Lawrence, however, testified that he had no recollection of ever having seen the 2005 inspection report.

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<sup>33</sup> Granelle testified that since most of the serology testing was being conducted by the Nassau County Medical Examiner's Office, he recommended ceasing serology testing; regardless, his superiors wanted to keep the discipline. The lead ASCLD/LAB inspector told Granelle that if the lab were to cease serology testing, the number of deficiencies would decrease, but Granelle informed the lead inspector that he was unable to do so. Following the inspection and the numerous nonconformances related to serology, the superiors agreed to cease serology testing.

Further, Tully added language which minimized the importance of the citations by ASCLD/LAB. Tully testified, however, that this language was consistent with what was being reported to him by Granelle and Wanlass, that most of the issues involved technicalities that were easily fixed. However, when asked his opinion of Granelle's approach to the remediation, Wanlass related that he had been concerned that Granelle was too quick to minimize the ASCLD/LAB findings of noncompliance. Essentially, Wanlass opined that while some of ASCLD/LAB's wording about a nonconformance sounded worse than the actual underlying violation, Granelle's characterization of most of the problems as minor or easily fixed was too dismissive given the overall number of citations for noncompliance.

With regard to the remainder of the edits, Tully asserted, "I think it was understood that I would look at it and if I felt something had to be added to it, I would make these types of changes." He claimed, however, that if "Granelle came to me and said I want to send a letter to the Commissioner, he would run it by me first and I would look at it and say: What are you trying to say? I would talk to him about it. I would not put words in his mouth."

Tully's assertion notwithstanding, Granelle testified that he made attempts to get his message across to no avail: "I tried rewriting it the way I wanted it again. Again, it wasn't accepted." Indeed, the editing process of this particular correspondence was so protracted that the original draft was sent to Wanlass and Tully on December 13, 2005, but the final version that was reported up the chain of command was dated January 13, 2006. Upon being shown the edited version of his correspondence in which the nonconformances were characterized as mostly "minor," Granelle initially maintained

that in fact some were relatively minor. Upon being pressed, however, Granelle conceded that the characterization of the totality of the nonconformances as minor was misleading:

**Question:** I know you just said some of them were minor, but did you believe the report as a whole was a minor technicality?

**Granelle:** Obviously, the report as a whole with that many problems was a problem, but many of the problems came down to just the Serology and the fact that our manual was a mess. That was major portion of it.

**Question:** But the manual being a mess is not a minor technicality?

**Granelle:** No, it's not. Some of the areas were easy to fix though. Some of these were minor. It's easy to fix. It is just a simple rewrite and we are done and then prove we were doing it for 90 days.

**Question:** But presenting your report with that many essential criteria not implying as simply some problems in Serology and some other minor technicalities, is that misleading?

**Granelle:** It could be, yes. Yes, it could be.

**Question:** Could be or it is?

**Granelle:** Yes, it is.

The final January 13, 2006 version noted that of the 18 noncompliances, five concerned serology which was going to be outsourced obviating the need for remediation; 11 noncompliances involved minor problems regarding documentation that had already been addressed; and the remaining two noncompliances – rewriting the quality assurance manual and the training manuals – were more complex. The correspondence concluded with an insertion crafted entirely by Tully: “Meeting these two criteria will be time consuming, but through the work that has already been started and with the civilian replacement of detectives that we have lost through attrition, I am

confident we will meet the standards well within the time allotted. By July 19<sup>th</sup>, 2006, we must notify ASCLAD/LAB (sic) that all essential criteria have been remediated.”

In the section of the official correspondence requiring endorsement up the chain of command, Deputy Inspector Wanlass signed his name and wrote, “This is a complete and comprehensive report on our accreditation inspection. I will work with the CO FEB to complete the remediation process within the required time frame.” Tully similarly endorsed the correspondence and added, in relevant part, “a remediation plan is well underway, and follow up reports will be submitted.” Of course, it was Tully who had eliminated the attachment which delineated the details of that remediation plan.

Evidence revealed that Tully continued to minimize the lab’s problems to the detriment of the lab, its personnel, and its forensic testing. In December 2005, Joan Yale was appointed Chief of Detectives and, in order to assess the status of her commands, she scheduled meetings, one of which included lab members and their immediate supervisors. Tully and Wanlass attended; however, Granelle was not available and Deputy Commanding Officer Cole and Section Supervisor Marc Marino attended in his stead. At this meeting, Marino informed Yale that the lab had issues related to personnel, equipment and training. Marino testified: “We didn’t have personnel. We had been requesting it for a long period of time. We hadn’t received any of it. Our equipment was not terrible but it definitely was behind what a modern lab would have. So was [sic] the facilities that we were working in. And as far as training that would have been available had we not had the tremendous caseload that we were carrying.” Marino then declared that after he explained the lab’s dire situation to Yale, Tully interjected that Marino “was exaggerating the conditions of the lab and that everything was basically okay.”

Following that statement, Marino requested a transfer out of the lab, and was transferred soon thereafter.

## **5. Response to the Unfavorable 2005 Inspection Report by the Forensic Commission**

As required by the Forensic Commission, in mid-October 2005, Granelle forwarded the 2005 ASCLD/LAB inspection report to Cathryn Levine of OFS, stating, “As you can see we have some remediation work ahead of us. I’ll keep you informed of our progress.”

On December 6 and 13, 2005, the Forensic Commission met for its regularly scheduled quarterly meeting to discuss pending forensic issues. Granelle was notably absent from both of these meetings. The December 6 meeting minutes reflect a discussion of laboratory accreditation, but, despite having been provided a copy of Nassau County’s 2005 inspection report, the Forensic Commission minutes bear no discussion of Nassau’s report. Furthermore, the December 13 meeting transcript reveals scant discussion about Nassau County’s 2005 inspection report and the findings of 18 Essential noncompliances. It appears that because the FEB had not provided its remediation plan to the Forensic Commission prior to the December meetings, no substantive discussion took place despite the high number and seriousness of the findings. Incredibly, a discussion even ensued regarding the lack of quality manuals at other labs in the state without any mention of FEB’s noncompliance on this exact issue. Forensic Commission member Ann Willey expounded:

We’ve visited this issue before about the technicalities of ASCLD/LAB and to what extent this Commission remains comfortable that this process actually deals with the kinds of technical issues that are uncovered in these inspections. I’m very concerned in [two labs in New York State]. There’s

an indication that there's no quality manual; that since you don't have a manual, there's no review of your quality, there's no validation of new methods, there's no verification that employees using new methods have been appropriately proficiency tested.

I mean these are the kinds of deficiencies found in a laboratory that in laboratory accreditation circles, clinical labs, environmental labs, the kind of labs we deal with in the Department [of Health], would result in suspension of testing privileges potentially until that laboratory could document that the methods that they were using had properly been validated. And we've never taken action adverse to an ASCLD recommendation, but those are the kind of serious technical deficiencies that we may need, I believe, to discuss by what criteria this Commission accepts or, on occasion, rejects ASCLD/LAB accreditation findings.

Wiley's vigorous commentary, however, met with little response. Hicks merely mentioned that one of the offending laboratories had already crafted a remediation letter to ASCLD/LAB. Despite Wiley's urging, when faced with clear evidence that the FEB and other labs were in need of significant improvement with regard to their quality manual and system, the Forensic Commission saw the need to do little more than send a letter.

With regard to Nassau County's unfavorable inspection report, the following comprises the Forensic Commission's entire discussion over this two-day period. Hicks stated: "With respect to Nassau County, we don't have any information. I'd like to recommend that, perhaps, we draft a letter to Nassau County . . . seeking additional information. And if you have specific points that you want to be sure are emphasized in that letter, if you'd let me know that by e-mail, I'll make sure they are included."

Such a letter was in fact sent to Nassau County. In the letter drafted by Hicks and dated January 5, 2006, Chair Parker, on behalf of the Forensic Commission, expressed to Commissioner of Police Lawrence the Forensic Commission's concerns regarding the 2005 ASCLD/LAB inspection results. Parker elaborated:

I have been asked to communicate the concerns of the Commission regarding the findings of this recent inspection. This report lists eighteen findings of non-compliance with criteria rated by ASCLD/LAB as “essential” for continued accreditation. As you probably recall, two years ago on July 14, 2003 a letter was written expressing concerns about a 2003 inspection which listed fifteen findings of non-compliance. Now, once again, we are faced with a large number of findings of non-compliance. As you know, an accredited laboratory is expected to maintain the high standards which were met in order to achieve accreditation. The concern that some laboratories were having difficulty in maintaining these high standards over a 5-year cycle prompted the Commission to enact the mid-term inspection rule which became effective on June 8, 2005.

The Commission requests that they be informed of your continued progress to implement the corrective actions necessary to be re-accredited by ASCLD/LAB. They request details as to how these issues are being addressed and, most importantly, what systematic changes are being put in place to insure that they don’t reoccur. Continuous correction of so many criteria in non-compliance does not instill confidence in the quality system of the laboratory. We are concerned that our recommendation in 2003 for the establishment of procedures for regular management review to ensure adherence to accreditation criteria have not been met.

While the message of this letter appears strong on its face, both Hicks and Parker had little to no recollection of it.

Lawrence “vaguely” recalled receiving the letter, stating “when I got this letter, I thought it was a response to Granelle not attending the meeting or that, that, that was the thinking. Um, so, so that’s when we really . . . started questioning Granelle as far as . . . him being in that position, but . . . we didn’t have a . . . lot of choices.” Lawrence was referring to a general consensus that Granelle should have attended the December 2005 Forensic Commission meeting or sent someone in his stead. Even while criticizing Granelle, however, Lawrence acknowledged that given the resources and personnel issues at the FEB, Granelle was working under less than optimal conditions. Further, Lawrence also blamed others in the chain of command for the FEB’s inadequacies:

You know, and just like it's [Granelle's] responsibility, it was also the people up the ladder from him . . . Scott Wanlass who had been there for- because . . . I was questioning Scott Wanlass too because . . . Scott Wanlass had been there . . . longer than Granelle and, and, and everyone's telling me that . . . he had all of the knowledge . . . and we failed the inspection again, so I was questioning Scott Wanlass. But, these were the horses that we had.

Indeed, few sworn officers possessed qualifications necessary for the position of lab director and, as Lawrence disclosed, the Police Department had made repeated unsuccessful attempts to hire a civilian lab director.

The Inspector General also questioned many Forensic Commission members about the 2005 inspection report and the letter Parker sent in response. Most had very little recall about either. Richard Jenny, Ph.D., Forensic Commission member and a representative from the Department of Health, did not recall the 2005 inspection report which cited the FEB with 18 nonconformances, explaining that he had only recently been appointed to the Forensic Commission in June 2005: "I was a neophyte in 2005, 2006 and somewhat intimidated by the Commission, I have to admit, and kind of going with the flow at that point." That justification notwithstanding, Jenny actually took a strong position regarding the report. On January 6, 2006, Jenny, responded via email to Hicks's request for input into the Nassau County letter, albeit a day after the letter had been sent. Regardless of his lack of recall, Jenny's analysis of the 2005 ASCLD/LAB inspection report is telling. Jenny wrote to Hicks and Levine questioning the work performed at the FEB based on the seriousness of the deficiencies:

The following are my notes regarding the ASCLD inspection findings that were brought to the Commission's attention for the December meeting. I am most concerned about the Nassau County Police Department laboratory and question whether the lab should be allowed to continue to function. I don't see how that laboratory's work would withstand legal scrutiny, based on ASCLD citations. Should there be an independent (DCJS) review to substantiate ASCLD's

findings for purposes of decision-making on the accreditation status. . . .

Nassau County Police Department

mid-cycle inspection conducted Sept 19-23, 2005 ASCLD report sent to the laboratory October 6 Undated letter from NCPD to DCJS, simply stating work to be done.

Several deficiencies are so serious that one must question the defensibility of work performed by the NCPD

- quality manual lacking for several key practices:
- validation, evidence handling
- new technical procedure not validated properly
- appropriate standards and controls are not specified and/or used in some analytical procedures
- laxity in maintenance of instrumentation
- potentially unsafe working environment
- compromised security through lack of controls on key distribution

Given the serious (sic) of the deficiencies, I was taken aback by the casual response from the Commanding Officer. There should be an immediate response from the NCPD with plan of corrective action and timeliness. Should work cease until the most serious deficiencies are remedied? I would argue that work should cease. Who is to substantiate the effectiveness of the correction action in a timely manner? Wait for ASCLD or utilize DCJS resources? The NCPD response should include a root cause analysis of substandard practices that includes a review of prior inspection findings and accreditation status.

Jenny made some compelling recommendations; however, when the Inspector General proffered this e-mail to him for review and comment, he had no recollection of it.

Instead, Jenny attempted to rationalize his lack of recall: “these Commission meetings they’re four times a year, presented materials, recommendations are made, it’s the expectation that the office [of Forensic Services] follow-up, you know, on something like this. I personally walk away from the issues from meeting to meeting. I don’t know that the Commission members are expected to be engaged on a day-to-day basis.” Jenny’s explanation underscores his expectation of the impact the Forensic Commission is to have on forensic laboratories. It also demonstrates the need to empower OFS and its full-

time DCJS paid employees to monitor the accreditation status of forensic laboratories in New York State more comprehensively, as set forth in the recommendations below.

As of February 1, 2006, OFS still had not received any response from the FEB regarding its intended remediation. In turn, Hicks drafted a letter for Parker's signature to Commissioner Lawrence. The letter initially commented on the lack of any remediation plan from the FEB as of that date. The letter also incorporated some of Jenny's comments in his January 6, 2006 e-mail. Of note, the letter commented:

“Particularly disturbing to members of the Commission was the apparent indifference to the inspection findings by the commanding officer as reflected in his letter received at DCJS on October 19, 2005.” As related earlier in this report, when Granelle forwarded the 2005 ASCLD/LAB inspection report to Levine of OFS, he included a cover letter with the terse message to which Jenny, and perhaps others, took offense. Granelle had written, “As you can see we have some remediation work ahead of us. I'll keep you informed of our progress.”

Nevertheless, while the draft letter for Parker's signature was being vetted by OFS staff and counsel's office at DCJS, Deputy Inspector Scott Wanlass sent a letter dated February 6, 2006, to Hicks, specifying that a remediation plan was being implemented and attaching the detailed plan prepared by Granelle that Tully had previously omitted from the internal correspondence to Commissioner Lawrence. Wanlass testified that Tully had asked him to draft this letter to Hicks because Tully felt that Hicks had been receiving information about the FEB's inspection and remediation in piecemeal fashion and wanted to present the information from Wanlass, who had extensive experience with the lab. Upon receipt of this letter, Hicks modified the draft

letter from Parker to Lawrence and eliminated the comment about Granelle's perceived glib comment; the modified letter was sent on or about February 8, 2006. Lawrence did not respond to Parker's letter, likely because Wanlass's February 6, 2006 letter addressed the Forensic Commission's concerns.

**6. No Notification to the District Attorney's Office or the County Executive Regarding the Unfavorable 2005 Inspection Report**

Forensic Commission Member James Murphy, who is the Saratoga County District Attorney, related that as a member of the District Attorney's Association of the State of New York (DAASNY), he or District Attorney William Fitzpatrick (Onondaga County) would "unofficially" report on Forensic Commission issues at DAASNY meetings. Parker and others attested to a lack of formal notification by the Forensic Commission, and the investigation did not find any other notification, official or unofficial.

With regard to the FEB and the Nassau County Police Department, as discussed earlier, Granelle would not have reported outside of the chain of command to the District Attorney's office; rather, such reporting would occur, if at all, from those superior to him in the chain of command. When queried as to whether he suggested to his supervisors that the District Attorney or the County Executive be notified about the results of the 2005 inspection, Granelle responded that he had not.

Indeed, Suozzi testified that during his tenure as County Executive, he did not recall being informed of any problems at the FEB. Suozzi's Deputy County Executives for Public Safety reported that they had routine contact with the Police Department, but dealt more with larger budgetary issues, and not issues specific to the lab. In fact,

throughout Suozzi's tenure as County Executive and the subsequent administration, the Police Department submitted yearly budget proposals to the County Office of Management and Budget which included specific requests from each command, including the FEB's requests for additional staffing and resources. For instance, the FEB's 2005 submission for fiscal year 2006 stated, in pertinent part: "The depletion of our staff has made it extremely difficult to provide the timely and efficient service our department has come to expect and it will be impossible to pass our upcoming inspection without hiring." Previous and subsequent FEB budget submissions all included similar language and warnings. This critical information, however, was buried deep in budget submissions and did not include more details about the lab's ongoing accreditation problems. In truth, the County routinely provided a set amount of funding for the Police Department and these specific requests were generally denied.

To the extent the Police Department wanted a specific budget request to be addressed, a Police Department member would have to bring that issue to the attention of a member of the County Executive's Office for consideration in addition to the written submission. The Deputy County Executives during the relevant period reported to the Inspector General that in fact, aside from whatever was contained in the written submissions, they did not recall that the Police Department made any specific budgetary requests regarding the functioning of the lab.

## **7. The FEB's Remediation Plan in Response to the 2005 ASCLD/LAB Inspection Report**

Wanlass's February 6, 2006 letter cited above annexed a remediation plan prepared by Granelle which presented each non-conformance in three parts: the inspectors' evaluation, the actual problem, and the proposed corrective action. In his letter to Hicks, Wanlass explained that while the serology discipline was found noncompliant in five areas, the discipline was now outsourced thereby obviating the need for remediation. He also offered that an additional 11 nonconformances related to "insufficient, missing, or inappropriate documentation" had been or were in the process of being corrected. As to the two remaining nonconformances, Wanlass recognized their importance and complexity, and the time required to correct them:

The two remaining non-compliant issues deal directly with the quality and training manuals. These issues are more complex and will take additional time to remediate. To bring these manuals into compliance, we have reassigned a newly hired civilian forensic scientist to re-implement an effective Quality system and to completely rewrite the quality manual. In the interim, we are also compiling the necessary documentation as it relates to the training manuals. As new scientists are hired in other disciplines in the future, appropriate training manuals will be promulgated and utilized in the laboratory.

The reassigned newly hired civilian forensic scientist, to whom Wanlass referred, was Melanie McMillin, who had originally been hired to conduct arson debris analysis.

### *a. A New Civilian Quality Assurance Manager*

After receipt of the 2005 inspection report, Granelle determined that Arlene Colon, who had been placed in that position in early 2005, could not continue as Quality Assurance Manager; instead, he made Colon the Safety Manager, the person in charge of

training and supervision of safety in the lab. Sergeant Marc Marino, who worked in the FEB from January 2003 until September 2006 and held supervisory titles as well as Quality Assurance Manager, testified that he and Granelle repeatedly attempted unsuccessfully to obtain a civil service title for the quality assurance manager position, which would have allowed them to hire from outside the Police Department.

After these attempts, Granelle looked within the FEB to fill the position. Initially, he asked Regina Healy, a trace evidence examiner who had been hired in November 2005, after the ASCLD/LAB inspection. Healy however, declined the position, informing Granelle that while she felt confident within her discipline, she was not qualified to oversee quality assurance of the entire laboratory. Granelle related: “Nobody really wanted to be the Quality Assurance Manager. The Quality Assurance Managers, they are the bad guys. They’re the whistle blowers. Everybody perceives them as the bad guy and so nobody really was looking forward to doing that. I asked a few detectives and they really didn’t want to do it.” Granelle then turned to McMillin, who agreed to become the Quality Assurance Manager, a position she held until February 2011 immediately prior to the closure of the laboratory.

Placing McMillin in the position of Quality Assurance Manager was controversial within the FEB. She had initially been hired as an arson debris analyst; however, when she arrived at the FEB in July 2005, she claimed to be unable to perform any arson examinations because of problems with the instrumentation. Marino, her section supervisor, reported that he questioned McMillin’s claim of instrument inoperability because Sgt. Charles Conti, who had been transferred out of the lab and returned as the drug chemistry section supervisor in 2009, had been the arson analyst whom McMillin

replaced and had conducted testing on those same instruments without incident.

McMillin testified that she had been a trace analyst engaging in fire debris analysis at the NYPD laboratory and was deemed proficient. However, when she was hired by the FEB, no written procedures existed for evaluating and training incoming analysts, a deficiency that was one of the 18 Essential noncompliances of the 2005 ASCLD/LAB inspection.<sup>34</sup> She also related that she was unfamiliar with FEB's instrumentation and the manufacturer could not provide training for her for several months. She explained that she therefore took upon herself to try to learn the instruments to no avail. After approximately six months, McMillin had still not conducted any arson examinations. As a result, many FEB members questioned her qualifications to perform the tasks for which she was hired.

McMillin was hired as a fire debris analyst with a civil service title of Forensic Scientist II, and, when she assumed the role of Quality Assurance Manager, she retained that civil service title. Therefore, while according to the FEB organizational chart she was above section supervisors, her civil service title was equal to that of other civilian scientists, a situation that bred resentment among the other civilian scientists.

Furthermore, as noted earlier, the sworn officers did not take well to answering to a civilian. Perhaps most noteworthy, FEB sworn personnel and civilians alike consistently referred to McMillin's difficult personality. In fact, Deputy Commanding Officer Michael Cole, the second in command at the FEB, testified that following the standard six-month probationary period imposed on new hires, Granelle asked him and Sgt. Marino if the FEB should retain McMillin and both responded "unequivocally . . . absolutely not." When asked why McMillin had evoked this animosity, Cole expounded:

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<sup>34</sup> The 2005 ASCLD/LAB inspection report cited as an Essential nonconformance, "The training program lacks a procedure for effectively determining competency prior to assuming casework responsibilities. The

“Because she was not competent. . . . She didn’t get along with one person in the laboratory. I didn’t see her ever being able to fulfill a function there. . . . she never was able to get the arsons up and running. Allegedly Criminalistics would do arson examinations. She was never able to get it up and running ever.”

Granelle apparently did not heed their advice because, on December 28, 2005, he made McMillin the Quality Assurance Manager. Granelle acknowledged that he had been aware that she did not get along with many people in the lab. Nevertheless, Granelle related that he had consulted a colleague of his who had worked with McMillin, who acknowledged her strong personality, but still endorsed her for the Quality Assurance Manager position. Granelle explained: “At that point in time, I approached her and said you know what, I can send my arson cases up to New York State Police to do but I need a Quality Assurance Manager, somebody who understands the lingo. . . . ‘You speak ASCLD, I don’t.’ She agreed to it.”

Granelle stated that first and foremost, McMillin was tasked with rewriting the quality assurance manual, and he believed her to be completely capable of doing so. In point of fact, Granelle declared that when the lead ASCLD/LAB inspector returned for the routine follow-up inspection “in 2006 his words . . . were, ‘That was the worst Quality Assurance manual I had ever seen in my life,’ and basically after Melanie McMillin took over he said, ‘Now I have never seen a better one than the one you have today.’” Despite these improvements, quality assurance at the FEB never attained the level necessary to sustain integrity in a forensic laboratory.

Of note, many FEB staff members attested to what appeared to be Granelle’s bias towards McMillin: the perception was that Granelle always took McMillin’s side in any

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laboratory has not selected an experienced fire debris trainer to administer the training program.”

controversy. While both Granelle and McMillin disputed those accounts, it was apparent that Granelle felt indebted to McMillin for her work on the quality manual which evoked the glowing review from the ASCLD/LAB inspector.

*b. Problems in Obtaining Qualified Analysts at the FEB*

The search for a quality assurance manager illustrates the challenges the Nassau County Police Department had in its attempt to staff the laboratory. Initially, when the laboratory was mostly staffed with sworn personnel, it was difficult to find officers qualified and willing to go to the lab. As the current Chief of the Department Steven Skrynecki explained:

**Question:** How were police personnel discovered or employed at the lab; did they have to ask for the assignment or were they sent for special training?

**Skrynecki:** In a number of ways. And that's one of the inherent issues that I think that makes me personally think you're better off with a civilian lab. We hire a cop to be a cop. We don't interview you for your chemistry background or biology background. If you come to us with that, that's fine. But, you know, we're really looking at you as how are you going to perform as a police officer. There's all kinds of tests from the written exams to medical to physical and psychological exams that are all geared to selecting a good person for a police officer position. Now, once you're in, we look around and we say I see on your application you have a degree in chemistry or you have a degree in biology. So possibly we might reach out to you. Or you may raise your hand and say, excuse me, I have a degree in biology, chemistry or an interest in this and would like to apply for a position in the lab. So it would come from one of those two sources, either an individual expressing an interest, maybe coming in with some background, maybe not, maybe we would supply the training or we would learn of somebody who had exceptional training and solicit that person to see if they wanted to work in the lab.

**Question:** But was the assignment to the lab viewed as a desirable position?

**Skrynecki:** Well, I guess that really depends on the individual. Personally, I would never want to work in the lab because I came out of the police department to be a cop. But that's just personal. But there are, again, there are people who absolutely love working in the lab and probably that's clearly their preference and were quite, you know, would be disappointed to be redeployed.

**Question:** But sometimes there are assignments in the PD that are viewed as a sort of a steppingstone. Is the lab one of those?

**Skrynecki:** Not really.

Skrynecki's testimony highlights the problem of drawing analysts for the laboratory from a limited population of Nassau County police officers with science backgrounds who by happenstance were interested or willing to work in the lab. While the State Police and NYPD laboratories also maintain their laboratories within the structure of their police departments, they staff their laboratories almost entirely with civilian personnel. The State Police has 165 positions in its laboratory system, of which only four are sworn personnel. Similarly, the NYPD laboratory is comprised of 148 civilians and 45 uniformed personnel. It must be noted, however, that when FEB and Nassau County Police personnel endeavored to rectify this situation by attempting to civilianize some lab positions, they were met with bureaucratic obstacles.

Yet another problem uncovered by the instant investigation was the routine practice by the Nassau County Police Department of placing sergeants in the lab as section supervisors, despite having no experience in the discipline in which they were supervising. In turn, that supervisor was only able to engage in administrative review, a review of the paperwork, as opposed to technical review, a comprehensive review of the testing itself and the documentation. Presumably, these sergeants also could not offer

assistance if a problem arose with testing and were not fluent in the science surrounding the discipline.

#### D. ASCLD/LAB Imposes Probation on the FEB in 2006

After faring poorly during the 2005 inspection report and receiving 18 Essential noncompliances, the FEB commenced a remediation plan. In April 2006, as part of her new duties as Quality Assurance Manager, McMillin prepared a comprehensive remediation report. As required by ASCLD/LAB, the report was submitted to the lead inspector for review and approval.<sup>35</sup> In addition, the lead inspector then returned to the FEB for a re-inspection on July 24-25, 2006, which entailed a more discreet examination as to whether the remedial measures were in fact instituted. The lead inspector generated an ASCLD/LAB inspection report dated August 10, 2006.

The re-inspection resulted in findings of compliance with all Essential criteria, with the exception of the one Essential non-compliance related to hair analysis.<sup>36</sup> As discussed earlier, the original Essential noncompliance from the 2005 inspection stated that conclusions of racial origin of hair were inconsistent between laboratory work notes and the laboratory case report. Specifically, a hair analyst had recorded in the case notes regarding a very short hair as being of “possible” mixed race origin, but the final report omitted the word “possible” from the report’s conclusion. FEB’s remediation plan prepared by McMillin declared: “This [noncompliance] was an isolated error by the analyst that had not been detected during the case record review. A review by the Quality

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<sup>35</sup> The remediation plan was also provided to OFS.

<sup>36</sup> As noted earlier, laboratories are not required to be in full compliance with Important and Desirable Criteria.

Manager<sup>37</sup> of the 2005 hair casework notes and reports by that analyst *failed to disclose any other such errors*. The analyst corrected the case notes, crossing out and initialing the “possible.” [Emphasis supplied]. Notwithstanding McMillin’s assertion, the lead inspector, upon return to the FEB, found other inconsistencies in that same analyst’s reports. The re-inspection report found, “In the trace evidence discipline, observations and conclusions of hair remained inconsistent between laboratory work and notes and the laboratory case report.” Notably, the re-inspection finding regarding the hair sub-discipline inconsistencies contradicted the April 2006 remediation report prepared by McMillin.

Accordingly, after the lead inspector brought these inconsistencies to Granelle’s attention, Granelle determined that the hair sub-discipline should be temporarily suspended so that the lab could be re-accredited.<sup>38</sup> On August 1, 2006, Granelle reported, through official channels to Commission Lawrence, regarding the re-inspection results. The correspondence stated, in pertinent part:

Of the eighteen essential criteria that needed to be remediated, the lab was successful on all but one sub-discipline of one criteria. In the category of Criminalistics, the inspector noted inconsistencies in the note taking / report writing of one hair examiner. Further, he expressed his concern that these inconsistencies should have been revealed during the course of further inspection and review. Since this issue concerns not just the work of one detective, but what is considered a failure of the system, it is not a matter that can be corrected simply by the re-training in the report writing / note taking / use of abbreviations, of this one detective. It is our consensus that the best course of action is to request the temporary suspension of the analysis of hair evidence, so as not to delay the re-accreditation of the rest of the lab.

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<sup>37</sup>McMillin had engaged in hair examinations while employed at the NYPD lab.

<sup>38</sup>Granelle testified that he believed the suspension of this discipline was relatively insignificant because hair analysis had become nearly obsolete with the advent of DNA testing; further, the number of cases that had been tested that year was minimal.

The next day, Granelle drafted a letter to ASCLD/LAB Executive Director Ralph Keaton to that same effect. Members of the Nassau County District Attorney's Office informed the Inspector General that they were never notified that the FEB had ceased hair analysis.

## **1. ASCLD/LAB Probation Imposed 10 Months After the Initial Inspection**

On August 14, 2006, Keaton sent a letter to Granelle informing him that the ASCLD/LAB Board had placed the FEB on probation because it deemed the number of noncompliances to be too high for an accredited laboratory, and it noted that the FEB's annual internal audit was entirely inconsistent with the 2005 inspection report. Keaton explained:

The Board voted to place the Nassau County Police Department Forensic Evidence Bureau's accreditation on probation effective immediately and pending the results of another inspection which should be scheduled as soon as possible following the submission of the next Annual Accreditation Audit Report which is due on or about the anniversary of accreditation. The Nassau County Police Department will be responsible for the cost of the inspection.

The Board determined that probation was appropriate for two primary reasons. First the seventeen (17)<sup>39</sup> findings of non-compliance with Essential criteria is unacceptably high for an accredited laboratory and second, the non-compliance with some of the Essential criteria was not reported in your Annual Accreditation Audit Reports.

Keaton's letter placing the FEB on probation occurred over ten months after the original inspection. As reported herein, the original 2005 inspection took place on September 19-23, 2005, and ASCLD/LAB provided its inspection report to the FEB on October 6, 2005. However, at this time, it was ASCLD/LAB's practice to only present final reports that included the inspected lab's remediation plan to the Board. Therefore, the Board did

not have the opportunity to evaluate the 18 Essential nonconformances until August 10, 2006, at which time it placed the FEB on probation, even though by then the FEB had already remediated all of the noncompliances and the remediation plan had been approved by the ASCLD/LAB lead inspector.

When questioned about this ten-month delay, Keaton admitted that the fault lay with him: “That was the case where, obviously, I did not take that initial report to the Board until we had a supplemental report, is what I would glean from this. That when it was taken to the Board, they saw that this was an exceptionally high number of essential findings, and this may have been the impetus for me to be more aggressive in taking things to the Board, when there were a high number of [E]ssential noncompliances.” Indeed, in contrast, in 2010, Keaton presented the initial findings to the Board which immediately placed the FEB on probation prior to any remedial measures.

Most notably, the delayed imposition of probation in 2006, following the full remediation and successful re-inspection, had the effect of dulling the impact and creating confusion about this probation sanction. As Granelle attested, while he took seriously the imposition of probation on his laboratory, the FEB staff believed it had already remediated the noncompliances because they had received a second inspection indicating that the lab was now in full compliance with all Essential criteria. The FEB was left with the impression that the ASCLD/LAB probation had little meaning because it imposed no other additional requirements on the lab. As Granelle stated, “[B]asically being on probation we are allowed to perform our analyses. We are allowed to do our job and they are going to come back in a year to make sure we’ve done it okay for the

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<sup>39</sup> Keaton explained that the reference to “17” non-compliances was a typographical error. He acknowledged that the initial 2005 inspection report cited 18 Essential noncompliances.

previous year.” In fact, Keaton’s August 14, 2006 letter apprising the FEB of the probation included the comment, “While on probation, the Nassau County Police Department Forensic Evidence Bureau remains accredited contingent upon a finding of continued compliance with all Essential criteria during the inspection to be scheduled.” Significantly, Section Supervisor Marino had no recollection of hearing of the probationary status, but recalled purchasing a frame for the accreditation certificate sent by ASCLD/LAB.

Levine of OFS also noted her surprise at the delay in the imposition of probation, which she attributed in part to the way the FEB was remediating some of its noncompliances – by jettisoning the problem discipline: “I think one of the reasons that [ASCLD/LAB] were concerned why they put [the FEB] on probation was because the only way they were getting through their remediation was removing disciplines. [The FEB] removed hair, they removed fire debris, they removed serology. I think that was more of a – we’ve got a real serious problem here if you can’t fix the problems and the only thing you are doing is removing them and you are moving on. That might have triggered [the FEB] being put on probation, but I think that was late to go on probation for a 2005 probation, waiting until the summer of 2006. That caught us all by surprise.” Indeed, Granelle related a conversation he had with Keaton wherein he questioned why, after remediating and receiving a stellar re-inspection report, the lab was placed on probation. Keaton explained to Granelle that “because [the FEB] didn’t remediate every single issue, that the Hair had to be removed, that sort of was the straw that broke the camel’s back.” At that time, the FEB was the first forensic laboratory in New York State to receive the ASCLD/LAB sanction of probation.

In an Internal Correspondence Through Official Channels dated August 29, 2006, Tully formally apprised Commissioner Lawrence regarding the imposition of probation and annexed Keaton's letter to that effect. Tully reiterated the ASCLD/LAB Board's reasoning for the probation: the high number of Essential criteria nonconformances; and that the lab's self evaluation failed to note any of these same nonconformances. Tully then explained:

At the time the lab personnel completed the self-inspection, they reasonably believed that they had met all essential criteria. . . . However, the best course of action may be to retain the services of an outside consultant to assist us in building our quality assurance program, which was the most significant shortcoming identified by the inspection team, to guide us through the self-inspection audit. While we are researching the hiring of such a consultant, we have submitted requests for training, under the Aid to Crime Labs Grant, for the Commanding Officer to attend the next ASCLAD (sic) meeting (he has never previously attended a meeting) and for Forensic Scientist II Melanie McMillan (sic), who has been working on the Quality Assurance Program, to receive further training in that area.

Granelle testified that, per McMillin's advice, they in fact brought in scientists from other New York State laboratories to assist with the self audit for that year. However, in subsequent years, the FEB resumed conducting its own self audits. As set forth in the recommendations, the Forensic Commission should consider implementing a requirement that when a laboratory receives a high number of noncompliances during an ASCLD/LAB inspection which is inconsistent with its prior self audit, it must seek assistance from another state laboratory for its next self audit to encourage a more accurate evaluation.

## **2. The November 9, 2006 Forensic Commission Meeting**

At its November 9, 2006 meeting, the Forensic Commission discussed, among other things, the FEB's probationary status. In attendance from Nassau County were Granelle, McMillin and Tully. Hicks began the discussion by pointing the Forensic Commission members to the August 14, 2006 letter from ASCLD/LAB placing the FEB on probation, which had been provided to them prior to the meeting as per OFS's practice. Notably, the record does not reveal any discussion or admonishment of the lab for being the first and only New York State laboratory to be placed on probation by ASCLD/LAB. However, as noted earlier, the August 14, 2006 letter, which was circulated among the Forensic Commission members, placed the FEB on probation at the same time that it accepted the remediation and reaccredited it – a dual status that was likely confusing to the members.

When questioned by the Inspector General about FEB's probation, unique in New York State accreditation history, only approximately half of the Forensic Commission members from that period recalled it. Despite this extraordinary and unprecedented sanction imposed on a New York State laboratory under his jurisdiction, then Chair Parker had no memory of it. Forensic Commission member Fitzpatrick, the District Attorney of Onondaga County, recalled the probation status and noted to the Inspector General its seriousness, but explained that the Forensic Commission's objective is not to shut down labs but rather to assist and monitor the remedial process so that the infractions do not recur. In that vein, Forensic Commission member Peter Neufeld, during the meeting, questioned Granelle regarding the cessation of disciplines; Granelle explained that serology had been subsumed by the Nassau County Medical Examiner's

Office, fire debris had been ceased because the analyst had become the Quality Assurance Manager, and hair testing had to be temporarily suspended but the FEB was working on having it reinstated. Those explanations notwithstanding, former Forensic Commission member Ivar Goldart, in his testimony before the Inspector General, expounded on what he deemed to be of greater concern regarding FEB's cessation of disciplines:

To me it said less about the lab than pointed to a defect in our system because jettisoning the discipline doesn't cure what might have been the problem. If the problem is an underlying deficiency in administration or funding, jettisoning the lab takes away – knocks out a symptom, but doesn't cure the disease. And that is what we were really all about. And I remember there were discussions about this, that shouldn't be allowed and whatever. But what would happen if they jettisoned the discipline, then ASCLD/LAB would simply write: We are not looking into this because they don't have this function. And that could hide a lot of problems. And indeed there could have been serious mistakes made in that jettisoned discipline that would then escape the purview by statute of the commission.

Goldart recognized the danger of excusing noncompliances simply by permitting the problem discipline to be jettisoned.

At the November 9, 2006 meeting, Goldart opined on what he believed to be a potential cause of the cessation of disciplines: that the laboratory appeared to be operating under time and resource constraints which led to eliminating certain testing services. District Attorney Fitzpatrick then asked Granelle whether he felt that Nassau County was adequately funding the laboratory. In spite of his constant complaints and requests to his superiors at the Nassau County Police Department regarding lack of personnel and resources, the minutes reflect that “Granelle responded that this is not a resource issue and noted that the lab has recently hired new staff and expects further staff increases to work in the areas of hair examination, analysis of controlled substances,

footwear and fire debris.” Granelle’s unwillingness to detail his laboratory’s needs detracted from the Forensic Commission’s ability to assist the FEB in obtaining what it actually needed for improvement. Notwithstanding this lack of candor, the Forensic Commission did not probe Granelle regarding the factors which led to the lab’s probation.

Ironically, Chair Parker commented on the efficacy of the ameliorative process as reflected in the discussion regarding Nassau County lab’s probation.<sup>40</sup> The minutes indicate: “The Chair made the general observation that the prior discussion is indicative of how the process is supposed to work; that is, procedures are in place to detect where improvements may be needed.” Parker then “noted that additional funding had been provided to the labs in the past year to expand capacities for ballistics and DNA analysis with the overall goal of ensuring effective service and the highest standards for testing. He asked [the] . . . Chair of the Crime Laboratory Advisory Committee to continue discussions among the lab directors to identify where support may be needed so that improvements can be made.” It is clear that the Forensic Commission provided funding where needed and was receptive to input regarding areas that required additional funding and attention, as reflected in Parker’s request of NYCLAC, the association comprised of laboratory directors across the state. Granelle’s lack of candor, therefore, potentially deprived the FEB of additional resources that might have been provided by the state.

With regard to the extraordinary sanction of probation, as discussed earlier in this report, Executive Law § 995-b(3)(e) empowers the Forensic Commission, following notice and a hearing, to revoke, suspend or otherwise limit the accreditation of any

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<sup>40</sup> When questioned by the Inspector General, Parker had no recollection of the cessation of the different disciplines.

laboratory found to be, among other things, in non-compliance of any of the established Forensic Commission criteria for maintaining accreditation. Notwithstanding this broad legislative mandate, upon learning of the ASCLD/LAB-imposed probation, the Forensic Commission initiated no independent action. A number of Forensic Commission members attested to reliance on the ASCLD/LAB findings. In the words of Forensic Commission member, Saratoga County District Attorney James Murphy:

I think – my sense was that that – that ASCLD putting them on probation, as you say, was a tremendously unusual step and I think we felt the same way. And I felt that that was sufficient enough to garner attention about the seriousness of the transgression, combine that with the fact that we were going to have the lab director come to us, which I think is not a pleasant experience, you know when you have the lab director come and be questioned by 14 commissioners and the commissioner of DCJS and there are 35 other people in the room, your peers certainly, I mean it's a dress-down, which is certainly something, and then a follow-up as to what you have done and what you haven't done and then a re-inspection, I felt though at that time given what we knew at the time that it was sufficient.

Murphy's sentiment is apparently widely shared because, in the history of its existence, the Forensic Commission has never imposed any type of sanction on any New York State laboratory; it has always deferred to the ASCLD/LAB findings. Forensic Commission member Neufeld described the transition of the relationship between ASCLD/LAB and the Forensic Commission from deference to dependence: "ASCLD/LAB, at some point, moved from delegation, to abdication [by the Forensic Commission of its responsibilities to ASCLD/LAB], if you were going to assess the state of mind. It's not the state of mind of the commission. It's the state of mind of the people who ran it, which is DCJS." Indeed, following the November 9, 2006 Forensic Commission meeting wherein the probation was discussed and Granelle was questioned, the Forensic Commission took no further oversight action either: it deferred entirely to the 2007 re-inspection by

ASCLD/LAB and ASCLD/LAB's eventual removal of the probationary status in May 2007.

**3. No Notice of the FEB's 2006 Probation to the Nassau County District Attorney or the County Executive**

*a. The Nassau County District Attorney's Office*

In November 2005, Kathleen Rice was elected Nassau County's District Attorney and assumed office on January 1, 2006. Rice testified that her predecessor, Denis Dillon, provided little in the way of transition. Specific to the instant investigation, to the extent that Dillon was aware of any problems at the FEB, she was not informed of them. In addition, Rice also met with Commissioner of Police Lawrence after taking office and, according to Rice, he did not inform her of any issues regarding the FEB. Further, Rice reported that she was never made aware of the August 14, 2006 probation imposed on the FEB until December 2010. The Inspector General also interviewed numerous Assistant District Attorneys in positions which have significant contact with the FEB and the Police Department and none was aware of the 2006 probation.

Lawrence attested to significant and constant contact between the District Attorney's office and the FEB and the Police Department, and expressed surprise that nothing about the probationary status would have been divulged: "I know we spoke with the D.A.'s office about the backlogs in the lab, about the increase in workload because of, Kathleen's DWI programs, and we had all these discussions and nobody knew about this . . ." Nevertheless, when the Inspector General questioned whether the actual word "probation" was used, Lawrence related that, following the February 2011 closure of the

laboratory and the media attention, he contacted his former Chief of Staff Jack Haviken, who did not recall the word “probation” ever being used in discussions at that time.

With regard to Rice’s lack of knowledge of the 2006 probation, neither the Forensic Commission nor OFS notified the Nassau County District Attorney’s Office or the County Executive about the laboratory which served their county. The Inspector General questioned Parker about this seemingly glaring omission within the structure of the New York State criminal justice system:

**Question:** Given the information that we have shown you, now that the lab was put on probation, would you expect that someone would inform the local prosecutor that this had occurred?

**Parker:** What I would expect is that they would be going to the lab, figuring out the problems, figuring out a plan to correct those problems and working with the lab directly. I don’t know whether DCJS would be notifying the prosecutor or not. I would expect that what we would be doing directly is working, for the service people, directly with the lab people and ASCLD, and whatever that problem is, fixing that problem, reporting back to the commission, but making sure that the problem has been fixed.

**Question:** In other words, in your role in the criminal justice system in New York State, would you think that a lab being put on probation for so many deficiencies that go to the lab would be something that needed to be reported to the prosecutor?

**Parker:** I think the most important thing is to fix the problems in the lab and to get that on track. I don’t know what our policy was, or what the policy of the commission or the policy of the office was in terms of notifying anybody else, but the most important thing is to identify the problems, fix the problems and verify that they have actually been fixed.

**Question:** But you, as commissioner, had you known that the lab was put on probation, and you told [us] you don’t recall that, had you known that the lab was put on probation, would you have thought that the local prosecutor would be notified that that had occurred?

**Parker:** Well, certainly it’s not something that I have any objection to them knowing. I think everything we did was open. I just don’t know if

we would have affirmatively, it depends on the nature of the problems and how – to me, they look like technical are important, but they are technical things that have to be fixed within that lab. I would have to look more closely to know the obligation and that sort of thing to go beyond that, but certainly there was nothing that we did, either at the Commission or with the office or in any of these correspondences there would be any reason not to communicate that to problems, whatever the problems, they anybody, whether the prosecutor, the commissioner, the county executive, anybody. They were all that were meant to be on the public process to improve the quality and performance of these labs across the board.

**Question:** Would you have expected that the lab itself would have notified the local prosecutor?

**Parker:** I can't speculate that the lab would or wouldn't. I would expect at least we would notify the police department. In this case it was the police department, or some other government agency, that oversees the plan, that is responsible for the lab, but I would expect that we would be working with that government entity to make sure they are aware of it and the problem would be fixed, but most of the work would be done directly with the lab to fix it.

As revealed in the above exchange, Parker would not even concede that the FEB should have notified the Nassau County District Attorney.

Forensic Commission Member District Attorney Murphy related that as a member of the District Attorney's Association of the State of New York (DAASNY), he or District Attorney Fitzpatrick would "unofficially" report on Forensic Commission issues at DAASNY meetings. Aside from this, Murphy deemed it inappropriate for individual members to officially report the workings of the Forensic Commission; rather, he believed that any notifications should be discussed among the members and come from the chair. Murphy, however, felt that the laboratories were obligated to keep the district attorneys whom they serve apprised of their status, and the district attorneys bore an equal responsibility to remain apprised of the status of their respective labs: "I guess I

wouldn't expect the commissioner of DCJS to be reporting it to the District Attorney. I would expect that the lab director would do that and/or the police department to do that, in combination with the fact that it's incumbent upon the District Attorney to have an idea about what's going on in his or her lab and in his or her cases. I mean this is the elected representative and the chief law enforcement officer in the county responsible for tens of thousands of cases, thousands or hundreds of thousands, depending upon the size of the county, going through a lab." Fitzpatrick echoed Murphy's assessment: "Let me speak bluntly here. If your crime laboratory is having a serious problem and you're the district attorney and you're unaware of it, there's something seriously wrong with the management processes in that county, seriously wrong."

Despite these assessments regarding the obligation of district attorneys to be informed, until December 2010 when the FEB was placed on probation by ASCLD/LAB for the second time in its history, Rice testified that she had not heard of either ASCLD/LAB or the Forensic Commission. As part of the investigation, the Inspector General interviewed two members of the Nassau County District Attorney executive staff and certain senior Assistant District Attorneys who routinely interacted with the FEB. With the exception of the bureau chief of the Vehicular Crimes Bureau who, in 2008, learned of the existence of the Forensic Commission while attempting to modify certain toxicology testing at the Nassau lab, and the deputy bureau chief of the Major Offense Bureau who had heard of ASCLD/LAB in the context of DNA expert testimony, none of the senior Assistant District Attorneys, including the bureau chief in charge of the Street Narcotics and Gang bureau, had heard of ASCLD/LAB or the Forensic Commission.

By way of comparison, District Attorney Fitzpatrick attested to frequent contact

and discussion with the lab director of Onondaga County, Kathleen Corrado, Ph.D., a fellow Forensic Commission member. Similarly, District Attorney Murphy of Saratoga County which is served by the State Police Laboratory in Albany, reported that he speaks to the lab director “at least quarterly and then certainly someone at the lab . . . on a weekly basis.” He also noted that a senior investigator of the State Police at the lab is assigned to contact the District Attorney’s offices should there be any concern or any question on any case, and Murphy speaks to him personally or a member of his office speaks to him certainly weekly on the status of their cases. It must be noted, however, that the Saratoga County District Attorney’s Office is relatively small as compared to Nassau: Saratoga has approximately 20 assistants while Nassau has more than 175. Perhaps most important, both Fitzpatrick and Murphy are members of the Forensic Commission, positions which necessarily keep them apprised of laboratory issues and which foster communication with their respective laboratories. Murphy’s and Fitzpatrick’s opinion that district attorneys should be sufficiently engaged with his of her forensic laboratory conforms to the Inspector General’s recommendation, as set forth below.

*b. The County Executive’s Office*

Former County Executive Suozzi testified that he was never aware that the FEB had been placed on probation by ASCLD/LAB in 2006. His Deputy County Executive for Public Safety during this time period, Justice Timothy Driscoll,<sup>41</sup> also noted that he did not recall being informed about the FEB’s probationary status. He did recall a

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<sup>41</sup> Justice Driscoll was elected a New York State Supreme Court Justice in November 2007.

meeting in early 2007 with a member of the Police Department and others to discuss the outsourcing of the hair sub-discipline. Of course, the hair sub-discipline had been jettisoned in response to the unfavorable 2005 inspection report and was a major contributing factor to the imposition of probation by ASCLD/LAB that was still in effect. None of these facts, however, was revealed to Driscoll. Driscoll further related that he then asked if there were any other lab issues of which he should be aware, and he received a vague response about a lock on a door that required repair.

E. New DCJS Commissioner and Chair of the Forensic Commission Appointed in 2007

In November 2006, Eliot Spitzer was elected Governor of New York, and he assumed office in January 2007. Spitzer's appointment of Denise O'Donnell as DCJS Commissioner was confirmed by the New York State Senate in March 2007.<sup>42</sup> As DCJS Commissioner, O'Donnell also assumed the role of Chair of the Forensic Commission. O'Donnell related that during the transition to her new position, Parker provided her general information about the Forensic Commission duties, but she recalled no discussion regarding FEB's probationary status. O'Donnell also received an orientation from OFS Director Hicks. O'Donnell related that she "put in substantial amount of work to oversee the work of the Commission," and described it as a "learning process" which took "a considerable amount of time and [she] learned the job as [she] went along." Levine of

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<sup>42</sup>At the March 29, 2007 Forensic Commission meeting, O'Donnell advised the members of an Executive Order issued by Governor Spitzer which required that all open meetings be conducted by webcast and explained that the Forensic Commission was subject to the Order. It was noted that some issues before the Forensic Commission may be confidential in nature and that such issues would be moved to the end of the agenda and addressed in executive session, as appropriate. The first Forensic Commission meeting to be webcast took place on April 15, 2008.

OFS confirmed that O'Donnell was "very involved" in her Forensic Commission duties: she was thoroughly prepared for the meetings having reviewed the binders of documentation prepared by OFS relevant to the upcoming meeting; and, she was diligent in her attendance at those meetings.

O'Donnell explained that she and other Forensic Commission members were concerned about numerous reports of misconduct and malfeasance in New York State laboratories and elsewhere, and, therefore, her "initial focus was to try to put more teeth into oversight of serious negligence and misconduct occurring at the laboratories." To that end, O'Donnell designated the Office of the New York State Inspector General as the independent entity under the federal Coverdell grants to investigate allegations of serious negligence or misconduct by laboratory personnel substantially affecting the integrity of the forensic results.<sup>43</sup> O'Donnell further requested that the Inspector General provide ethics training to staff at all laboratories.<sup>44</sup> According to O'Donnell, the Forensic Commission mandated, albeit not by regulation, that lab directors attend meetings at which their accreditation issues were being discussed so that the Forensic Commission would be better informed. In addition, in 2009, O'Donnell created the Quality Assurance Subcommittee to report to the Forensic Commission on issues arising within quality assurance, the section of laboratories which would be best equipped to discover malfeasance and to create controls to prevent its recurrence.<sup>45</sup>

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<sup>43</sup> Indeed, since becoming the Forensic Commission's designee to investigate allegation of serious negligence and misconduct substantially affecting the integrity of forensic results, the Inspector General has reported on a number of investigations of New York State laboratories.

<sup>44</sup> The Inspector General provided, and continues to provide, ethics training to all 22 New York State forensic laboratories. DCJS has also provided additional ethics training for criminalists (forensic science technicians).

<sup>45</sup> Since its creation, the subcommittee has only met a few times, and has not fully realized O'Donnell's vision of it.

Shortly after her confirmation by the Senate, O'Donnell, in a letter dated April 20, 2007,<sup>46</sup> wrote to Granelle and other laboratory directors across the state regarding the necessity of disclosure of events at forensic laboratories that could affect the integrity of lab results.<sup>47</sup> The letter begins:

Given the critical nature of the work performed in forensic laboratories, it is crucial that all personnel adhere to the highest standards of scientific and technical performance, and ethical conduct, in order to maintain the confidence of the public and the courts. I am sure that you realize that it is incumbent upon laboratory managers to ensure that any issue that could affect the integrity and reliability of its work product is promptly and appropriately disclosed. The purpose of this communication is to review existing standards for such disclosure and to provide general guidance regarding the expectations of the Commission on Forensic Science.

She then discussed the recently approved DAASNY guidelines, also crafted in response to reports of misconduct and malfeasance at state laboratories, and noted that they had “been endorsed by the Commission on Forensic Science and provide specific guidance for laboratory directors on these issues.”

A copy of the DAASNY guidelines dated July 22, 2006, entitled, “Guidelines for Notification of District Attorneys in Cases of Laboratory Error or Misconduct by Laboratory Personnel,” was enclosed with the letter, and delineated the following requirements:

- A. Consistent with crime laboratory directors’ obligation to maintain the integrity of the work product and consistent with accepted accreditation standards, a crime laboratory director shall notify the appropriate District Attorney of his/her designee when any of the following situations are discovered:

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<sup>46</sup> At the November 9, 2006 Forensic Commission meeting which preceded O'Donnell's appointment, the Forensic Commission had voted unanimously to send a letter to all New York State laboratory directors to inform them of newly approved DAASNY guidelines regarding notification by laboratories to district attorneys of misconduct in laboratories; and, and to clarify on reporting responsibilities under the federal Coverdell grant requirement to report misconduct in a laboratory to a certified investigatory agency. This letter, however, was not drafted and disseminated until April 20, 2007, under O'Donnell's stewardship.

<sup>47</sup> The letter provided to the Inspector General was addressed to Granelle; nonetheless, the letter apparently was sent to all New York State laboratory directors.

- (1) A lab employee has engaged in any intentional fabrication or falsehood with regard to his or her work product, analysis or test results that have resulted in an erroneous report being issued.
  - (2) A lab employee, in the course of testimony, has significantly misrepresented or misstated a material fact; has significantly misstated his or her experience, training, education or qualifications; or has made a significant scientific error.
  - (3) A lab employee has engaged in a demonstrated pattern of significant errors which has affected the reported results of laboratory analysis such as an erroneous identification, false identification, or false positive.
  - (4) Other conditions or situations which raise immediate and significant concerns and which affect the reliability of a laboratory report.
- B. Provided, however, that nothing in this guideline shall be deemed to affect or define the prosecutor's statutory or constitutional obligation of disclosure.

Forensic Commission Member DA Fitzpatrick was instrumental in the drafting of these guidelines, in consultation with NYCLAC, the association of New York State laboratory directors. Fitzpatrick related that these guidelines were disseminated to all district attorney's across the state. When presented with a copy of these guidelines, however, District Attorney Rice testified that she had never seen them. Apparently, more was needed to effectively communicate and integrate these new obligations. In truth, the approval of the guidelines by DAASNY, an association of district attorneys, did not bind the laboratory directors in any way. Hence, for these guidelines to be effective, they had to be communicated to and obligate forensic laboratories. And, indeed, the Forensic Commission "endorsed" the guidelines and, by this letter, provided them to all forensic laboratory directors. Notably, the Forensic Commission endorsed the DAASNY guidelines rather than utilize the power bestowed upon it by Executive Law § 995 to promulgate a regulation that mirrored the language of the DAASNY guidelines. While the practical effect may have been the same, a laboratory found to have violated a

Forensic Commission regulation, as opposed to an endorsed guideline, would more readily be subject to sanction.<sup>48</sup>

O'Donnell also provided ASCLD/LAB's Policy on Disclosure of Non-Compliance, approved by its Board on June 7, 2006, which states, in pertinent part: "In keeping with the stated objective of 'identifying those laboratories which meet established standards', the ASCLD/LAB Board has determined that, as an accrediting body, we must be timelier in reviewing instances of significant non-compliance. To further this objective, all accredited laboratories must disclose to ASCLD/LAB all substantive occurrences of non-compliance within 30 calendar days of determining that the non-compliance has occurred."<sup>49</sup>

O'Donnell concluded her letter by reminding the laboratories that the Forensic Commission requires copies of all correspondence to and from ASCLD/LAB: "[A]s part of the requirements for New York State accreditation, NYCRR 6190.5(b)<sup>50</sup> provides that 'a forensic laboratory must submit to the division [of criminal justice] a copy of any documentation submitted to ASCLD/LAB . . . or received therefrom as part of the continuing compliance requirements, including any notification of disciplinary action taken by ASCLD/LAB . . . against such laboratory. Such documentation shall be reviewed by the commission, and appropriate action may be taken against such laboratory, if necessary.'"

O'Donnell's letter represented a positive step towards improving disclosure and

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<sup>48</sup> The letter also informed the laboratories that the state Inspector General had been designated as the independent entity to investigate allegations of serious negligence or misconduct as required pursuant to the federal Coverdell Grant Program. Prior to the Inspector General's designation, the State Commission of Investigation was the original designee.

<sup>49</sup> O'Donnell also included a copy of ASCLD/LAB's procedure entitled, "Allegations Concerning Accredited Laboratories and their Employees," which she noted also applies to contractors, i.e., non-laboratory employees who engage in testing for that laboratory.

transparency within forensic science in New York State. Indeed, when O'Donnell drafted this letter, she was unaware of FEB's probationary status, and only learned about it when FEB's reaccreditation was before the Forensic Commission at a later date.

Furthermore, as reported herein, District Attorney Rice and the County Executive were never made aware of the 2006 FEB probation by any official channels until learning of it in December 2010. As O'Donnell attested, the Forensic Commission did not generally notify prosecutorial agencies of issues with the labs that serve them; rather, Forensic Commission members assumed that district attorney offices were notified by their labs about any issues at their respective forensic laboratories:

**Question:** So, in terms of non-compliances that could potentially affect the integrity of the lab, in your view, is it important that the district attorney's office should be made aware of those non-compliances?

**O'Donnell:** I think as a recommendation going forward, that probably would be a good recommendation. I think, I assume that district attorneys were aware of what was going on with their laboratories. That was my perception during the time that I served as Chair of the Commission.

**Question:** I don't think that's an illogical perception. The problem is in the implementation of that, that sort of policy decision, at least in Nassau County's case, didn't seem to have occurred and that is what we are trying to figure out what the disconnect was.

**O'Donnell:** Well, I don't know if it's so much a disconnect or ways of looking at improving the system in the future because as I look at it on a continuum, I think we've made some significant progress in moving forward with dealing with problems in laboratories. But we have a long way to go in a lot of ways and I think that would be a good recommendation for how to move forward in the future. Either district attorneys attend the meetings or have someone from their office attend the meetings or that the minutes be disseminated. But then how wide does it go? Who does the Commission give its minutes to? So, the Commission has regulations in effect, and those regulations can be improved upon, but the regulations in effect at the time really didn't provide for notification of any parties.

In fact, the Inspector General recommends, as discussed in the Findings and

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<sup>50</sup> New York Codes, Rules and Regulations.

Recommendations Section of this report, that the Forensic Commission promulgate just such regulations. A system must be established whereby district attorney's offices are aware of Forensic Commission meetings and designate liaisons to keep abreast of issues before the Forensic Commission, including but not limited to, the labs which service them; and, laboratories should be required to present documentation to OFS indicating that their respective district attorney's offices have been notified of impending inspections and results. OFS should similarly notify district attorney's offices and county executives of issues related to their laboratories. Such a system will enhance oversight, scrutiny and transparency.

#### F. ASCLD/LAB Removes FEB'S Probationary Status in May 2007

Following the August 14, 2006 probation and having already remediated the non-compliances, the FEB began preparing its self-audit as required by ASCLD/LAB and the Forensic Commission. On February 9, 2007, Granelle wrote to ASCLD/LAB that the FEB's 2006 internal audit accreditation report was concluded and will be "forthcoming shortly."<sup>51</sup> Granelle's February 9, 2007 letter also announced the FEB's intention "to apply to the New York State Commission of Forensic Science for . . . accreditation in the Hair sub-discipline." As reported earlier, the hair sub-discipline had been jettisoned to allow FEB to be fully compliant with ASCLD/LAB Essential criteria. This letter represented FEB's attempt to reinstate this discipline, and attached to it was a "revised hair analysis program" for review by ASCLD/LAB because ASCLD/LAB's approval

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<sup>51</sup> Granelle submitted the 2006 annual accreditation report on March 29, 2007. While the annual accreditation report is due on the anniversary of the accreditation, in the FEB's case on February 7, 2007, ASCLD/LAB policy permits submission of the annual accreditation report with 60 days of that date.

was required for provisional accreditation from the Forensic Commission. Regina Healy, a civilian, who had been hired in November 2005 in the trace evidence section, was tasked with rewriting the procedures for hair analysis and engaging in mock casework to facilitate the reinstatement of hair analysis. In fact, the FEB was never successful in reinstating hair analysis.

Following the submission of the annual accreditation report, the FEB scheduled another inspection, as mandated by ASCLD/LAB. The lead inspector conducted the inspection on April 24-25, 2007, and issued a report dated May 17, 2007, which concluded, in pertinent part:

Since the mid-cycle inspection, the laboratory has instituted a quality system which assists the laboratory in identifying and characterizing quality problems. The laboratory has a new Quality Manager who is learning about quality management. She has been allowed to become a member of a forensic quality management association. She has established the quality systems required by ASCLD/LAB. The laboratory is self-identifying issues in the quality system and taking the appropriate corrective actions.

In a May 23, 2007 letter which accompanied the May 10, 2007 inspection report, ASCLD/LAB informed the FEB that the probation sanction had been lifted.<sup>52</sup>

However, in the same letter, ASCLD/LAB informed the FEB that it would not permit the FEB to reinstate hair analysis: the accompanying inspection report noted that numerous corrective actions had been initiated regarding the hair sub-discipline. Nevertheless, the hair analyst whose work had been called into question had performed three mock cases which were reanalyzed by “an external contract examiner from another accredited laboratory,” and “[t]wo of the three cases reanalyzed by the external contract examiner had conclusions which differed significantly from the Nassau PD examiner.”

Accordingly, the ASCLD/LAB Board concluded that “insufficient steps have been taken to reinstate hair analysis as an accredited sub-discipline.” In turn, all hair analysis had to continue to be outsourced. Moreover, in yet another example of the bureaucratic quagmire that pervaded the FEB, the hair analyst was not terminated from employment. Rather, Granelle informed the Inspector General that he transferred the hair analyst who had repeated inconsistencies in his case notes and final reports and who had failed the mock case assessment to the firearms section, stating, “He sort of got . . . burnt out where he was.”

#### G. Lab Director Granelle Considers Retirement

Following the FEB’s removal from ASCLD/LAB probation in May 2007, Granelle announced his intention to retire from the Nassau County Police Department effective July 12, 2007. Granelle explained, “Once we got off probation, I retired and I just said I have had enough, I can’t do this any more, that’s it.” Deputy Inspector Wanlass testified that, following the 2005 unfavorable inspection and the imposition of probation, he and Chief Tully had concerns about Granelle’s leadership abilities, and that he and Granelle had had some heated discussions. Wanlass stated that Tully wanted to look for a new laboratory director, and they were pleased when Granelle filed for retirement because removing a high-ranking officer from a position was problematic:

**Wanlass:** He filed his retirement papers, which seemed to be a solution to a problem that we were having trouble otherwise trying to rectify.

**Question:** Why’s that? I don’t understand. He’s a subordinate officer, if you wanted to make a change, theoretically you could.

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<sup>52</sup> On June 28, 2007, Granelle was notified by O’Donnell that the Forensic Commission had renewed the FEB’s New York State accreditation based upon the successful reaccreditation inspection by ASCLD/LAB.

**Wanlass:** Theoretically you could but in practice, it's difficult with senior people, there was an issue at least at the Chief's level that if he was to be reassigned, where he would be reassigned to and Lieutenant Granelle has . . . had very little like police supervision experience because like I said, I spent my whole career either in the laboratory or in the Chief's office in the Detective's Division, Lieutenant Granelle was the same way. He did one of his promotions, he was assigned to patrol for about three or four months, basically couldn't cut it, got assigned back to us. But in any case, there was concern at the Chief's level as to where they would assign him if they took him out of the laboratory. But in any case, no decision was made. He did file for retirement and he was going to retire.

Granelle testified, however, that he began to regret his decision after staying home in order to use up vacation time prior to his retirement taking effect. He learned that the Police Department had been unsuccessful in finding a replacement for him and he was asked to return. In addition, during Granelle's absence, Commissioner of Police Lawrence retired and was replaced by Lawrence Mulvey on July 1, 2007. With the appointment of a new commissioner, Granelle believed that with the "new blood" things would improve at the Police Department, and he withdrew his retirement papers and returned to the FEB.

Granelle described that upon returning to the FEB, he was merely trying to "keep our heads above water" until full civilianization took place:

Basically, I came to realize that we were going to try to civilianize. Plans were being made for a new building where we were going to be placed in a new building, a new laboratory and that eventually once we got through our financial crisis, that people would be hired that needed to be hired and basically it was my job to keep our heads above water until such time that we were able to do all the hiring and move into a new laboratory.

Deputy Commanding Officer Cole elaborated: "He's been around a long time. I don't think he has any interest whatsoever in the laboratory." Echoing this sentiment, Peter Pizzola, Ph.D., who was hired as a consultant to assist in the remediation of the

laboratory in 2010, related that Inspector Neil Delargy told him that Granelle was widely known as an “absentee landlord.”

Notably, although Mulvey assumed his position as Commissioner of Police shortly after the FEB’s probationary status was lifted, Mulvey testified that he was not told of the 2006 probation and learned of it in only December 2010, following the FEB’s second probation. Mulvey stated that the Police Department’s failure to notify him about the probation was unacceptable and prevented him from supervising what he later learned was a subpar bureau within his department: “And I would want to know or be assured that they made the changes necessary to ensure that it wouldn’t happen again and then I would want to have some mechanism in place to monitor them, make sure that we were going on.” Notwithstanding Mulvey’s claim, former Deputy Chief of Detectives Richard McGuire testified that he had in fact produced a memorandum about the FEB’s problems and provided it to Mulvey shortly after he assumed the commissionership. Mulvey, however, denied ever having received such a memorandum. Furthermore, Mulvey testified that he did not schedule any transition meetings with outgoing Commissioner Lawrence; rather, he and Lawrence had an informal discussion about personnel but no discussion occurred regarding “operations of the job.” In fact, Mulvey’s apparent disinclination to engage in a productive transition with Lawrence created a void during his tenure as Commissioner regarding the troubled history of the lab.

#### H. The 2007 Reaccreditation Inspection of the FEB

Although the FEB had been re-inspected as recently as April 24-25, 2007, and removed from probation on May 17, 2007, it still had to adhere to the five-year

reaccreditation renewal requirement. As FEB's accreditation was to expire on February 8, 2008, ASCLD/LAB conducted an inspection on October 22-26, 2007.<sup>53</sup>

In the ASCLD/LAB report of that inspection dated November 1, 2007, the FEB was found to be noncompliant in eight Essential criteria, eight Important criteria, and one Desirable criterion. However, as with previous inspections, some criteria included more than one nonconformance; therefore, the FEB in actuality was cited for 16 Essential noncompliances. Some of the Essential noncompliances included:

- In the trace evidence section regarding the analysis of gunshot residue, a certain procedure and conclusion were “not supported by general acceptance [within the field], method validation or known standard methods.”<sup>54</sup>
- “Examination documentation in Controlled Substances cases . . . did not contain a record of the standard(s) used in the analysis.”
- “In the Trace Evidence unit, reports are issued stating that items ‘were examined for trace evidence,’ or ‘no fibers were found.’ Examination documentation in these cases contained no record of what was done and observed.”
- “The conclusions for fingerprint comparisons which do not result in identification are not being included in the written report.”
- The Firearms Section procedure on the use of abbreviations lists certain authorized abbreviations. Several examples of abbreviations not listed in the procedure were found in documentation.
- “In the Controlled Substances cases involving multiple exhibits of similar specimens, the case records often did not detail the fact an examination was performed on each specimen.”

Two other non-Essential nonconformances merit discussion. First, the ASCLD/LAB inspection report again cited the FEB for the non-contiguousness of its physical plant. However, the inspection report also noted that “There has been a problem

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<sup>53</sup> In a July 12, 2007 cover letter accompanying its Application for Accreditation, the FEB informed ASCLD/LAB that the questioned documents discipline had been withdrawn from the renewal application because of the retirement of the FEB's only questioned documents examiner. The letter noted that the anticipated replacement was proceeding through the civil service application process.

<sup>54</sup> The FEB instituted the following corrective action regarding these noncompliances: “The criteria for GSR [Gun Shot Residue] particle analysis interpretation were revised in reference to the particle constitution and morphology. A review of the GSR reports issued in 2007 resulted in the amendment of one report. The Assistant District Attorney was notified of the finding and supplied with the amended report.” Furthermore, this noncompliance was discussed extensively at the April 15, 2008 Forensic Commission meeting whereat Granelle was in attendance to answer questions.

with water seeping through the floor in the Firearms Sections Lab which is in the basement of police headquarters. This has caused the relocation of two comparison microscopes to laboratory space on the second floor. Examiners must frequently go back and forth between the firearms lab in the basement and the location of the scopes in order to complete their analytical assignments.” Sgt. Robert Nemeth, the longtime Firearms Section Supervisor, testified that the water problem had persisted unattended for years. At one point, the floor had rotted to the extent that one analyst fell through the floor. When Nemeth brought the dire situation to the attention of the chiefs, he was told “to do more with less.” The FEB finally obtained a state grant for \$8,000 to repair the floor; nevertheless, the repair still took close to a year.

The second non-Essential noncompliance requiring mention related to safe emergency exits from the laboratory. The report stated: “The second floor laboratory has one exit. The laboratory has purchased a steel escape ladder support device in order to allow a second escape route out of the laboratory. The ladder has not yet been installed.” Robert Stacey, the ASCLD/LAB lead inspector for the 2010 inspection which resulted in probation, declared that when he and his fellow inspectors conducted their inspection, they found the same ladder two-and-a-half years later sitting on the floor in a box. He simply copied the noncompliance from the 2007 report and pasted it into the 2010 report. Stacey stated, “I guess that told me volumes.” When the Inspector General questioned Granelle about this repeated noncompliance, he explained:

**Granelle:** Yes. Put in a number of requests to have it put in. They didn’t have the personnel to do it or feel it important enough to do. After awhile you just give up. You ask a number of times, Please do this, and after awhile you just forget.

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**Granelle:** We purchased the ladder, we had a window prepared for it and somebody please, and there was a problem, they couldn't drill into the wall to do it, they might crack the concrete. We just met with opposition every time we tried. After awhile it just became an afterthought.

Both the water problem in the firearms section and the uninstalled emergency exit ladder are additional examples of the Nassau County Police Department's lack of concern for the laboratory, its personnel, and the ASCLD/LAB inspections.

Finally, during the 2007 inspection, the FEB yet again sought reaccreditation in the hair sub-discipline and was still unsuccessful. The report stated:

The laboratory has applied to add the sub-discipline of hair analysis to its accreditation. One examiner has been competency tested by the laboratory while another examiner is in training. The laboratory was advised to provide case records from five mock case records to demonstrate evidence of compliance with criteria pertaining to case record documentation. There were only three case records from mock cases worked by the qualified examiner available during the inspection. At least two additional cases must be presented for the inspection team to review to demonstrate compliance with requirements for case record documentation in the hair sub-discipline.

Once again, the FEB's preparation fell short of ASCLD/LAB requirements.

I. A 2008 Letter Requesting a Meeting Between the Forensic Commission Chair and Nassau County Officials Regarding the FEB's Troubled History was Drafted but Never Sent

At its April 15, 2008 meeting, the Forensic Commission reviewed the November 2007 ASCLD/LAB inspection report citing eight noncompliances; however, because the ASCLD/LAB Board would vote at its April 27, 2008 meeting whether to accept the FEB's remediation plan, the Forensic Commission voted to continue the FEB's New

York State accreditation until its next meeting pending a decision from the ASCLD/LAB Board.<sup>55</sup>

Nonetheless, a letter was prepared to be sent by Forensic Commission Chair O'Donnell to then Nassau County Executive Thomas Suozzi noting the Forensic Commission's concern about the FEB troubles, past and present. Although the April 28, 2008 letter noted the vote taken by the Forensic Commission to continue FEB's New York State accreditation until the next Forensic Commission meeting, it included a summary report of the eight Essential noncompliances; recommended that the areas of noncompliances be addressed promptly and that procedures be established to accomplish adherence to accreditation criteria; and, stated the Forensic Commission's concern about the historically high number of noncompliances cited by ASCLD/LAB in this report and over the previous four years. The letter concluded with O'Donnell requesting that Suozzi and other Nassau County officials contact her to arrange a meeting to discuss the issues at the lab.

In its production of documents to the Inspector General as part of this investigation, DCJS, on behalf of the Forensic Commission, provided an unsigned letter dated April 28, 2008. The letter copied Gina Bianchi, DCJS Counsel and Acting Director of OFS, District Attorney Rice, Commissioner of Police Mulvey, and Det./Lt. Granelle. Because the letter provided to the Inspector General was unsigned, the Inspector General attempted to ascertain whether the letter was in fact sent. After a full inquiry into this matter, the Inspector General concluded that the letter was never sent.

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<sup>55</sup> The lead inspector had informally accepted the remediation plan but the ASCLD/LAB Board had yet to formally accept it and vote on the reaccreditation.

The Inspector General queried O'Donnell regarding the letter; however, she only vaguely recalled it and could not explain why it was not sent. O'Donnell did state unequivocally that no meeting with Nassau County officials took place. Patrizia Greco, O'Donnell's executive assistant at the time, testified that she maintained a log of all received correspondence but did not maintain a log of outgoing correspondence. O'Donnell explained that letters were often drafted on her behalf and presented to her for editing and approval. Bianchi testified that she believed she drafted the letter, and the letter would have been sent to Greco for O'Donnell's edits and signature. Greco stated that if a letter was provided for O'Donnell's review, after obtaining O'Donnell's signature, it was Greco's practice to forward a copy to the drafter, in this instance, Bianchi. Bianchi maintained that the letter in question was not sent because Bianchi was listed among the people who would have received a copy of the letter; and it was Bianchi's practice to place copies of all sent letters in a daybook binder. Bianchi or her executive assistant, Gabrielle Ballou, conducted a search for the letter in all electronic files, day book, hard copy files and OFS files to no avail.

Ballou did find a second page of the letter with the notation "not sent, 10/28/08 filed" on it in a file of laboratory documents. Ballou testified that when she forwarded letters for signature, she maintained a copy in a "hold" file, which she would routinely check. When she realized at some point that this April 28, 2008 letter was still in her hold file, she consulted Bianchi's day book. Finding no letter even resembling the April 28, 2008 letter, she deduced that the letter had not been sent, made the aforementioned notation, and filed it.

The Inspector General also inquired of the intended recipients of the letter. Former Nassau County Executive Suozzi did not recognize or recall having received the letter in question. District Attorney Rice, upon being shown the letter, stated that she did not recall receiving the letter or attending any meeting with O'Donnell or other Nassau County officials regarding the FEB. A search conducted of District Attorney's files did not uncover the letter. Granelle testified that he thought he had seen this letter; however, there was no record of such letter in his files.

Further supporting the conclusion that the letter was not sent, as a matter of course, letters that were sent on behalf of the Forensic Commission were disseminated to the Forensic Commission members and discussed at subsequent Forensic Commission meetings. A review of the minutes of the two meetings following the date of the letter revealed no mention of any letter related to the FEB. In contrast, a letter sent to another laboratory was discussed at the April 15, 2008 meeting. O'Donnell speculated after reviewing certain Forensic Commission minutes that perhaps the letter was not sent because a May 7, 2008 letter from ASCLD/LAB noted that the ASCLD/LAB Board at its April 27, 2008 meeting had voted to reaccredit the FEB. Regardless, all evidence points to the determination that the letter was never sent and that therefore, the parties were not informed by the Forensic Commission of the FEB's repeated citations for nonconformances. To be sure, O'Donnell took seriously her role as chair of the Forensic Commission and appreciated its potential. Indeed, in drafting this letter, O'Donnell recognized the need for the Forensic Commission to notify affected parties regarding the troubled laboratory. However, by failing to ensure that the letter was sent or take any other meaningful steps to communicate the information, she missed an opportunity to

enlighten them regarding the FEB's problems two years before the FEB's second probation.

J. The FEB Encounters a Problem with Ecstasy Testing in September 2010

After being re-accredited by ASCLD/LAB on May 7, 2008, the FEB did not require another ASCLD/LAB inspection until the New York State mandated mid-cycle inspection in 2010.<sup>56</sup> However, as part of its ASCLD/LAB accreditation, it still had to submit annual accreditation reports and report any corrective actions or changes in testing to ASCLD/LAB and the Forensic Commission. With regard to a problem encountered with its testing of Ecstasy, the FEB was delinquent with its reporting.

On September 22, 2010, Detective Daniel DeCastro, a drug chemist at the FEB, was attempting to quantify the purity of recently seized Ecstasy pills (MDMA) as required for certain criminal charges, when he encountered problems with the testing. While, as noted earlier in this report, the drug chemistry section was one of the busiest sections in the FEB, the quantitation (purity calculation) of MDMA was not often required.<sup>57</sup> Furthermore, because Ecstasy is a clandestine drug created in makeshift laboratories and combined with various non-illicit materials, its composition frequently changes, which can make the purity determination difficult. These testing issues ultimately led to the cessation of the quantitation of MDMA, and in February 2011, were integral to the decision to close the drug chemistry section and eventually the entire lab.

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<sup>56</sup> The FEB did receive a limited inspection from ASCLD/LAB to reinstate the Questioned Documents discipline following the retirement of the former examiner and the hiring of a civilian analyst. On February 18, 2009, the FEB was granted accreditation in the Questioned Documents discipline.

In order to bring criminal charges against a defendant related to Ecstasy possession, FEB procedures require a drug chemist to first conduct a qualitative analysis, a confirmation of the presence of MDMA. If a large number of pills are received, a quantitative analysis, or purity determination, is required for the application of higher criminal charges. In the case at issue, DeCastro had received a large number of what appeared to be Ecstasy pills, an indication that a higher criminal charge might apply.<sup>57</sup> Accordingly, DeCastro weighed the pills, and consistent with standard practice, performed some initial presumptive tests, and received a positive result, evidence – though not dispositive – that the pills were MDMA. He then performed a confirmatory test on the pills and received a positive result for MDMA. Next, DeCastro proceeded to attempt to determine the purity of the MDMA.

To do so, DeCastro had to first run a known sample of MDMA through the instrument to ensure that it was working properly. As part of this process, the FEB would purchase vials of laboratory-manufactured MDMA of a known purity, referred to as a “standard,” for testing purposes. An analyst then would run a “calibration standard” through the instrument and generate a printout maintained in a binder in the laboratory for comparison purposes to test the calibration of the instrument. Prior to commencing a quantitation, the analyst would run another sample of the known standard, referred to as a “check standard,” to compare against the calibration standard printout. The check standard was maintained with the specific case file. When the MDMA standard of a known purity was run through the instrument, the analyst was able to determine whether

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<sup>57</sup> When Conti and Cole reviewed all quantitation cases analyzed from 2003 to 2010, they only found around 35 cases, culled from approximately 50,000 drug cases.

<sup>58</sup> The FEB had determined, after some analysis, that a quantitation would be performed for any number of pills over and including 20.

the instrument was calibrated properly because if so, it would generate a purity determination equal to or within range (statistically close) of the purity of the calibration standard. If the check standard fell outside of the range, it might be an indication of a problem and the quantitation could not be performed.

With regard to the September 22, 2010 MDMA quantitation at issue, the check standard initially fell out of range with the calibration standard, so DeCastro ran the check standard a few more times to no avail. He then brought the situation to the attention of the drug chemistry section supervisor, Det./Sgt. Charles Conti. They attempted to retrieve another vial of MDMA standard to continue troubleshooting and realized that the lab had run out of the standard.

Conti testified that he then reviewed past data to see if there was a “trend” with regard to the check standard problem. In order to understand what data was relevant to Conti’s review, a brief explanation of the instrument’s output following a quantitation is necessary. The instrument on which quantitation is performed reports the data in many ways, all of which assist in determining the purity of the controlled substance, in this instance, MDMA. First, a sample of the pills in question is injected into the instrument; the instrument then separates the different compounds that exist in the pills and determines the purity of the isolated MDMA. The instrument reports the results as a graph of peaks, one of which should represent the pure MDMA for which the test is being conducted. The instrument also generates a “peak purity value,” which is a number that represents the purity of the chemical. For the instrument to be functioning properly and for the peak to be considered free of other compounds, the number should be 1000 or close to 1000.

Conti reported that he first reviewed the calibration standards which were maintained in a binder and noticed that there were “some inconsistencies in the peak purity value that was being reported.” This discovery, in and of itself, should have been of great concern because the data produced from the calibration standard is the data against which all check standard are to be compared to ensure that the instrument is functioning properly. If the peak purity value of a sample of pure MDMA of a known percentage is not producing a peak purity value close to 1000, it is a clear indication that something is wrong with the instrumentation and the manufacturer should be contacted for service.

Conti further testified that he then retrieved prior MDMA quantitation cases and reviewed the check standard data and “discovered discrepancies in the peak purity value”; he also noticed problems in the cases themselves. He explained that the quality of the peaks being reported was “questionable. . . . It looked like there could be something else going on there with that particular peak.” Conti was referring to the quality of the graphical output. Essentially, not only was the peak purity value being reported well below acceptable norms, but also the graphical data appeared, on its face, to be of poor quality – an indication that the other compounds in the pills were not separating properly, or co-eluting, with the MDMA thereby generating an incorrect purity result.

Notwithstanding these significant initial discoveries, Conti merely suspended the quantitation of MDMA in order to obtain additional standard; he took no further steps to investigate past cases to assess whether serious mistakes potentially affecting criminal charges had occurred. Conti claimed that he reported the following to Granelle and

McMillin. “I reported to Lieutenant Granelle that we need to shut down the quantitation of MDMA for the time being. I told him there is a potential problem with the peak purity not being able to detect any interferences that may be occurring, and I also told the Quality Assurance Manager the same thing.” However, when Conti drafted an e-mail memorializing the conversation, he made no mention of any peak purity issues. On September 22, 2010, at 4:10 p.m., Conti sent an e-mail<sup>59</sup> to Granelle and copied McMillin stating:

I have temporarily suspended MDMA quantitation in the Drug Chemistry Section on 9/22/10. The prepared MDMA Standard Check Sample is no longer being reported within expected limits and the laboratory does not have any more MDMA standard available for use. No MDMA quantitation reports have been subsequently issued. I have notified ADA Theresa Corrigan in person at the District Attorney’s Office. Our current supplier of the standard is out of stock and back ordered until July 2011. I am currently searching for other potential suppliers and will follow up with purchase requests as soon as one is located.

McMillin stated that she had asked for written notification by e-mail to herself, Granelle and the drug chemists, in order to memorialize the problem, resulting in this e-mail. As to the conversation that preceded it, McMillin testified that Conti had informed her that there was a problem with the quantitation method (not specific to MDMA) and if anything was mentioned or discovered during the impending ASCLD/LAB audit, it could be problematic. She elaborated that she recalled being told of a potential co-elution problem, that compounds may not be separating from each other, resulting in the overlapping of two peaks causing one peak to appear larger thereby skewing the purity calculation. According to McMillin, Conti asserted that he was investigating the problem

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<sup>59</sup> Conti also sent a contemporaneous e-mail to all of the drug chemists and copied Granelle and McMillin stating: “MDMA quantitations are suspended until further notice. We are in the process of obtaining

but did not know the extent of it, and needed to obtain more MDMA standard to do so.

In fact, due to problems with the purchasing order, the FEB never received any MDMA standard even at the time of the closure of the lab some five months after the cessation of MDMA quantitation.

When questioned about his knowledge of the September 2010 MDMA issue,

Granelle related that he had not been informed of any potential problems:

**Question:** So, first time you learned of a potential MDMA issue, when was that?

**Granelle:** I learned of the lack of an MDMA standard. I believe that was September of 2010 and Sergeant Conti explained to me that we had no MDMA standard left and without that we could not perform the analysis we needed to do a quantitative analysis in order to get felony charge for an MDMA possession. He informed the Assistant District Attorney of the problem because she was requesting some cases to be done and he said, "We don't have the standard, we can't perform those examinations. We can identify the molecule, but we can't do a quantitative analysis on the substance, and because of that we can't charge with a felony until we do get a standard in."

**Question:** At the time that you were informed about not having the standard, were you told there is a potential issue with the quantitative testing?

**Granelle:** No.

**Question:** When did you first learn of a potential issue with quantitative analysis with MDMA?

**Granelle:** When I read about it in the paper in February of 2011.

Granelle revealed that after the MDMA problems were reported in the press in February 2011, (Granelle had been relieved of his duties as lab director by this time) he contacted Conti and asked Conti if he had ever informed him of these issues. Granelle related that

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MDMA standards for calibrations and check sample preparations. Do not perform or report any MDMA

Conti answered, “I didn’t talk to you about this because there was no need to yet because I had no idea what it was I was dealing with.”

While Conti was described by many in their testimony to the Inspector General as hardworking and caring of the science, his lack of candor with regard to this specific issue prevented Granelle and McMillin from evaluating the appropriate course of action – a matter properly within the purview of the quality assurance manager and laboratory director.

With regard to Conti’s notification to ADA Corrigan, Corrigan related that she was at the Police Department for a meeting regarding the extensive backlog at the FEB<sup>60</sup> when Conti took her aside and informed her of the need to obtain MDMA standard and the cessation of MDMA quantitation. Conti, however, did not mention any of his discoveries as to the prior cases. Conti explained: “The District Attorney was notified that we shut down the method, and they were aware that we needed standard. They actually offered to help pay for it when I told them.<sup>61</sup> So, I expected to get this pretty fast, but they were not notified of any suspicions revolving what’s going on with the case at that time, because there are just suspicions at the time.”

Corrigan further related to the Inspector General that it was her understanding based on her conversation with Conti that all MDMA testing, not just quantitation, was being suspended until the FEB could obtain more MDMA standard. As a result, the District Attorney held MDMA cases in abeyance pending the perceived resumption of

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quantitations at this time.”

<sup>60</sup> The backlog was blamed on understaffing and lack of funding. The Police Department wanted the District Attorney’s office to notify the lab when a case had been disposed of by plea so that the evidence would not be tested and priority could be given to more pressing cases.

<sup>61</sup> Corrigan testified that Conti asked if the District Attorney’s office could pay for the MDMA standard and she replied that she would ask her superiors about paying for it. The District Attorney’s office,

testing. Following the commencement of this investigation, however, the Inspector General and the District Attorney discovered several FEB cases tested during this time period in which MDMA was in fact identified, although not quantified, for lower criminal charges. However, the reports were not sent to the District Attorney's office because the assigned assistants did not know to request the reports under the misimpression that such testing could not be conducted.

As will be discussed later in this report, all of Conti's suspicions were confirmed and could have been dealt with in September. Instead, Conti allowed them to languish until late December 2010 when he brought the issues to the attention of Buffolino, FEB's new civilian lab director. Buffolino immediately required a review of all MDMA quantitation cases. Nine MDMA quantitation cases of questionable results were then sent to the Suffolk County Crime Laboratory for retesting, the outcome of which revealed significant discrepancies from the FEB's testing; in one case Suffolk's test results produced a 70 percent lower purity determination than the FEB's.

The issues regarding the quantitation of MDMA exemplify a number of problems at the FEB. Specifically, with regard to DeCastro's case that caused the cessation of MDMA quantitation, the pills were not sent to another laboratory for a purity determination. Instead, Conti unilaterally chose to await the requisitioning of additional MDMA standard. Furthermore, the way that DeCastro documented his findings at the direction of Conti is problematic. Upon discovering that the check standard would not fall into range of the calibration standard, DeCastro was instructed by Conti to write in the case notes, "Unable to quantify due to calibration error." However, in the one-page

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however, did not agree to do so. Chief of Staff Meg Reiss spoke with Chief of the Department Skrynecki who agreed that the Police Department should pay for its own supplies.

report that was sent to the District Attorney's office (and presumably provided to defense counsel) no indication was given that any error in testing occurred. Rather, the substance was reported as MDMA with no number of pills listed and the notation "less than 1 gram pure substance," because DeCastro had been able to confirm the presence of MDMA but not the purity.<sup>62</sup> In essence, the Assistant District Attorney and defense attorney who received this report would have no idea that a purity determination had not occurred because of problems in testing. As Corrigan explained:

**Question:** Reading this lab report with what is described under the substance, what I described to you before, would that lead you to believe that a quantitative analysis was performed and it didn't rise to the level of more than one gram pure substance?

**Corrigan:** Yes, I would have believed that, reading this report.

**Question:** So not having the back-up documentation or the notes, you would never know that, in fact, quantitative analysis was not performed?

**Corrigan:** That is correct. I would not have known that.

**Question:** And this is what you would have used in the prosecution of your case?

**Corrigan:** That is correct. I would use the top page only.

**Question:** So your determination when you get this back, let's say it was a possession case. Your determination would be this is not a felony because it's less than one gram?

**Corrigan:** Correct.

Corrigan further testified that no one from the FEB informed her orally that the lab had been unable to perform a quantitation in this specific case.

As a result, a criminal defendant was most probably undercharged. The defendant in the case at issue pleaded guilty to a low level misdemeanor when he could have been

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<sup>62</sup> The underlying case notes are provided only if and when cases proceed to hearing and trial.

charged with a felony because the reported results were not representative of what had transpired. Had the report properly reflected what had occurred, the District Attorney's office might have asked for the pills to be sent to another lab for testing. Nevertheless, even the bench notes and accompanying documentation did not fully and accurately reflect what occurred. Specifically, while Conti testified that check standards results were routinely maintained with the case file, this file included no such documentation. Emblematic of this problem, during the November 2010 ASCLD/LAB inspection that resulted in the sanction of probation, one of the Essential noncompliances criticized the representations made in the drug chemistry section reports.

Finally, the cessation of MDMA quantitation was not reported to ASCLD/LAB or the Forensic Commission within 30 days of its occurrence as required by ASCLD/LAB policy. Nor was the issue reported during the 2010 inspection. ASCLD/LAB Executive Director Keaton was questioned about the lack of disclosure:

**Question:** Let's say the lab had its inspection scheduled for middle of November, but that in September, late September . . . it had stopped any MDMA testing and quantitations because of a problem with testing. Would that be the kind of thing that would rise to a level that ASCLD would be expected to be notified about?

**Keaton:** Yes.

**Question:** Were you notified about that problem in Nassau County?

**Keaton:** I'm not aware that we were.

When questioned about this lack of disclosure and seeming violation of ASCLD/LAB procedure, McMillin asserted that ASCLD/LAB notification usually occurs upon determination of the problem which had yet to occur. Notwithstanding that assertion, McMillin testified that Conti had expressed that the cessation of MDMA quantitation

could be problematic if discovered during the ASCLD/LAB inspection. Furthermore, upon being questioned as to whether this cessation of MDMA testing should be reported to ASCLD/LAB, Cole conceded that the cessation of MDMA affected casework:

**Question:** What kind of things would require corrective action in your section that you would write up?

**Cole:** I guess anything that was unusual or affected case work, I would guess, anything that would affect the final outcome.

**Question:** Well, would this affect the final outcome, the inability to get the check standard within the proper range?

**Cole:** Yeah.

**Question:** Didn't it, in fact, affect testing?

**Cole:** Yes, it did.

Perhaps most disturbing, armed with the knowledge of potential problems, the FEB waited months for MDMA standard and did not investigate the problem or even attempt to acquire some MDMA standard from another laboratory.

#### K. The FEB Quality Assurance Manager Seeks Other Employment

In December 2009, McMillin applied to the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) National Laboratory Center for a quality manager position. She informed the Inspector General that she had decided to seek other employment because she had been promised a promotion from PFS II [Police Forensic Scientist] to PFS III or a designated civil service title of quality assurance manager, either of which would have included a salary increase. Having received neither, she began to look for employment elsewhere and applied to the ATF and the FBI. In March 2010 ATF informed her that she was the primary candidate, and she advised Granelle of her

application with ATF and her intent to leave the FEB. At one point, she was to commence employment with the ATF on or about July 3, 2010. However, a hiring freeze was imposed. Finally, two weeks after the 2010 ASCLD/LAB inspection, she received and accepted an offer from the ATF.

While this process with ATF took over a year, having decided to seek outside employment in December 2009, McMillin's was resigned to leaving the FEB. As such, by this time, McMillin, like Granelle who withdrew his retirement in 2007 but who was perceived to lack commitment to his job, may have been less than fully invested in the FEB.

#### L. The 2010 ASCLD/LAB Inspection and Resulting Probation

As mandated by the Forensic Commission and having been re-accredited in May 2008, the FEB scheduled its mid-cycle inspection for November 7-11, 2010. Following the FEB inspection, in a report dated November 24, 2010, ASCLD/LAB cited the FEB with 15 Essential noncompliances, 10 Important noncompliances, and one Desirable noncompliance. However, because the 15 Essential noncompliances often involved multiple citations, the actual number of Essential noncompliances was 27. The drug chemistry and latent prints sections received the majority of the citations for noncompliance.

Notably, in a departure from previous inspections and apparently in accordance with new standard operating practice, Keaton presented the 2010 FEB inspection report to the ASCLD/LAB Board prior to the FEB remediating the noncompliances. In his December 3, 2010 letter to the FEB accompanying the inspection report, Keaton

declared: “As a result of the Board’s concern that the inspection team found evidence of non-compliance by an accredited laboratory with fifteen Essential criteria, the Nassau County Police Department Forensic Evidence Bureau’s accreditation was placed on probation for one year, effective immediately.” In addition, ASCLD/LAB imposed the following conditions of probation: the FEB was required to submit a remediation plan to Robert Stacey, the lead inspector, within 30 days of the date of the letter; the FEB was required to meet all ASCLD/LAB established deadlines for submitting reports; and, ASCLD/LAB inspectors would revisit and re-inspect the laboratory at the FEB’s expense.

The condition of probation that FEB must meet all ASCLD/LAB established deadlines results from one Essential nonconformance cited in the 2010 report which stated: “The annual accreditation report for 2008 and 2009 were not submitted by the required deadline. The 2008 report was due February 7, 2009 and it was submitted on May 28, 2009. The 2009 report was due on February 7, 2010 and it was submitted on June 30, 2010. There is no record of a request to ASCLD/LAB for an extension for the submission of the reports.” Upon being questioned about this seemingly easily avoidable noncompliance, Granelle responded: “[b]asically, that’s on me as the director. I needed to make sure that that got out in time.” This noncompliance is representative of Granelle’s apparent indifference to the rigors of ASCLD/LAB accreditation. Indeed, when former Commissioner Mulvey was asked what he thought of Granelle following the 2010 imposition of probation, he opined that Granelle did not take his position seriously enough and cited this specific noncompliance: “Reading the ASCLD/LAB report, one of the things that irked me was he was late to respond to reports. That is a no-no. You just

can't do that, and that kind of thing, and just in conversations with others post this, he had a very – it appears he had a very laissez faire kind of attitude about it, that 'I could fix things' and ultimately everything would come together. I don't think he took it seriously enough.”

As to ASCLD/LAB Legacy standards in general, ASCLD/LAB does not impose specific requirements regarding a laboratory's standard operating procedures (SOPs); however, ASCLD/LAB does require that if a laboratory has SOPs, it must follow them.<sup>63</sup> In that regard, the FEB received numerous citations in the 2010 inspection report for not following its SOPs. The drug chemistry section's noncompliances regarding its lack of adherence to the SOPs appeared to result in part from the way drug chemists were recruited and trained in the Police Department. As noted earlier in the report, the Police Department would place sworn officers with science degrees in the FEB who would then be trained by a senior member of the lab. While the SOPs may have been provided to the new analysts, they apparently relied primarily on their in-house training. Inquiries of the drug chemistry analysts by the Inspector General regarding the SOPs revealed a lack of familiarity and knowledge as to their requirements, as manifested in the 2010 ASCLD/LAB report. In contrast, analysts in other disciplines, like trace evidence and questioned documents, who had received their training outside the laboratory, reported being actively involved in modifying their sections' SOPs.

Disregard for SOPs, what should be the handbook of a laboratory, can have detrimental effects on a laboratory system as evidenced by the FEB. For instance, in the 2010 ASCLD/LAB report, the FEB was cited for, among other things, not adhering to

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<sup>63</sup> ASCLD/LAB *International* Program standards are more stringent and include specific requirements for a forensic laboratory's SOPs.

written laboratory policy that the drug chemistry section “will maintain the chemical inventory, verify the quality of chemicals, and utilize the appropriate controls and standards as required.” The ASCLD/LAB report stated that the policy is not well understood by the controlled substances discipline and cited that it does not keep track of the amounts of drug standards. Deputy Commanding Officer Cole explained in his testimony that it was his understanding that the computer system at the laboratory was being used to monitor the chemical inventory; however, it was apparently not maintained once the drug chemist who was familiar with the system was transferred from the laboratory. Incidentally, had such a system been utilized, it would have alerted the laboratory to the low inventory of the MDMA standard and could have possibly limited the fallout from what became the main impetus for the closure of the FEB.

In different instances, the ASCLD/LAB inspection report revealed ambiguous or problematic SOPs. For example, ASCLD/LAB found FEB to be noncompliant with its requirement that laboratories specify the frequency of instrument calibration in their SOPs. During the inspection, ASCLD/LAB inspectors discovered that the pipettor used in blood alcohol analysis had not been calibrated since 2007 and that the SOPs were silent as to a calibration schedule. When questioned by the Inspector General regarding the significance of this nonconformance, Granelle was dismissive, stating “I can’t even say I assumed it was done, I never really gave it much thought. I never thought about it, not that I was trying to ignore it. I never recognized the need for it.” In contrast, current Lab Director Buffolino stated to the Inspector General that he regarded instrument calibration as a basic component of laboratory quality assurance. While the FEB promptly arranged for calibration of the instrument and it was found to be properly

calibrated, this noncompliance demonstrates the FEB's indifference toward ASCLD/LAB standards.

The report also cited the FEB for failing to follow its procedure which required the running of a "blank" in certain limited circumstances with tests in the controlled substances discipline. Conti asserted that this SOP was misinterpreted by the ASCLD/LAB inspectors as broadly applicable to drug testing when, in fact, the FEB considered the SOP relevant only in a situation where the lab was testing a pill or chemical it had never seen before. A blank, or negative control, is a solution that is run through an instrument to ensure that no remnant of a previously tested chemical is present, which might skew the next test results. According to Peter Pizzola, when he was reviewing the ASCLD/LAB report and assisting with the remediation following the imposition of probation, he inquired about the use of blanks and was shocked to learn that the FEB was not running them, an important part of testing which apparently only takes minutes. Pizzola expounded: "I would say if you're using that kind of technique, it should be in between each sample or at the very least, between each case. They weren't running [blanks] at all." Conti similarly attested, "I can't say I disagree with their thinking. I think it is a good laboratory practice to run blanks before every sample, in my opinion, anyway." When asked about the running of blanks, Cole stated that generally that step was not part of the SOPs and opined, "It's good practice, but I just don't feel it's necessary."<sup>64</sup> Notwithstanding these assertions, the FEB did not modify its SOPs to

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<sup>64</sup> In fact, another Essential nonconformance questioned the lack of documentation regarding positive or negative controls. The report states, "After reagents (color test and TLC developing sprays) [tests that provide indications as to the identity of certain chemicals] are made, the items are tested using drug standards. However, these tests are not documented or repeated at any defined interval to ensure that these reagents are still working as expected and there is no documentation in the case record to show the use of positive or negative controls."

include the running of blanks until after the imposition of probation and at the insistence of Pizzola. And, in fact, the more stringent ISO standards of the ASCLD/LAB *International* Program under which all ASCLD/LAB accredited laboratories will soon be accredited requires the running of a blank before each sample. More importantly, as discussed later in this report, a recent review of the few blanks that were run indicated some contamination of the instruments in the drug chemistry section.

It must be noted that the citations in the 2010 inspection report arose in the context of the less stringent Legacy Program standards, yet the FEB still received a high number of noncompliances warranting probation according to the ASCLD/LAB Board. A number of the noncompliances for which the FEB was cited related to poor documentation, a basic and necessary facet of laboratory testing and reporting. Specifically, the latent prints section was cited for reporting conclusions without documenting the procedures used in reaching them. The ASCLD/LAB inspection report declared, “The examination documentation in these instances does not provide sufficient information to support the conclusion expressed in the report.” Sgt. Douglas Pardo, the latent print section supervisor, claimed that additional documentation requirements had been implemented by ASCLD/LAB<sup>65</sup> approximately a year-and-a-half prior to the 2010 inspection; however, he was not made aware of these changes until two weeks before the inspection by an e-mail from McMillin.<sup>66</sup> At that point, Pardo did not believe the latent prints analysts could redo all the documentation to be in conformance with this ASCLD/LAB requirement.

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<sup>65</sup> According to Pardo, the ASCLD/LAB additional requirements were available on ASCLD/LAB’s Web site.

This general lack of documentation resulted in another citation by ASCLD/LAB related to basic laboratory function: “The lack of examination documentation in the latent print discipline precludes a thorough technical review of the reports.” Technical review is a comprehensive assessment of the analysis by an equally qualified member of that discipline in order to detect mistakes in testing. In the latent print section, FEB protocol required technical review of approximately 20 percent<sup>67</sup> of cases; therefore, the deficient documentation in the latent print section prevented any meaningful technical review.

Similarly, ASCLD/LAB cited the FEB for disregarding the ASCLD/LAB requirement that technical reviews be conducted by “individuals having expertise gained through training or experience in the discipline being reviewed.” The ASCLD/LAB inspectors found that the blood alcohol section technical reviews were being performed by Conti and Cole, supervisors who did not possess the requisite experience to do so. When questioned by the Inspector General about the decision to technically review blood alcohol cases, Cole initially stated that he was unaware of this ASCLD/LAB requirement. Upon learning of the policy, Cole still insisted that his significant background in drug chemistry qualified him to technically review blood alcohol cases even though he had never engaged in blood alcohol testing. Cole eventually conceded the technical correctness of the ASCLD/LAB finding; nevertheless, his rationalization for performing technical reviews exemplifies the FEB’s lax attitude toward adherence to ASCLD/LAB standards.

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<sup>66</sup>Pardo, the supervisor of the latent prints section, was neither proficient nor competent in latent print testing. As noted earlier in this report, the Inspector General has identified the placement of unqualified supervisors at the FEB as contributing to its weak SOPs and quality assurance issues.

<sup>67</sup> ASCLD/LAB requires that a laboratory specify in its SOPs a percentage of cases to be technically reviewed.

The drug chemistry section was cited for ineffective technical review. The drug chemistry section mandated 100 percent technical review. However, because of the number of deviations from its SOPs, the ASCLD/LAB inspectors found that no meaningful technical review was occurring. The report stated: “Technical reviews in the controlled substances discipline do not routinely detect failure to follow the laboratory’s technical procedures.” Indeed, after the Inspector General presented Cole with a number of examples from the drug chemistry section in which the SOPs were clearly not followed and mistakes went undetected, he agreed with the ASCLD/LAB citation:

**Question:** But specifically “the technical reviews in the controlled substances discipline do not routinely detect failures to follow the laboratory’s technical procedures.” Do you concur with that statement?

**Cole:** Obviously.

**Question:** You do agree?

**Cole:** Yeah, based on what we’ve just done all day, yes.

**Question:** Right. We’ve uncovered and we’ve just pulled a few cases, cases that were technically reviewed where mistakes were not found, correct?

**Cole:** Yes.

**Question:** What do you think is occurring in the laboratory that the technical reviewers are not picking up the mistakes? Do you think people are just signing their names?

**Cole:** I don’t know. Obviously, shortcuts are happening. I don’t know if it’s from overwork. I don’t know. They’re missing things though. There’s a lot of cases being done. A lot of things aren’t missed, but one thing being missed, I guess, is too many.

As noted, technical review did not uncover the problems with MDMA quantitation which resulted in the application of incorrect criminal charges for some defendants.

While Cole attributed the deficient technical review to possible overwork, it must be noted that the drug chemistry section employed techniques that were outdated and inefficient thereby hampering the analysts' productivity. Specifically, certain instrumentation did not include autosamplers – an automated rather than manual method to introduce a sample into an instrument for testing, which is more precise and promotes efficiency. Pizzola expressed his surprise that the drug chemistry section was not utilizing autosamplers and declared that autosamplers were a “common laboratory tool used ... by every other laboratory in New York State.” Remarkably, after the FEB was closed, Buffolino's new civilian staff discovered four autosamplers on the floor of the laboratory, apparently unused. Not only does this disregard exemplify the FEB's outdated testing methods, but it also demonstrates a waste of resources.

The drug chemistry section was also cited for drafting misleading reports. The practice of the section when it received multiple bags or pills of a suspected controlled substance was to perform preliminary tests on a significant percentage or all of the submissions, but to only perform a confirmatory test on approximately 10 percent of them. However, the reports were drafted in a way that it appeared that confirmatory tests had been performed on every analyzed item. For example, in an actual case where 80 of 150 bags were reported as tested, only 10 bags had been confirmed as heroin; yet the 80 bags were reported as consisting of heroin. ASCLD/LAB determined that this type of reporting was unacceptable and that the reports should reflect what actual testing had occurred.

When Pizzola began to assist Buffolino and the lab with its remediation, another issue arose regarding this method of reporting. While the method of using sampling for

testing has been deemed acceptable by the scientific community, the FEB's method of taking a 10 percent sample had long been superseded by a sampling method known as hypergeometric sampling – a statistical analysis where a determination is made based on a certain probability of how many samples are needed to find a positive result and draw an inference that the rest of that population is the same drug. Therefore, besides utilizing the proper sampling method, the reports should also reflect that a sampling method was employed. The FEB did neither. Of note, the FEB drug chemistry reports failed to distinguish the items tested or testing procedures used, the results of which were at a minimum misleading. The Inspector General's investigation revealed that these inaccurate reports were the results of poor training and not malfeasance. As a result of the 2010 inspection report, the FEB had been in the process of instituting a method for issuing supplemental amended reports and was being trained in hypergeometric sampling prior to its closure.

Finally, as in previous inspections, the FEB was once again cited for the Important and Desirable nonconformances of not conducting employee evaluations, the lack of contiguousness of the physical plant,<sup>68</sup> and, as noted earlier, the emergency exit ladder that remained uninstalled since the previous full inspection. Following the FEB's inspection and the myriad violations, Stacey, the lead inspector, reported to the Inspector General that he commented at that time to Executive Director Keaton "that not every lab deserves to be accredited by ASCLD/LAB."

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<sup>68</sup> Related to the physical plant, the FEB received the following Important noncompliance: "Due to the high level of humidity in the controlled substances instrument room (water dripping from the ceiling), the logbooks for [certain instruments] have suffered water damage that has rendered pages to be illegible and entries are no longer visible."

His sentiments were not lost on those who attended the closeout meeting on the last date of the inspection, when the ASCLD/LAB team met with the FEB to discuss the citations. Cole related that he was not surprised at the imposition of probation following that meeting:

**Question:** Just getting back to the ASCLD inspection, at the closeout, was there a sense that you were going to be placed on probation?

**Cole:** On probation. We had a lot of violations. I would say yes, because we had 14. So I think it was kind of felt that we probably would. I didn't know how many were in each particular section or what have you. But it wouldn't be surprising or unusual for us to be put on probation.

### **1. Lab Director Granelle Minimizes the ASCLD/LAB Inspection Citations to Some Superiors and Neglects to Inform Others**

Cole's impression notwithstanding, Granelle apparently provided a much different representation of the preliminary oral findings of the ASCLD/LAB inspection. According to Chief of Detectives Jay Caputo, Granelle related to him during a conversation approximately one week after the closeout meeting that ASCLD/LAB "found some discrepancies" which were not "major and they could be straightened out quickly." Granelle's immediate supervisor, Deputy Inspector James Bartscherer, who in October 2010 replaced Deputy Inspector Wanlass upon his retirement, testified to the Inspector General that Granelle did not inform him that a closeout meeting of findings occurred, or of the findings themselves. Deputy Chief of Detective Paul Clark also was not informed that a closeout meeting had occurred or of its findings until he learned of the formal imposition of probation.

Bartscherer was notified of the ASCLD/LAB findings on or about December 3, 2010, when Granelle informed him that ASCLD/LAB was sending its report imminently and that the FEB was being placed on probation. Bartscherer related that Granelle described the probation as “we’ve been through this before,” and it involved some minor noncompliances which merely required remediation. Bartscherer sent an e-mail dated December 3, 2010, by which he informed Inspector MaryAnn Thompson, Deputy Chief of Detectives Paul Clark, and Chief of Detectives Jay Caputo of the impending probation. Because December 3, 2010 was a Friday, formal meetings took place on Monday, December 6. Caputo, according to police protocol, reported the probationary status to Chief of the Department Steven Skrynecki, who reported the information to Commissioner Mulvey. Skrynecki related that upon being confronted with the probationary status, Granelle still maintained that a high percentage of the citations were minor and remediable. Skrynecki then expressed his consternation at learning of the closeout meeting that had occurred approximately three weeks prior to the formal notification:

But I did subsequently learn that there was an oral review with Jim [Granelle] and maybe some other members of his staff before the ASCLD team, inspection team left. And I was, quite frankly, very disappointed in Jim Granelle to the point of I want to hold him accountable for this, what I consider to be quite a breach of passing significant information up the chain, that when the inspection took place and he had some indications that the inspection was not favorable and it was going to be problematic, in my opinion, he should have passed that information up the chain immediately. Instead, we went for a period of close to a month, possibly a whole month, before we recognized where we were. So my biggest criticism of him, frankly, would be his failure to let us know where we are in respect to that inspection so that we could have begun some remedial action right away. Once we did find out, we put number of things into place immediately.

Of note, this December 6, 2010 meeting was also the first time that those in the chain of command above Granelle learned of the previous 2006 probation.

Thereafter, Mulvey contacted County Executive Mangano,<sup>69</sup> alerting him to the probationary status of the FEB. Mangano reported that Mulvey minimized the importance of the 15 noncompliances and represented that they were all remediable. Nevertheless, Mangano testified, “I think initially the police had confidence in the lab. I took a very stern position going forward because of the gravity of having an error in a chain of evidence.”

On December 10, 2010, the Nassau County Police Department removed Granelle as commanding officer of the laboratory and assigned him to the Crimes Against Property Squad, a move that was considered a demotion.<sup>70</sup> Chiefs Caputo and Skrynecki informed the Inspector General that disciplinary action against Granelle has been considered but they are awaiting the results of this investigation. On December 10, 2010, Skrynecki also created, at Mulvey’s behest, a Laboratory Oversight Committee to evaluate the FEB’s problems, engage in remediation, and commence a process for hiring a civilian lab director. The committee panel included members of the Police Department, District Attorney’s office, and County Executive’s office. However, the Committee never fulfilled its mandate because the FEB was shuttered by February 18, 2010.

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<sup>69</sup> Mangano assumed office on January 1, 2010.

<sup>70</sup>In response to a query by the Nassau County Police Department regarding the initiation of disciplinary proceedings against Granelle, the Inspector General stated the Police Department could do so prior to the

## **2. District Attorney Rice First Learns of the FEB's Probation and Poor Accreditation History in December 2010**

District Attorney Rice testified that on December 6, 2010, she, accompanied by her Chief of Staff Meg Reiss, was attending the swearing in of Eastern District of New York United States Attorney Loretta Lynch when she received a call on her cell phone from Forensic Commission member District Attorney William Fitzpatrick who informed her that the FEB had been placed on probation by its accrediting agency and characterized the report as “scathing.” Rice stated that she asked Fitzpatrick, “Why didn’t I know about this,” and then called the Police Commissioner. Commissioner Mulvey told her that he was unaware of the situation and asked to call her back. Reiss also contacted Skrynecki to inquire about the report and probation and informed him that Fitzpatrick had referred to it as “scathing.” According to Reiss, Skrynecki related to her that he had been informed otherwise – that the citations were all remediable within 30 days, and that the FEB would meet that deadline. After Reiss explained to him that a member of the Forensic Commission considered the report and probationary status “very serious,” Skrynecki asked if he could speak to Fitzpatrick. Rice arranged for that conversation to take place.

Of note, Rice learned of the FEB’s probation informally from Fitzpatrick rather than from a member of the Nassau County Police Department, a member of the Office of Forensic Services, or the chair of the Forensic Commission. With regard to notification by the FEB, as noted earlier in this report, Granelle, as a member of the Police

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completion of this investigation. However, to date, the Police Department has not taken any disciplinary action against Granelle.

Department, was not permitted to inform anyone outside the Police Department until the information had been reported up the chain of command. The probationary status was in the process of reaching Commissioner Mulvey when Rice was informally contacted by Fitzpatrick. Furthermore, *Newsday* reported on its Web site on December 6, and in print on December 7, the details of the FEB's probation and, notably, that the lab had been placed on probation once before, a fact that most of the relevant parties learned for the first time from this article.<sup>71</sup> As demonstrated on these facts, notification to the District Attorney's Office was ad hoc at best. Accordingly, the Inspector General's recommendations include a formal system of notification for prosecutorial agencies and local government leadership as to scheduled ASCLD/LAB inspections and resulting reports.

### **3. December 7, 2010 Forensic Commission Meeting**

The Forensic Commission held a regularly scheduled meeting on December 7, 2010. However, no one from the FEB or the Nassau County Police Department was present to respond to questions. Discussion regarding many of the FEB's issues and past inspections ensued. The idea of sending a letter to Nassau County with respect to the laboratory's pending situation, in addition to determining the root cause of the problems associated with its failed inspection, was discussed at length. The Forensic Commission then voted unanimously to send a letter from the Commission outlining its expectations regarding remediation.

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<sup>71</sup> "Nassau Police Crime Lab Placed on Probation" by Andrew Strickler, *Newsday*, December 6, 2010.

Accordingly, in a letter dated December 17, 2010, DCJS Acting Commissioner and Chair of the Forensic Commission Sean Byrne wrote to Commissioner Mulvey regarding the FEB's probationary status. Of note and in contrast to previous Forensic Commission letters, Byrne copied the following people: members of the Forensic Commission, County Executive Edward Mangano, District Attorney Kathleen Rice, Administrative Law Judge Anthony F. Marano, Deputy Chief of Detective Detectives Paul Clark, and Pasquale Buffolino. By notifying all relevant parties, Byrne demonstrated an understanding that the probationary status of a county's forensic laboratory has far-reaching effects.

In his letter, Byrne informed the recipients that the Forensic Commission had discussed FEB's probationary status at length at its December 7, 2010 meeting. He noted some of the areas of noncompliance with Essential criteria, enclosed a summary of the findings, and expounded regarding the various parties' responsibilities in achieving a properly functioning laboratory system:

In order to ensure the integrity of forensic evidence, and to maintain public confidence, it is imperative that laboratories strictly adhere to the operating standards reflected in the accreditation criteria. Laboratories must have the support of their parent agencies in order to successfully maintain their accredited status, including commitment from management to dedicate the resources necessary to perform laboratory analyses and to maintain essential quality control practices.

He then reminded the recipients that the FEB must present its remediation plan to ASCLD/LAB by January 3, 2011,<sup>72</sup> and declared that the Forensic Commission will request that ASCLD/LAB conduct its re-inspection no later than March 4, 2011, at the FEB's expense. Byrne stated that the Forensic Commission expected the FEB to "take

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<sup>72</sup> In fact, under the guidance of its new laboratory director, Buffolino, the FEB timely submitted its remediation plan.

all necessary steps to identify the root causes contributing to the areas of non-compliance and systematically address each to ensure that, henceforth, the [FEB] adheres to all accreditation standards imposed by ASCLD/LAB and the Commission on Forensic Science.”

In response to the absence of any representative of the FEB at the December 7, 2010 meeting of the Forensic Commission, Byrne concluded his letter by mandating the appearance of a representative at the next Forensic Commission meeting scheduled for March 29, 2011.

M. Problems Discovered in Nine MDMA Cases Result in the Closure of the Drug Chemistry Section and Ultimately the Entire Lab

On December 13, 2010, Nassau County Executive Edward Mangano placed Pasquale Buffolino, Ph.D., director of forensic genetics at the Nassau County Medical Examiner’s Office, as acting director of the FEB. Peter Pizzola, Ph.D., a consultant and former director of the New York City Police Department Crime Laboratory, was recruited to assist in correcting deficiencies at the laboratory. As part of the remediation, Buffolino, joined at times by Pizzola, met with FEB members to assess what had occurred to warrant so many citations for noncompliance, and to prepare a remediation plan within the 30-day timeframe mandated by ASCLD/LAB and subsequently the Forensic Commission. Nassau County District Attorney Chief of Staff Meg Reiss reported that after Buffolino and Pizzola became involved in the review, she and her colleagues received a far different presentation as to the seriousness of the report. Specifically, although upon initial review of the report, Buffolino had not found anything

that would affect the integrity of the actual outcomes of the testing, he considered it “very sloppy science.”

At one of these meetings between Buffolino and the FEB staff on or about December 19, 2010, Conti, after conferring with Cole, decided to inform Buffolino of the circumstances surrounding the cessation of MDMA quantitation testing in September 2010. When they did so, Buffolino appeared angry and asked why the standard had not arrived as yet. They explained to him that the order had mistakenly been canceled. Buffolino then ordered Conti and Cole to review past felony cases to see if similar problems existed. Conti and Cole consulted the lab’s computer system and determined that approximately 35 felony MDMA cases had been tested since 2003. They proceeded to examine those 35 cases and determined that in nine of the cases, the quality of the graphical peaks indicated that co-elution, or lack of separation of other compounds, appeared to be occurring requiring retesting. It must be noted that their review was consistent with a standard technical review – reviews that were supposed to have been practiced in the laboratory but clearly were not based on their ability to easily cull out these nine cases.

Those nine cases were sent to the Suffolk County Crime Laboratory for retesting, which revealed differences in the FEB’s purity analyses affecting criminal charges in favor of three defendants. Notably, the nine cases spanned every chemist in the drug chemistry section and the most recent three drug chemistry section supervisors, an indication of the pervasiveness of the MDMA quantitation analytical deficiencies. In January 2011, Buffolino met with Jack Mario, the examiner from the Suffolk County Crime Laboratory who had conducted the reanalysis. Mario informed him that issues

existed as to “the interpretive and analysis processes within those cases and that three of them had changes in the drug charge.” He then contacted Nassau County Assistant District Attorney Teri Corrigan, the Narcotics bureau chief, and Pizzola, to discuss the results. Buffolino then participated in a telephone conversation with Reiss and Deputy County Executive Robert Walker during which it was decided to cease any drug chemistry testing. On February 10, 2011, County officials announced the drug chemistry section’s indefinite closure due to errors in MDMA testing.

In the wake of the December 3, 2010 ASCLD/LAB report placing the FEB on probation, further facts emerged regarding the cessation of MDMA quantitation analysis which resulted in the closure of the drug chemistry section of the FEB. Buffolino contacted McMillin, who had resigned from the FEB for employment with the ATF, regarding the aforementioned MDMA quantitation findings. In response, McMillin forwarded Buffolino the September 22, 2010 e-mail from Conti to her and Granelle regarding the cessation of MDMA purity testing which pre-dated by several months Conti’s and Cole’s discussion with Buffolino regarding problems in MDMA purity testing. Conflicting accounts of what occurred in September 2010 caused Buffolino concern as to what was known in the lab regarding MDMA testing and when it was known. This new revelation caused him to question the integrity of the drug chemistry section and whether it should continue to function. He immediately brought this information to the attention of the County Executive and the District Attorney’s Office.

Mangano related that he received a call from District Attorney Rice expressing her concerns about the FEB continuing testing at all. Mangano then concluded to close the entire lab, “as a belt-and-suspenders approach, as a precaution.” On February 18,

2011, District Attorney Rice and County Executive Mangano announced that, due to the above revelations that police supervisors were aware of problems with Ecstasy testing as far back as September, the entire FEB was being closed.

N. Plan Developed to Review FEB's Drug Chemistry, Blood Alcohol and Latent Prints testing

**1. Scope of the Retesting Plan**

Following the imposition of probation, Nassau County officials, and specifically District Attorney Rice, recognized that a system of review would be necessary to establish the reliability of evidence previously analyzed by the FEB. Therefore, as early as December 2010, a plan was formulated to review or reanalyze cases in the disciplines that received the most nonconformances by ASCLD/LAB – blood alcohol, latent prints, and drug chemistry. As to blood alcohol, because ASCLD/LAB determined that technical reviews in that discipline had been conducted by supervisors not deemed competent to do so, County officials decided to have 100 percent of blood alcohol cases since 2005 technically reviewed by a competent examiner. The County retained outside toxicology experts to perform the technical review, which revealed no errors.<sup>73</sup>

The audit of latent prints has only recently commenced, but includes a random sampling of a percentage of casework from each latent print examiner (approximately 150 cases in total) from 2007 to the present. Of note, during the pendency of this

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<sup>73</sup> During the review process Margaret Fisher, the FEB's sole blood alcohol analyst, discovered nine cases in which she mismatched test results to the wrong defendants. When she discovered her mistake, she immediately notified a supervisor and the information was ultimately provided to the District Attorney's Office and the Inspector General. The mismatches affected the charge in five of the nine cases, and these cases are being handled by the District Attorney within the criminal justice system.

investigation, the Police Department resumed latent print analysis. The Police Department is able to engage in this unmonitored testing because Executive Law § 995 specifically excludes latent print analysis from forensic oversight and accreditation: “For purposes of general forensic analysis the term ‘forensic laboratory’ shall mean 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 provided, however, that the examination of latent fingerprints by a police agency shall not be subject to the provisions of this article.” Currently, this latent print unit cannot, under the Executive Law, be monitored by the Forensic Commission. However, any positive identification by this unaccredited latent print unit is being confirmed by an outside accredited laboratory. Within Nassau County, the plan for the future forensic laboratory includes a latent print section. As a result, latent print analysis in Nassau County will and should be subject to ASCLD/LAB *International* accreditation and policies and Forensic Commission oversight.

With regard to the drug chemistry section, the initial plan included technical review of cases from 2007 to the present and retesting of 10 percent of the cases of each drug chemist performed in that same period. However, after the retesting of nine MDMA cases revealed significant differences from the FEB’s results and affected the criminal charges in favor of the defendant in three of the nine cases, the plan was expanded to include retesting of all felony cases since 2007 – approximately 3500 in total.<sup>74</sup> To accomplish this reexamination, Nassau County engaged the services of a private forensic laboratory, the National Medical Services Labs (NMS), to perform reanalysis and to conduct forensic testing for pending cases until the new forensic laboratory becomes

operational. In response to this outsourcing of testing, the Police Department has created the “Evidence Management Unit” to administer the processing of evidence to the appropriate laboratory.<sup>75</sup>

Additionally, the Nassau County Executive authorized the hiring of staff for the newly formed civilian forensic laboratory, under the leadership of Pasquale Buffolino, Ph.D., to replace the FEB. Buffolino and those staff already hired are not only working towards achieving ASCLD/LAB *International* accreditation in the disciplines once handled by the FEB, but are conducting comparative analyses to reconcile the NMS test results with those of the FEB. The results of the comparisons are immediately reported to the Inspector General, the Nassau County District Attorney, County Executive and Police Department.<sup>76</sup>

## **2. Initial Results**

Reanalysis of 814 felony drug cases has been completed, approximately 20 percent of the total number of cases scheduled to be retested. Preliminary results indicate that the majority of FEB test results are largely consistent with NMS’s reexamination results. Nonetheless, approximately 13 percent of this preliminary reanalysis – an unacceptably high percentage – indicate some inconsistencies in testing. These errors reflect the lack of an adequate quality system and other problems which plagued the FEB, as discussed in this report. Specifically, the reanalysis thus far has revealed patterns of

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<sup>74</sup> Additional analyses earlier than 2007 are being conducted at the specific request of the District Attorney.

<sup>75</sup> In late June 2011, marijuana evidence was sent to NMS by a common carrier and was determined to have been stolen. The investigation into the stolen marijuana is still ongoing, however as a result of this incident the Inspector General insisted that the Police Department cease using any common carriers for this purpose.

<sup>76</sup> Reexamined cases in which conclusions differ from determinations made by the FEB have been and will continue to be immediately addressed by the criminal justice system.

errors which include mistakes in calculation, weight differences, differences pertaining to substance identification, and inconsistency in the number of items submitted to the FEB versus the number of items received by NMS.<sup>77</sup> Many of these errors evidence the FEB analysts' departure from standard operating procedures.<sup>78</sup> Other errors include testing of substances without any documented procedure and the failure of procedures to specify measurement conversion formulas. These issues had the potential to affect results, and did so in certain instances. They also clearly demonstrate a general lack of uniformity and precision in the testing performed by the FEB. More importantly, despite representations that all FEB cases were administratively and technically reviewed, the fundamental nature of the errors identified in these cases support the conclusion that no meaningful review was performed.

Of import, the current retesting effort has revealed a number of cocaine cases which required a purity determination for higher criminal charges, with significant weight disparities from the weights documented in the FEB case files versus the amounts received by NMS. An examination of the NMS retesting reports as compared to the initial FEB reports provided no explanation as to the weight differences. In addition, the FEB's procedures in the drug chemistry section did not include steps which could have accounted for the weight differences – such as the discarding of a portion of the substance or the heating of the cocaine solution to return the cocaine to its solid form following testing. Because of this, the Inspector General was required to re-interview the former drug chemistry analysts to determine the cause of these weight disparities. The

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<sup>77</sup> In some instances, errors may be attributed to differing protocols from the FEB and the independent laboratory, NMS.

drug chemists uniformly reported that they liquefied or dissolved the cocaine; that some substances that would separate from the cocaine were routinely discarded during the testing; that some cocaine was necessarily consumed during testing; that the cocaine solution was heated in order to return it to a solid form; and that some of the solid cocaine might have adhered to the dish following the solidifying process. All of these issues most likely contributed to the weight disparities.<sup>79</sup> However, the FEB's incomplete and ambiguous SOPs with respect to cocaine quantitation render an absolute determination difficult if not impossible. Furthermore, these procedural deficiencies rendered the lab vulnerable to theft and abuse of evidence without detection. As the reanalysis is ongoing, these potential weight inconsistencies may recur; however, the District Attorney's Office has been evaluating, and will continue to evaluate, each issue on a case-by-case basis and will continue to report such to the Inspector General.<sup>80</sup>

Moreover, at the request of the Inspector General, Buffolino and his newly hired civilian scientists reviewed laboratory paperwork for evidence of negative controls – a solution that is run through an instrument to ensure that no remnant of a previously tested substance is present, which might skew the next test's results. The examination revealed that in 2007, 2008 and 2009, approximately 35 blank files were found for each year in the drug chemistry section despite having completed thousands of cases. For the year 2010, the scientists found that approximately 300 negative controls had been run. The 2010 controls were examined and many were found to indicate some contamination of the

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<sup>78</sup> The practice of deviating from standard operating procedure can be deemed acceptable if such deviation is authorized in the SOP and then documented and approved by a supervisor. With regard to the deviation by FEB analysts, no such documentation was found.

<sup>79</sup> It must be noted that the FEB's cocaine quantitation method is accepted with the scientific forensic community.

instruments; therefore, a further assessment of how this contamination affected testing must be conducted beyond the original retesting of all felony drug cases from 2007 to the present. Accordingly, the Inspector General, in addition to recommending the expanded review recommended below, the Inspector General has already recommended an expanded review to include all misdemeanor drug cases, as well as the felony cases, from the same time period.

Of note, the reanalysis undertaken by Nassau County requires, and will continue to require, a commitment of significant resources. The Police Department has estimated that the cost attributable to the retesting and outsourcing of evidence by NMS alone thus far has been approximately 100,000 per month.<sup>80</sup> Moreover, this amount does not include additional expenditures on toxicological technical reviews, latent print reanalysis, or the comparative analyses being performed by Buffolino's newly hired staff. Nevertheless, the reanalysis and expanded reviews are a necessary endeavor not only to identify any testing discrepancies, but also to restore Nassau County's faith in its forensic testing. Unquestionably, these costly efforts are an unfortunate consequence of the inattention paid to the FEB by the relevant parties, most particularly the Police Department, and including the District Attorney and the County Executive. All of these parties have been appropriately responsive to the retesting effort and must continue to be so. More importantly, however, Nassau County must dedicate the necessary resources and personnel to ensure the success of Nassau County's future forensic laboratory.

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<sup>80</sup> These cases are being addressed within the criminal justice system. Recently, in at least one instance, the District Attorney reduced charges in light of these weight disparities. "Crime Lab Error Leads to Prison Release" by Ann Givens, *Newsday*, October 4, 2011.

<sup>81</sup> Former Commissioner Mulvey approved the use of asset forfeiture funds to pay for NMS retesting expenses.

## **V. FINDINGS AND RECOMMENDATIONS**

The Inspector General's investigation revealed that the problems at the Nassau County Police Department Forensic Evidence Bureau were not isolated to the Ecstasy testing issues made public in February 2011, but that these testing issues arose in the wake of a tortured history of significant problems at the lab. Indeed, from its formation in 2003 through its closure in 2011, the FEB struggled to meet the requirements necessary to qualify for accreditation. However, the lab's problems went largely undetected, ignored, or not properly addressed due to failures at all levels of the FEB's management and oversight – from the laboratory itself, up through the Police Department, Nassau County leadership, and ultimately the agency charged with forensic laboratory oversight in New York State, the Commission on Forensic Science.

Internally, the FEB suffered from weak leadership, a dysfunctional quality management system, analysts with inconsistent training and qualifications, and outdated and incomplete testing procedures. As a result, the laboratory operated absent the rigors and precision necessary in scientific testing. Indeed, during every one of its mandatory inspections, ASCLD/LAB cited the FEB for a significant number of problems and, in a four-year period, twice placed the FEB on probation, a sanction unprecedented among forensic laboratories in New York State. These problems created an environment where mistakes were more likely to occur and less likely to be detected. Not surprisingly, testing mistakes did in fact occur. Although recent retesting of certain drug chemistry analysis by FEB has not yet been completed, preliminary results indicate that more than 10 percent of the laboratory's drug chemistry results – an unacceptably high percentage – had some inconsistencies in testing that should have been caught by lab personnel.

Notably, some of the issues identified thus far affect charges in criminal cases, a pattern that is, unfortunately, likely to continue. The issues relating to individual criminal cases are and will continue to be handled by the Nassau County District Attorney's Office within the criminal justice system. Overall, as detailed in this report, the Inspector General's investigation found significant and pervasive problems at the lab that not only affected the drug chemistry section, but also had the potential to affect every discipline in the laboratory.

The Nassau County Police Department should have been more attentive to the lab's performance and accreditation status. The Inspector General determined, however, that important information about the FEB was minimized as it was reported up the chain of the Police Department hierarchy. When they did learn about the lab's numerous unfavorable accreditation reports, the Police Department leadership took little if any action with respect to the issues raised in the reports. Furthermore, the Police Department did not communicate the results of the lab's unfavorable inspections or its probationary status to either the Nassau County District Attorney's Office or the County Executive, as it should have.

Thomas Suozzi, the County Executive for the relevant time period, had deputies who had direct supervisory authority over the Police Department, including the FEB, and the other two non-police labs in the County. However, the County Executive and his deputies deferred the oversight of and responsibility for the FEB to the Police Department because they viewed the FEB as merely a small part of the larger police organization. In this way, the County Executive rendered his office entirely dependent on the Police Department for information about the County's forensic crime laboratory.

This dependence proved to be unreliable, and as a result, the County Executive was not appropriately informed about significant lab issues, including the unfavorable inspection reports or FEB's probation in 2006.

District Attorney Kathleen Rice was similarly uniformed regarding the FEB. During her tenure, the FEB continued to have problems, including being placed on probation by ASCLD/LAB in August 2006. However, District Attorney Rice did not learn of any of these problems until December 2010. Up to that point, District Attorney Rice and her office took for granted the reliability of the evidence produced at the FEB and were not appropriately informed as to the laboratory accreditation process or the role of the Forensic Commission.

Finally, the Forensic Commission failed to provide the FEB the assistance and monitoring it desperately needed. In particular, not only did the Forensic Commission fail to impose its own sanctions once it learned that the FEB was placed on probation by ASCLD/LAB in 2006, it also neglected to conduct its own inquiry into the reasons for the probation, and did not even take the minimal step of notifying County Officials of the lab's continued precarious status. Although the Forensic Commission possessed clear authority to promulgate requirements specifically tailored to promote uniformity, quality and excellence among forensic laboratories in New York State, it did not do so. Instead, the Forensic Commission abdicated most if not all of its responsibility for oversight of the FEB and other forensic laboratories across the state to a private accrediting agency, ASCLD/LAB.

These compound failures enabled the FEB to operate as a substandard laboratory for far too long, and deprived the public of the right to have complete and unfettered

confidence in forensic testing. Accordingly, this report recommends changes to the management and operation of forensic laboratory testing in Nassau County as well as oversight of forensic laboratories in the state: the future Nassau County forensic laboratory must establish protocols to ensure quality and integrity in testing; the County Executive and the District Attorney must formalize communication with both the future lab and the Forensic Commission; and the Forensic Commission must make full use of its powers in order to maintain New York State's preeminence in forensic testing.

The following are the findings and recommendations of the Inspector General.

A. Findings

**1. The Forensic Evidence Bureau**

The Inspector General found that the FEB was fraught with problems since its formation in 2003. FEB's lab director Det./Lt. James Granelle was a weak leader who lacked up-to-date scientific knowledge and the dedication required to run a forensic laboratory. Granelle's supervisory laboratory staff testified that they could not turn to him for assistance with testing problems because of his scientific shortcomings. Granelle's weakness was most evident, however, in the area of quality assurance and control, a fundamental aspect of a laboratory's operation which affects every discipline. Indeed, until late 2005, various sworn officers whom Granelle placed in the position of quality assurance manager had no expertise or training in the area. Granelle even went as far as to attest to the abilities of one of these purported quality assurance managers when that same person informed the Inspector General that he was not aware that he held that title until after this investigation began.

Following a 2005 accreditation inspection during which the FEB was severely criticized for its non-existent quality assurance manual, Granelle was forced to recognize that the lab could not survive without a qualified person in the position of quality assurance manager. Still, Granelle filled the position with someone ill-suited for the job. Subsequently, the FEB's quality assurance improved but never attained the level necessary to sustain integrity in a forensic laboratory.

Indeed, the investigation found that the FEB lacked critical aspects of quality assurance and control throughout its existence. This inferior quality assurance system was a major deficiency that contributed to the problems and eventual closure of the FEB. For instance, although the lab reported that it performed technical and administrative reviews – which are essential to detecting mistakes in initial testing – based on recent analysis, these reviews were either ineffective or were not performed at all. In addition, evidence established that the standard operating procedures for many testing methods, specifically in the drug chemistry section, were either outdated or incomplete. Certain testing that has long been accepted by the scientific community – such as a sampling method for cases involving numerous samples and controls used to assure that an instrument is not contaminated – were not employed by the FEB, and in fact resulted in flawed sampling and contaminated instruments.

Furthermore, in both the drug chemistry and latent prints sections, the analysts were not properly documenting the steps they took in testing, a deficiency which limits the ability to appropriately review cases and prevents critical examination of the conclusions. In addition, the lab prepared and sent reports to the District Attorney that did not accurately document the testing methods that had been used. While these reports

were certainly misleading, this investigation did not uncover evidence that they were intentionally falsified; rather, the evidence reflects that these flawed reports were the product of poorly trained analysts and outdated procedures.

The FEB was also hampered by issues beyond its control. Granelle and the FEB staff were challenged by the lab's physical plant. The lab was cramped and included areas which were noncontiguous, a deficiency cited in every ASCLD/LAB inspection. Some areas, specifically the firearms section, were in disrepair, and complaints about it were largely ignored until faced with the threat of failing an inspection. The functioning of the lab was further compromised by union rules prohibiting the evaluations of sworn personnel, an issue for which the FEB was cited in each ASCLD/LAB inspection report, and which both former Commissioners Lawrence and Mulvey complained was detrimental to Police Department administration overall.

All of these issues led to consistently unfavorable inspections by ASCLD/LAB. In each ASCLD/LAB inspection throughout its history, the FEB received a high number of noncompliances<sup>82</sup> relative to other labs across the country: in 2003 – 27 nonconformances in 15 Essential categories; in 2005 – 21 nonconformances in 18 Essential categories; in 2007 – 16 nonconformances in eight Essential categories; and in 2010 – 27 nonconformances in 15 Essential categories. The only inspection in which the FEB received fewer than 10 noncompliances was in 2007, and that inspection occurred a mere five months after the FEB had received its final re-inspection that allowed the 2006 probation to be lifted. This troubled inspection history demonstrates that Granelle and the various laboratory supervisors did not appreciate the importance of adhering to

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<sup>82</sup> As noted throughout this report, the FEB received multiple noncompliances for a number of Essential criteria thereby raising the number of noncompliances considerably in each inspection.

ASCLD/LAB standards and rooting out systemic problems. Instead, following each ASCLD/LAB inspection, the FEB merely took minimal corrective action or simply eliminated the problematic discipline to maintain accreditation.

Taken together, these deficiencies undermined the integrity of testing throughout the FEB.

## **2. The Nassau County Police Department**

While the FEB's failings resulted largely from its weak management and poor quality assurance system, the FEB was further compromised by the police bureaucracy within which it operated. Because the FEB existed as one bureau among many at the Nassau County Police Department, the hierarchy of the Police Department was not focused on, nor did the members understand, the specific needs of a forensic laboratory. Indeed, this is a risk associated with housing a forensic laboratory within a police organization which is necessarily focused on broader criminal justice issues. In fact, the Deputy Inspector to whom Granelle reported supervised eight precinct squads, which included the Central Detective Squad, of which the FEB was a small unit. Furthermore, the members of the Police Department hierarchy were unfamiliar with the science and protocols necessary for a forensic laboratory to be successful. As a result, they did not properly address the resource and personnel requirements needed to operate an effective laboratory. In addition, routinely, trained analysts would be promoted within the police department and then transferred out of the laboratory to a squad, leaving the laboratory severely understaffed. When the FEB would finally obtain a replacement, the new analyst had to be trained – a process which took a minimum of six months and required

significant attention from a supervisor. All too often, the Police Department allowed considerations of rank to outweigh laboratory efficiency.

The police bureaucracy also hindered communication about the FEB to the Police Department leadership and County officials. When Granelle attempted to report the FEB's problems within the Police Department, he was met with resistance by his immediate supervisors. In some instances when Granelle attempted to report information, his immediate supervisors edited his memoranda to downplay the problems at the FEB. Because Granelle was required to report up through his chain of command in the Police Department, he was prohibited from directly informing the District Attorney or County Executive about the lab's myriad problems.

This communication problem was exacerbated by former Commissioner Lawrence Mulvey's seeming disinclination to engage in a productive transition with outgoing former Commissioner James Lawrence. Likely as a result of these communication breakdowns, the Police Department leadership understood that the FEB had problems but did not fully comprehend their significance. Notwithstanding this, the Police Department should have, but repeatedly failed to communicate what it knew regarding the FEB's accreditation status or other fundamental laboratory issues to both the Nassau County District Attorney's Office and the Nassau County Executive.

### **3. Nassau County Executive**

Thomas Suozzi, the County Executive during the relevant time period, employed Deputy County Executives for Public Safety who had supervisory authority over the Police Department and the four Nassau County laboratories: the FEB and two non-police

laboratories. The Deputy County Executives for Public Safety directly communicated with the other two non-police department labs in Nassau County. But the County Executive's Office deferred oversight of and responsibility for the FEB to the Police Department because the County Executive viewed the FEB as merely a small part of the larger police organization. In fact, former County Executive Suozzi testified that as to the Police Department, his main concerns were crime and overtime reduction, and he left the day-to-day operation of the Police Department to its members, in which he had confidence. In this way, however, the County Executive rendered himself entirely dependent on the Police Department for information about the County's forensic crime laboratory, a dependence which proved to be unreliable.

Although the Police Department submitted yearly budget proposals to the County Office of Management and Budget which included specific requests from each command, including the FEB's requests for additional staffing and resources, this information was buried deep in budget submissions and did not include more significant information about the lab's ongoing accreditation problems. In truth, the County routinely provided a set amount of funding for the Police Department and these specific requests were generally denied. To the extent the Police Department wanted a specific budget request to be addressed, a Police Department member would have to bring that issue to the attention of a member of the County Executive's Office for consideration. In fact, in the FEB's eight-year history, witnesses could recall only one meeting between the Deputy County Executive for Public Safety and Police Department personnel regarding the lab, and this was to discuss budgetary issues regarding outsourcing of certain lab disciplines. After the meeting, Deputy County Executive for Public Safety Timothy Driscoll specifically

asked if there were any other issues he should be aware of about the lab, and he received a vague response about a lock on a door that required repair. Remarkably, at the time Deputy County Executive Driscoll asked about the lab, the FEB was on probation yet the Police Department neglected to communicate that information to Driscoll or anyone else in the County Executive's Office

The Inspector General notes, however, that when current County Executive Edward Mangano was made aware of the problems at the laboratory, he responded appropriately and closed the FEB. In addition, Mangano's proposal for a civilian state-of-the-art forensic laboratory appears sound, and the County has been properly attentive to the ongoing retesting effort.

#### **4. Nassau County District Attorney**

The investigation found that District Attorney Rice did not know about the problems at the FEB until she received an unofficial call from Forensic Commission member Onondaga County District Attorney William Fitzpatrick in December 2010 informing her of a scathing ASCLD/LAB inspection report and the resulting probation of her County's forensic laboratory. According to her testimony, District Attorney Rice was not aware of the forensic laboratory accreditation process or the existence of the Forensic Commission until she learned of the lab's probation in December 2010. Instead, up until that point, District Attorney Rice and her office took for granted the accuracy and reliability of the evidence produced by the FEB – a confidence that was, in this instance, misplaced. Had the District Attorney's Office been better informed regarding forensic testing and the forensic accreditation process – including the role of the Forensic

Commission – some of the FEB’s problems might have been avoided or at least detected earlier.

Nevertheless, upon learning of the FEB’s probationary status in 2010, District Attorney Rice acted responsibly in calling for the retesting of thousands of cases to ensure the reliability of convictions obtained or sought by her office. In addition, upon learning of serious problems with Ecstasy testing, Rice promptly and appropriately called for the closure of the drug chemistry section and ultimately the entire laboratory.

## **5. The Forensic Commission and the Office of Forensic Services**

The Inspector General found that the Forensic Commission – the entity designated with the oversight of New York State forensic laboratories – failed to effectively respond to the FEB’s troubled eight-year history, a failure which prolonged the lab’s flawed operation. Remarkably, the Forensic Commission meeting minutes following FEB’s 2006 probation do not reflect any discussion of response to or redress of the FEB for being the first and only New York State laboratory ever placed on probation by ASCLD/LAB. Furthermore, the Inspector General’s investigation revealed that the Forensic Commission did not invoke its statutory powers to conduct a hearing into the unprecedented probation or impose its own sanction, and instead deferred entirely to the ASCLD/LAB probation; it engaged in no independent monitoring of the FEB; and it even failed to notify relevant Nassau County prosecutorial agencies and leadership of the FEB’s probationary status.

Although former Forensic Commission Chair Chauncey Parker during his tenure sent two letters to Police Commissioner James Lawrence which raised questions about

the FEB, Parker did not follow up on these letters, nor did he copy any other relevant parties – such as the County Executive or the District Attorney – on these communications. In fact, the Inspector General determined that the only attempt to notify the relevant parties as to the FEB’s problems was a draft letter by then Forensic Commission Chair Denise O’Donnell in 2008 which, inexplicably, was never sent.

The Inspector General found that these failures of oversight were due in part to the Forensic Commission’s almost complete abdication of its responsibility for forensic laboratory accreditation and monitoring to a private accrediting organization, ASCLD/LAB. While ASCLD/LAB provided an effective framework to carry out the accreditation process, the Forensic Commission failed to tailor ASCLD/LAB’s minimum standards to promote uniformity, quality and excellence among forensic laboratories in New York State, as the Forensic Commission had the clear authority to do. In addition, a comprehensive review of all Forensic Commission meetings since 2003, documents related to the FEB, and interviews of current and past Forensic Commission members revealed that the Forensic Commission underestimated the breadth of its oversight powers under Executive Law § 995, and that individual commissioners had varying understanding of their roles.

As to the Office of Forensic Services (OFS), the administrative arm of the Forensic Commission, the Inspector General determined that forensic oversight has suffered since the position of OFS Director became vacant, with leadership assumed by an attorney with no scientific background. Furthermore, OFS’s staff is heavily weighted toward supervision of the DNA databank leaving few staff members to tend to the important area of forensic laboratory oversight and accreditation. OFS has essentially

become a repository for accreditation documents of forensic laboratories across the state, with little more than clerical responsibilities relating to the quarterly Forensic Commission meetings.

**B. Recommendations**

In light of the above, the Inspector General makes the following recommendations to strengthen both the management of forensic testing in Nassau County, and the oversight of forensic laboratories in New York State.

**1. The Future Nassau County Forensic Laboratory Must Meet Certain Minimum Requirements**

Following the permanent closure of the FEB and removal of forensic testing operations from the Police Department, County Executive Mangano has proposed the creation of a new Nassau County forensic laboratory independent of the Police Department to operate as a subdivision of the Medical Examiner's Office with Pasquale Buffolino, Ph.D., as laboratory director. The proposal includes the construction of a state-of-the-art facility and appointment of qualified management and civilian analysts. Under Buffolino's direction, Nassau County intends to seek ASCLD/LAB *International* accreditation in all disciplines previously analyzed by the FEB (including latent prints), as well as the evidence reconstruction discipline, and will incorporate the currently accredited testing performed by the Medical Examiner's Forensic Genetics lab.

The Inspector General acknowledges Nassau County's significant efforts toward the creation of an improved County forensic laboratory, including the appointment of

Buffolino as lab director and the hiring of several civilian scientists proficient in drug chemistry, latent prints and quality assurance. Buffolino, who developed Nassau County's retesting protocols and is working with recently hired staff to apply for provisional accreditation, has already demonstrated the level of expertise and dedication to scientific standards necessary to run Nassau County's future forensic laboratory.

Nonetheless, the Inspector General recommends that the future forensic laboratory must meet the following standards to operate a forensic laboratory in which the public can have full confidence: (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 in particular disciplines should be responsive to expected case volumes; (5) the physical plant must be contiguous and 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. It is imperative for the future success of forensic science in Nassau County that Buffolino and his staff be given the necessary resources to attain these goals.

## **2. The County Should Expand the Review of FEB's Casework to Include Every Discipline**

This investigation uncovered systemic issues at the FEB that were not isolated to the problems identified with the Ecstasy testing, but rather involved weak leadership and dysfunctional quality assurance and control at the lab. These broad issues had the potential to affect all disciplines in the laboratory. While the retesting thus far has focused on the sections that received the most ASCLD/LAB noncompliances – drug

chemistry, blood alcohol and latent prints – the findings of this investigation indicate that the prudent course of action warrants a more comprehensive review of all disciplines at the laboratory. Accordingly, the Inspector General recommends that the current lab director formulate a proposal for expanded review of all disciplines and submit it to the Nassau County Executive, the District Attorney and the Inspector General for their collective approval within 30 days of the publication of this report.

### **3. The Forensic Commission Should Set Clearer Standards for Accreditation in New York State**

#### *a. Set Minimum Standards for Each Scientific Discipline*

Currently, the Forensic Commission mandates that all New York State forensic laboratories be accredited by ASCLD/LAB. However, the Forensic Commission also accepts the minimum standards set forth by ASCLD/LAB as the standards for all New York State forensic laboratories. Even considering that all labs will soon be accredited under the more stringent ASCLD/LAB *International* Program, the Forensic Commission need not be bound by the minimum ASCLD/LAB standards. Indeed, Executive Law § 995-a empowers the Forensic Commission with “develop[ing] minimum standards and a program of accreditation for all forensic laboratories in New York State, including, establishing minimum qualifications for forensic laboratory directors and such other personnel as the commission may determine to be necessary and appropriate, and approval of forensic laboratories for the performance of specific forensic methodologies.” Accordingly, the law allows the Forensic Commission to establish the standards it deems “necessary and appropriate” for the proper functioning of forensic laboratories across the state. Deferring to ASCLD/LAB standards has simply been the easier path.

The Forensic Commission should now consider developing its own minimum standards to improve the practice of forensic testing in New York State. Indeed, when the Forensic Commission determined that the ASCLD/LAB practice of inspecting laboratories on a five-year cycle and depending on annual self-audit reports by the labs in the interim years was insufficient to assure the maintenance of quality at the labs, it instituted the mid-cycle inspection – a change in the minimum ASCLD/LAB standards that was easily accomplished and fully complied with by ASCLD/LAB. It must be stated that the mid-cycle inspections have only barely mitigated the unreliability of the self audits, and the Forensic Commission should consider a better means for assessing a laboratory's status than self audits. At a minimum, the Forensic Commission should require that when a laboratory receives a high number of noncompliances during an ASCLD/LAB inspection which is inconsistent with its prior self audit, it must seek assistance from another state laboratory for its next self audit to better evaluate its operation.

In evaluating existing practices, the Forensic Commission should be informed by existing resources such as the standards promulgated by the FBI-sponsored Scientific Working Groups as well as the Forensic Commission-initiated Technical Working Groups to develop appropriate standards within the different for New York State accreditation.

*b. Set Minimum Standards for Quality Assurance, Quality Assurance Manager and Laboratory Director*

Quality Assurance and controls are essential to the proper functioning of a forensic laboratory. To be sure, the lack of an adequate and properly implemented

quality assurance system at the FEB was likely the greatest contributor to the lab's failings. In addition, as to the recommendation set forth above that the Forensic Commission promulgate its own minimum standards within each scientific discipline, the same should be required for quality assurance systems. Furthermore, the Forensic Commission should consider setting forth minimum professional and educational standards for quality assurance managers and laboratory directors. In taking these steps, the Forensic Commission can ensure that the individuals primarily responsible for setting internal laboratory policy and reporting to outside agencies possess the requisite experience and knowledge with which to make informed decisions.

*c. Require Uniform Reporting*

The Forensic Commission should consider instituting uniform reporting templates and procedures for forensic laboratories to use in their reports sent to prosecutorial agencies (and defense counsel). As noted in the body of this report, the FEB was cited in 2010 by ASCLD/LAB for misleading reporting. Statewide uniform reporting requirements would cure this problem; moreover, it would allow the Forensic Commission to better monitor reporting of forensic testing and aid the relevant parties in the criminal justice system in understanding the reports.

*d. Implement Mandatory Continuing Education and Certification of all Forensic Analysts*

The Forensic Commission should consider mandating continuing forensic science education program for analysts across the state and in each discipline. Existing education requirements address only new and untrained forensic analysts or those in need of

remedial training; no current state mandatory continuing educational requirements exist for forensic analysts engaged in testing. Furthermore, ASCLD/LAB's existing requirements fail to account for analysts currently engaged in testing. Mandated continuing education programs would encourage forensic analysts to stay up-to-date on new scientific developments within their disciplines. A minimum number of hours of continuing education should be required for every lab technician and supervisor engaged in evidence analysis, and such should be documented and submitted to the Office of Forensic Services for verification. The Forensic Commission should also consider requiring that all analysts become certified in their disciplines.

#### **4. Improve Effectiveness of Laboratory Inspections**

As noted above, while the Forensic Commission has outsourced to ASCLD/LAB the inspection and initial accreditation of New York State forensic laboratories, the Forensic Commission can set its own standards for inspections occurring within the state. For instance, with regard to ASCLD/LAB's policy of requiring each analyst in a lab seeking accreditation to select five cases of his or her choosing for review by ASCLD/LAB inspectors, such practice is susceptible to abuse and might not reliably represent the actual quality of work of a laboratory.

Accordingly, the Inspector General recommends that the Forensic Commission should consider establishing its own procedures for accreditation inspections occurring in New York State. For instance, the Forensic Commission could mandate that casework of individual analysts must be selected at random for review and inspection instead of ASCLD/LAB's current policy requiring analysts to preselect cases for review. Requiring

inspectors to select cases from a prepared list of the analyst's casework will result in a more accurate picture of a specific analyst's abilities and overall adherence by lab personnel to testing protocols. Furthermore, ASCLD/LAB's currently policy requires inspectors to destroy their notes of inspections; only the reports are maintained. To ensure integrity of the process, the Forensic Commission should require ASCLD/LAB to maintain any and all documentation that relates to inspections conducted in New York State.

## **5. Encourage Transparency in the Accreditation Process**

This investigation revealed that the Nassau County District Attorney's Office and the Nassau County Executive were not informed about the 2006 probationary status of the FEB, the results of numerous unfavorable ASCLD/LAB inspections, the remediation processes associated with those inspections, or the cessation of numerous disciplines at the FEB, until well after these events occurred. This lack of notification must be viewed as a failing of all relevant parties – the FEB, the Nassau County Police Department, and the Forensic Commission. However, the Forensic Commission is the entity best equipped to promote and monitor notification of accreditation issues at forensic laboratories. To that end, the Forensic Commission should consider at minimum: (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. In this way, the Forensic Commission can be assured that all relevant parties are informed of the status of their forensic laboratories. The

Forensic Commission should also consider making available certain accreditation documents or other lab-related information on its Web site; such transparency will allow every interested party equal access to the information.

## **6. Mandate Direct Communication between Accrediting Organizations and the Forensic Commission**

The Forensic Commission maintains records relating to laboratory accreditation as well as laboratory integrity; nevertheless, the Forensic Commission currently relies on laboratories to forward to it all communication to and from ASCLD/LAB. Although this investigation has not uncovered evidence that state laboratories are not meeting this obligation, the Inspector General suggests that a better practice would be to mandate direct communication to the Forensic Commission from all private accrediting agencies. To accomplish this direct communication, the Forensic Commission should require all forensic laboratories in the state to include in their contractual agreements with the accrediting organizations a requirement that the Forensic Commission be copied on all communication sent to the laboratories. In this way, the Forensic Commission can be assured that it has received all necessary documentation in a timely manner.

## **7. The Office of Forensic Services Should be Empowered to Better Monitor the Forensic Laboratories**

Currently, the Office of Forensic Services has minimal personnel and resources dedicated to the oversight of forensic laboratories. Under the auspices of the Division of Criminal Justice, OFS should be directed by a scientist knowledgeable across many scientific disciplines and conversant in the structure of the criminal justice system. The OFS Director reports to the DCJS Commissioner who also chairs the Forensic

Commission, and it is the Chair who must actively drive the Forensic Commission, including acting between meetings to monitor the forensic laboratories in New York State. To that end, between the quarterly Forensic Commission meetings, OFS staff should be empowered to support the Chair in being more proactive in the oversight of forensic laboratories in New York State.

**8. District Attorneys Should Establish Liaisons with their Respective Laboratories and the Forensic Commission**

Because district attorney offices rely heavily on the evidence tested at forensic laboratories, the Inspector General recommends that all district attorney offices, to the extent they do not already have one, designate a lab liaison 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. The Forensic Commission should also notify each district attorney office's lab liaison as to the dates of the Forensic Commission meetings, especially those at which a relevant laboratory is being discussed. As the meetings are webcast, the lab liaison could view the meeting from the district attorney's offices if attendance is inconvenient or costly. By assuring that district attorney's offices are properly notified and engaged about forensic science in general and the status of their servicing laboratory in particular, a situation like that which occurred in the Nassau County, involving thousands of hours of retesting and diminished confidence in forensic results, can be avoided.

## **9. District Attorneys Should Establish Mandatory Education of their Staff Regarding Scientific Analysis**

To the extent they have not already implemented such 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. District attorneys should also engage their servicing laboratories to provide seminars to their assistants regarding the testing methods employed in each discipline. 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.

### **C. Conclusion**

The Inspector General has reported these findings and recommendations to the Forensic Commission. In addition, copies of the report will be provided to all Forensic Commission members, Nassau County District Attorney Kathleen Rice, Nassau County Executive Edward Mangano, Nassau County Police Department Acting Commissioner Thomas Krumpert, and Lab Director Pasquale Buffolino.

# APPENDIX

## 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.

## **Article 49-B. Commission on Forensic Science and Establishment of DNA Identification Index**

### **§ 995. Definitions**

When used in this article, the following words and terms shall have the meanings ascribed to them in this section:

1. For purposes of general forensic analysis the term “forensic laboratory” shall mean 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 provided, however, that the examination of latent fingerprints by a police agency shall not be subject to the provisions of this article.
2. For purposes of forensic DNA analysis, the term “forensic DNA laboratory” shall mean any forensic laboratory operated by the state or unit of local government, that performs forensic DNA testing on crime scenes or materials derived from the human body for use as evidence in a criminal proceeding or for purposes of identification and the term “forensic DNA testing” shall mean any test that employs techniques to examine deoxyribonucleic acid (DNA) derived from the human body for the purpose of providing information to resolve issues of identification. Regulation pursuant to this article shall not include DNA testing on materials derived from the human body pursuant to title five of article five of the public health law for the purpose of determining a person's genetic disease or medical condition and shall not include a laboratory operated by the federal government.
3. “DNA testing methodology” means methods and procedures used to extract and analyze DNA material, as well as the methods, procedures, assumptions, and studies used to draw statistical inferences from the test results.
4. “Blind external proficiency testing” means a test sample that is presented to a forensic laboratory for forensic DNA testing through a second agency, and which appears to the analysts to involve routine evidence submitted for forensic DNA testing.
5. “DNA” means deoxyribonucleic acid.
6. “State DNA identification index” means the DNA identification record system for New York state established pursuant to this article.
7. “Designated offender” means a person convicted of and sentenced for any one or more of the following provisions of the penal law (a) sections 120.05, 120.10, and 120.11, relating to assault; sections 125.15 through 125.27 relating to homicide; sections 130.25, 130.30, 130.35, 130.40, 130.45, 130.50, 130.65, 130.67 and 130.70, relating to sex offenses; sections 205.10, 205.15, 205.17 and 205.19, relating to escape and other offenses, where the offender has been convicted within the previous five years of one of the other felonies specified in this subdivision; or sections 255.25, 255.26 and 255.27, relating to incest, a violent felony offense as defined in subdivision one of section 70.02 of the penal law, attempted murder in the first degree, as defined in section 110.00 and section 125.27 of the penal law, kidnapping in the first degree, as defined in section 135.25 of the penal law, arson in the first degree, as defined in section 150.20 of the penal law, burglary in the third degree, as defined in section 140.20 of the penal law, attempted burglary in the third degree, as defined in section 110.00 and section 140.20 of the penal law, a felony defined in article four hundred ninety of the penal law relating to terrorism or any attempt to commit an offense defined in such article relating to terrorism which is a felony; or (b) criminal possession of a controlled substance in the first degree, as defined in section 220.21 of the penal law; criminal possession of a controlled substance in the second degree, as defined in section 220.18 of the penal law; criminal sale of a controlled substance, as defined in article 220 of the penal law; or grand larceny in the fourth degree, as defined in subdivision five of section 155.30 of the penal law; or (c) any misdemeanor or felony defined as

a sex offense or sexually violent offense pursuant to paragraph (a), (b) or (c) of subdivision two or paragraph (a) of subdivision three of section one hundred sixty-eight-a of the correction law; or (d) any of the following felonies, or an attempt thereof where such attempt is a felony offense:

aggravated assault upon a person less than eleven years old, as defined in section 120.12 of the penal law; menacing in the first degree, as defined in section 120.13 of the penal law; reckless endangerment in the first degree, as defined in section 120.25 of the penal law; stalking in the second degree, as defined in section 120.55 of the penal law; criminally negligent homicide, as defined in section 125.10 of the penal law; vehicular manslaughter in the second degree, as defined in section 125.12 of the penal law; vehicular manslaughter in the first degree, as defined in section 125.13 of the penal law; persistent sexual abuse, as defined in section 130.53 of the penal law; aggravated sexual abuse in the fourth degree, as defined in section 130.65-a of the penal law; female genital mutilation, as defined in section 130.85 of the penal law; facilitating a sex offense with a controlled substance, as defined in section 130.90 of the penal law; unlawful imprisonment in the first degree, as defined in section 135.10 of the penal law; custodial interference in the first degree, as defined in section 135.50 of the penal law; criminal trespass in the first degree, as defined in section 140.17 of the penal law; criminal tampering in the first degree, as defined in section 145.20 of the penal law; tampering with a consumer product in the first degree, as defined in section 145.45 of the penal law; robbery in the third degree as defined in section 160.05 of the penal law; identity theft in the second degree, as defined in section 190.79 of the penal law; identity theft in the first degree, as defined in section 190.80 of the penal law; promoting prison contraband in the first degree, as defined in section 205.25 of the penal law; tampering with a witness in the third degree, as defined in section 215.11 of the penal law; tampering with a witness in the second degree, as defined in section 215.12 of the penal law; tampering with a witness in the first degree, as defined in section 215.13 of the penal law; criminal contempt in the first degree, as defined in subdivisions (b), (c) and (d) of section 215.51 of the penal law; aggravated criminal contempt, as defined in section 215.52 of the penal law; bail jumping in the second degree, as defined in section 215.56 of the penal law; bail jumping in the first degree, as defined in section 215.57 of the penal law; patronizing a prostitute in the second degree, as defined in section 230.05 of the penal law; patronizing a prostitute in the first degree, as defined in section 230.06 of the penal law; promoting prostitution in the second degree, as defined in section 230.30 of the penal law; promoting prostitution in the first degree, as defined in section 230.32 of the penal law; compelling prostitution, as defined in section 230.33 of the penal law; disseminating indecent materials to minors in the second degree, as defined in section 235.21 of the penal law; disseminating indecent materials to minors in the first degree, as defined in section 235.22 of the penal law; riot in the first degree, as defined in section 240.06 of the penal law; criminal anarchy, as defined in section 240.15 of the penal law; aggravated harassment of an employee by an inmate, as defined in section 240.32 of the penal law; unlawful surveillance in the second degree, as defined in section 250.45 of the penal law; unlawful surveillance in the first degree, as defined in section 250.50 of the penal law; endangering the welfare of a vulnerable elderly person in the second degree, as defined in section 260.32 of the penal law; endangering the welfare of a vulnerable elderly person in the first degree, as defined in section 260.34 of the penal law; use of a child in a sexual performance, as defined in section 263.05 of the penal law; promoting an obscene sexual performance by a child, as defined in section 263.10 of the penal law; possessing an obscene sexual performance by a child, as defined in section 263.11 of the penal law; promoting a sexual performance by a child, as defined in section 263.15 of the penal law; possessing a sexual performance by a child, as defined in section 263.16 of the penal law; criminal possession of a weapon in the third degree, as defined in section 265.02 of the penal law; criminal sale of a firearm in the third degree, as defined in section 265.11 of the penal law; criminal sale of a firearm to a minor, as defined in section 265.16 of the penal law; unlawful wearing of a body vest, as defined in section 270.20 of the penal law; hate crimes as defined in section 485.05 of the penal law; and crime of terrorism, as defined in section 490.25 of the penal law; or (e) a felony defined in the penal law or an attempt thereof where such attempt is a felony; or (f) any of the following misdemeanors: assault in the third degree as defined in section 120.00 of the penal law; attempted aggravated assault upon a person less than eleven years old, as defined in section 110.00 and section 120.12 of the penal law; attempted menacing in the first degree, as defined in section 110.00 and section 120.13 of the penal law; menacing in the second degree as defined in section 120.14 of the penal law; menacing in the third degree as defined in section 120.15 of the penal law; reckless endangerment in the second degree as defined in section 120.20 of the penal law; stalking in the fourth degree as defined in section 120.45 of the penal law; stalking in the third degree as defined in section 120.50 of the penal law; attempted stalking in the second degree, as

defined in section 110.00 and section 120.55 of the penal law; criminal obstruction of breathing or blood circulation as defined in section 121.11 of the penal law; forcible touching as defined in section 130.52 of the penal law regardless of the age of the victim; sexual abuse in the third degree as defined in section 130.55 of the penal law regardless of the age of the victim; unlawful imprisonment in the second degree as defined in section 135.05 of the penal law regardless of the age of the victim; attempted unlawful imprisonment in the first degree, as defined in section 110.00 and section 135.10 of the penal law regardless of the age of the victim; criminal trespass in the second degree as defined in section 140.15 of the penal law; possession of burglar's tools as defined in section 140.35 of the penal law; petit larceny as defined in section 155.25 of the penal law; endangering the welfare of a child as defined in section 260.10 of the penal law; endangering the welfare of an incompetent or physically disabled person as defined in section 260.25 of the penal law.

8. "DNA record" means DNA identification information prepared by a forensic DNA laboratory and stored in the state DNA identification index for purposes of establishing identification in connection with law enforcement investigations or supporting statistical interpretation of the results of DNA analysis. A DNA record is the objective form of the results of a DNA analysis sample.

9. "DNA subcommittee" shall mean the subcommittee on forensic DNA laboratories and forensic DNA testing established pursuant to subdivision thirteen of section nine hundred ninety-five-b of this article.

10. "Commission" shall mean the commission on forensic science established pursuant to section nine hundred ninety-five-a of this article.

#### Article 49-B. Commission on Forensic Science and Establishment of DNA Identification Index

##### **§ 995-a. Commission on forensic science**

1. There is hereby created in the executive department, the commission on forensic science, which shall consist of the following fourteen members: (a) the commissioner of the division of criminal justice services who shall be chair of the commission and the commissioner of the department of health or his or her designee, who shall serve as an ex-officio member of the commission;

(b) twelve members appointed by the governor.

2. Of the members appointed by the governor,

(a) one member shall be the chair of the New York State crime laboratory advisory committee;

(b) one member shall be the director of a forensic laboratory located in New York State;

(c) one member shall be the director of the office of forensic services within the division of criminal justice services;

(d) two members shall be a scientist having experience in the areas of laboratory standards or quality assurance regulation and monitoring and shall be appointed upon the recommendation of the commissioner of health;

(e) one member shall be a representative of a law enforcement agency and shall be appointed upon the recommendation of the commissioner of criminal justice services;

(f) one member shall be a representative of prosecution services who shall be appointed upon the recommendation of the commissioner of criminal justice services;

(g) one member shall be a representative of the public criminal defense bar who shall be appointed upon the recommendation of an organization representing public defense services;

(h) one member shall be a representative of the private criminal defense bar who shall be appointed upon the recommendation of an organization of such bar;

(i) two members shall be members-at-large, one of whom shall be appointed upon the recommendation of the temporary president of the senate, and one of whom shall be appointed upon the recommendation of the speaker of the assembly; and

(j) one member, who shall be an attorney or judge with a background in privacy issues and biomedical ethics, shall be appointed upon the recommendation of the chief judge of the court of appeals.

3. Of the members appointed by the governor, each member shall be appointed to serve a three year term. Any member appointed by the governor may be reappointed for additional three year terms.

4. Any member chosen to fill a vacancy created otherwise than by expiration of term shall be appointed by the governor for the unexpired term of the member he or she is to succeed. Any such vacancy shall be filled in the same manner as the original appointment.

5. The commission shall meet at least four times each year and may establish its own rules and procedures concerning the conduct of its meetings and other affairs not inconsistent with law.

6. No member of the commission on forensic science shall be disqualified from holding any public office or employment, nor shall he or she forfeit any such office or employment, by reason of his or her appointment hereunder, and members of the commission shall not be required to take and file oaths of office before serving on the commission.

7. Members of the commission shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their functions hereunder.

#### **§ 995-b. Powers and duties of the commission**

1. The commission shall develop minimum standards and a program of accreditation for all forensic laboratories in New York State, including establishing minimum qualifications for forensic laboratory directors and such other personnel as the commission may determine to be necessary and appropriate, and approval of forensic laboratories for the performance of specific forensic methodologies. Nothing in this article shall be deemed to preclude forensic laboratories from performing research and validation studies on new methodologies and technologies which may not yet be approved by the commission at that time.

In designing a system of accreditation pursuant to this article, the commission shall evaluate other systems of accreditation.

2. The minimum standards and program of accreditation shall be designed to accomplish the following objectives:

(a) increase and maintain the effectiveness, efficiency, reliability, and accuracy of forensic laboratories, including forensic DNA laboratories;

(b) ensure that forensic analyses, including forensic DNA testing, are performed in accordance with the highest scientific standards practicable;

(c) promote increased cooperation and coordination among forensic laboratories and other agencies in the criminal justice system;

(d) ensure compatibility, to the extent consistent with the provisions of this article and any other applicable provision of law pertaining to privacy or restricting disclosure or redisclosure of information, with other state and federal forensic laboratories to the extent necessary to share and exchange information, data and results of forensic analyses and tests; and

(e) set forth minimum requirements for the quality and maintenance of equipment.

2-a. Any program of forensic laboratory accreditation with respect to a DNA laboratory pursuant to this section shall be under the direction of the DNA subcommittee established pursuant to subdivision thirteen of this section. Such subcommittee shall have the sole authority to grant, deny, review or modify a DNA forensic laboratory accreditation pursuant to this article, provided that such authority shall be effectuated through binding recommendations made by the DNA subcommittee to the commission. In the event the commission disagrees with any of the binding recommendations of the DNA subcommittee made pursuant to this article, the commission may so notify such subcommittee and request such subcommittee to reasonably review such binding recommendations. The DNA subcommittee shall conduct such review and either forward revised binding recommendations to the commission or indicate, with the reasons therefor, that following such review such subcommittee has determined that such binding recommendations shall not be revised.

3. The program of forensic laboratory accreditation shall include, at a minimum, the following requirements:

(a) an initial laboratory inspection, and routine inspections, as necessary, to ensure compliance with accreditation requirements;

(b) routine internal and external proficiency testing of all laboratory personnel involved in forensic analysis, including blind external proficiency testing if the commission, or the DNA subcommittee as the case may be, determines such a blind proficiency testing program to be practicable and appropriate. In determining whether a blind proficiency testing program is practicable and appropriate, the commission, or the DNA subcommittee as the case may be, shall consider such factors as accuracy and reliability of laboratory results, cost-effectiveness, time, allocation of resources, and availability;

(c) quality control and quality assurance protocols, a method validation procedure and a corrective action and remedial program;

(d) annual certification to the commission by the forensic laboratories of their continued compliance with the requirements of the accreditation program which certification, in the case of a forensic DNA laboratory, shall be forwarded to the DNA subcommittee;

(e) the accreditation of a forensic laboratory may be revoked, suspended or otherwise limited, upon a determination by the commission or, in the case of a forensic DNA laboratory, upon the binding recommendation of the DNA subcommittee, that the laboratory or one or more persons in its employ:

(i) is guilty of misrepresentation in obtaining a forensic laboratory accreditation;

(ii) rendered a report on laboratory work actually performed in another forensic laboratory without disclosing the fact that the examination or procedure was performed by such other forensic laboratory;

(iii) showed a pattern of excessive errors in the performance of forensic laboratory examination procedures;

(iv) failed to file any report required to be submitted pursuant to this article or the rules and regulations promulgated pursuant thereto; or

(v) violated in a material respect any provision of this article or the rules and regulations promulgated pursuant thereto; and

(f) no forensic laboratory accreditation shall be revoked, suspended, or otherwise limited without a hearing. The commission shall serve written notice of the alleged violation, together with written notice of the time and place of the hearing, which notice shall be mailed by certified mail to the holder of the forensic laboratory accreditation at the address of such holder at least twenty-one days prior to the date fixed for such hearing. An accredited laboratory may file a written answer to the charges with the commission, not less than five days prior to the hearing.

4. A laboratory director who knowingly operates a laboratory without obtaining the accreditation required by this article, or who, with the intent to mislead or deceive, misrepresents a material fact to the commission or DNA subcommittee, shall be subject to a civil penalty not to exceed seventy-five hundred dollars and such other penalties as are prescribed by the law.

5. The commission and the DNA subcommittee established pursuant to subdivision thirteen of this section may require and receive from any agency of the state or any political subdivision thereof such assistance and data as may be necessary to enable the commission or DNA subcommittee to administer the provisions of this article. The commission or DNA subcommittee may enter into such cooperative arrangements with the division of criminal justice services, the department of health, and any other state agency, each of which is authorized to enter into such cooperative arrangements as shall be necessary or appropriate. Upon request of the commission or DNA subcommittee, any state agency may transfer to the commission such officers and employees as the commission or DNA subcommittee may deem necessary from time to time to assist the commission or DNA subcommittee in carrying out its functions and duties. Officers and employees so transferred shall not lose their civil service status or rights, and shall remain in the negotiating unit, if any, established prior to such transfer.

6. All of the commission's records, reports, assessments, and evaluation with respect to accreditation, implementation of quality assurance standards (including proficiency testing) and monitoring thereof, shall be archived by the commission.

7. The commission and DNA subcommittee may establish, appoint, and set terms of members to as many advisory councils as it deems necessary to provide specialized expertise to the commission with respect to new forensic technologies including DNA testing methodologies.

8. The commission or DNA subcommittee shall designate one or more entities for the performance of proficiency tests required pursuant to the provisions of this article.

9. After reviewing recommendations from the division of criminal justice services, the commission, in consultation with the DNA subcommittee, shall promulgate a policy for the establishment and operation of a DNA identification index consistent with the operational requirements and capabilities of the division of criminal justice services. Such policy shall address the following issues:

(a) the forensic DNA methodology or methodologies to be utilized in compiling the index;

(b) procedures for assuring that the state DNA identification index contains the following safeguards:

(i) that any records maintained as part of such an index are accurate and complete;

(ii) that effective software and hardware designs are instituted with security features to prevent unauthorized access to such records;

(iii) that periodic audits will be conducted to ensure that no illegal disclosures of such records have taken place;

(iv) that access to record information system facilities, systems operating environments, data file contents whether while in use or when stored in a media library is restricted to authorized personnel only;

(v) that operation programs are used that will prohibit inquiry, record updates, or destruction of records from any source other than an authorized source of inquiry, update, or destruction of records;

(vi) that operational programs are used to detect and store for the output of authorized employees only all unauthorized attempts to penetrate the state DNA identification index;

(vii) that adequate and timely procedures exist to insure that any subject of the state DNA identification index has the right of access to and review of records relating to such individual contained in such index for the purpose of ascertaining their accuracy and completeness, including procedures for review of information maintained about such individuals and administrative review (including procedures for administrative appeal) and the necessary documentation to demonstrate that the information is inaccurate or incomplete;

(viii) that access to the index will be granted to an agency authorized by this article to have such access only pursuant to a written use and dissemination agreement, a copy of which is filed with the commission, which agreement sets forth the specific procedures by which such agency shall implement the provisions of subparagraphs (i) through (vii) of this paragraph, as applicable, and which agreement specifically prohibits the redisclosure by such agency of any information obtained from the DNA identification index; and

(ix) such policy shall provide for the mutual exchange, use and storage of DNA records with the system of DNA identification utilized by the federal bureau of investigation provided that the commission determines that such exchange, use and storage are consistent with the provisions of this article and applicable provisions of law.

10. Review, and if necessary, recommend modifications to, a plan for implementation of the DNA identification index submitted by the commissioner of criminal justice services pursuant to section nine hundred ninety-five-c of this article.

11. Upon the recommendation of the DNA subcommittee established pursuant to subdivision thirteen of this section, the commission shall designate one or more approved methodologies for the performance of forensic DNA testing, and shall review and act upon applications by forensic DNA laboratories for approval to perform forensic DNA testing.

12. Promulgate standards for a determination of a match between the DNA records contained in the state DNA identification index and a DNA record of a person submitted for comparison therewith.

13. (a) The commission shall establish a subcommittee on forensic DNA laboratories and forensic DNA testing. The chair of the subcommittee shall be appointed by the chair of the commission. The chair of the subcommittee shall appoint six other members to the subcommittee, one of whom shall represent the discipline of molecular biology and be appointed upon the recommendation of the commissioner of the department of health, one of whom shall represent the discipline of population genetics and be appointed upon the recommendation of the commissioner of the department of health, one of whom shall be representative of the discipline of laboratory standards and quality assurance regulation and monitoring and be appointed upon the recommendation of the commissioner of the department of health, one of whom shall be a forensic scientist and be appointed upon the recommendation of the commissioner of the

department of health, one of whom shall be representative of the discipline of population genetics and be appointed upon the recommendation of the commissioner of criminal justice services and one of whom shall be representative of the discipline of forensic science and be appointed upon the recommendation of the commissioner of criminal justice services. Members of the DNA subcommittee shall serve for three year terms and be subject to the conditions of service specified in section nine hundred ninety-five-a of this article.

(b) The DNA subcommittee shall assess and evaluate all DNA methodologies proposed to be used for forensic analysis, and make reports and recommendations to the commission as it deems necessary. The DNA subcommittee shall make binding recommendations for adoption by the commission addressing minimum scientific standards to be utilized in conducting forensic DNA analysis including, but not limited to, examination of specimens, population studies and methods employed to determine probabilities and interpret test results. The DNA subcommittee may require a demonstration by an independent laboratory of any proposed forensic DNA testing methodology proposed to be used by a forensic laboratory.

(c) The DNA subcommittee shall make binding recommendations for adoption by the commission with regard to an accreditation program for laboratories performing forensic DNA testing in accordance with the provisions of the state administrative procedure act. Such recommendations shall include the adoption and implementation of internal and external proficiency testing programs, including, if possible, a blind external proficiency testing program for forensic laboratories performing forensic DNA testing. The DNA subcommittee shall also provide the commission with a list of accepted proficiency testers.

(d) The DNA subcommittee shall be authorized to advise the commission on any other matters regarding the implementation of scientific controls and quality assurance procedures for the performance of forensic DNA testing, or on any other matters referred to it by the commission.

#### **§ 995-c. State DNA identification index**

1. Following the promulgation of a policy by the commission pursuant to subdivision nine of section nine hundred ninety-five-b of this article, the commissioner of criminal justice services is authorized to promulgate a plan for the establishment of a computerized state DNA identification index within the division of criminal justice services.

2. Following the review and approval of the plan by the DNA subcommittee and the commission and the filing of such plan with the speaker of the assembly and the temporary president of the senate, the commissioner of criminal justice services is hereby authorized to establish a computerized state DNA identification index pursuant to the provisions of this article.

3. Any designated offender subsequent to conviction and sentencing for a crime specified in subdivision seven of section nine hundred ninety-five of this article, shall be required to provide a sample appropriate for DNA testing to determine identification characteristics specific to such person and to be included in a state DNA identification index pursuant to this article.

4. The commissioner of the division of criminal justice services, in consultation with the commission, the commissioner of health, the director of the office of probation and correctional alternatives and the department of corrections and community supervision, shall promulgate rules and regulations governing the procedures for notifying designated offenders of the requirements of this section.

5. The sample shall be collected, stored and forwarded to any forensic DNA laboratory which has been authorized by the commission to perform forensic DNA testing and analysis for inclusion in the state DNA identification index. Such laboratory shall promptly perform the requisite testing and analysis, and forward the resulting DNA record only to the state DNA identification index in accordance with the regulations of the division of criminal justice services. Such laboratory shall perform DNA analysis only for those markers having value for law enforcement identification purposes. For the purposes of this article, the term

“marker” shall have the meaning generally ascribed to it by members of the scientific community experienced in the use of DNA technology.

6. DNA records contained in the state DNA identification index shall be released only for the following purposes:

(a) to a federal law enforcement agency, or to a state or local law enforcement agency or district attorney's office for law enforcement identification purposes upon submission of a DNA record in connection with the investigation of the commission of one or more crimes or to assist in the recovery or identification of specified human remains, including identification of missing persons, provided that there exists between the division and such agency a written agreement governing the use and dissemination of such DNA records in accordance with the provisions of this article;

(b) for criminal defense purposes, to a defendant or his or her representative, who shall also have access to samples and analyses performed in connection with the case in which such defendant is charged;

(c) after personally identifiable information has been removed by the division, to an entity authorized by the division for the purpose of creating or maintaining a population statistics database or for identification research and protocol development for forensic DNA analysis or quality control purposes.

7. Requests for DNA records must be in writing, or in a form prescribed by the division authorized by the requesting party, and, other than a request pursuant to paragraph (b) of subdivision six of this section, maintained on file at the state DNA identification index in accordance with rules and regulations promulgated by the commissioner of the division of criminal justice services.

8. The defendant, including the representative of a defendant, in a criminal action or proceeding shall have access to information in the state DNA identification index relating to the number of requests previously made for a comparison search and the name and identity of any requesting party.

9. (a) Upon receipt of notification of a reversal or a vacatur of a conviction, or of the granting of a pardon pursuant to article two-A of this chapter, of an individual whose DNA record has been stored in the state DNA identification index in accordance with this article by the division of criminal justice services, the DNA record shall be expunged from the state DNA identification index, and such individual may apply to the court in which the judgment of conviction was originally entered for an order directing the expungement of any DNA record and any samples, analyses, or other documents relating to the DNA testing of such individual in connection with the investigation or prosecution of the crime which resulted in the conviction that was reversed or vacated or for which the pardon was granted. A copy of such application shall be served on the district attorney and an order directing expungement may be granted if the court finds that all appeals relating to the conviction have been concluded; that such individual will not be retried, or, if a retrial has occurred, the trier of fact has rendered a verdict of complete acquittal, and that expungement will not adversely affect the investigation or prosecution of some other person or persons for the crime. The division shall, by rule or regulation, prescribe procedures to ensure that the DNA record in the state DNA identification index, and any samples, analyses, or other documents relating to such record, whether in the possession of the division, or any law enforcement or police agency, or any forensic DNA laboratory, including any duplicates or copies thereof, at the discretion of the possessor thereof, are either destroyed or returned to such individual, or to the attorney who represented him or her at the time such reversal, vacatur or pardon, was granted. The commissioner shall also adopt by rule and regulation a procedure for the expungement in other appropriate circumstances of DNA records contained in the index.

(b) As prescribed in this paragraph, if an individual, either voluntarily or pursuant to a warrant or order of a court, has provided a sample for DNA testing in connection with the investigation or prosecution of a crime and (i) no criminal action against the individual relating to such crime was commenced within the period specified by section 30.10 of the criminal procedure law, or (ii) a criminal action was commenced against the individual relating to such crime which resulted in a complete acquittal, or (iii) a criminal action against

the individual relating to such crime resulted in a conviction that was subsequently reversed or vacated, or for which the individual was granted a pardon pursuant to article two-A of this chapter, such individual may apply to the supreme court or the court in which the judgment of conviction was originally entered for an order directing the expungement of any DNA record and any samples, analyses, or other documents relating to the DNA testing of such individual in connection with the investigation or prosecution of such crime. A copy of such application shall be served on the district attorney and an order directing expungement may be granted if the court finds that the individual has satisfied the conditions of one of the subparagraphs of this paragraph; that if a judgment of conviction was reversed or vacated, all appeals relating thereto have been concluded and the individual will not be retried, or, if a retrial has occurred, the trier of fact has rendered a verdict of complete acquittal, and that expungement will not adversely affect the investigation or prosecution of some other person or persons for the crime. If an order directing the expungement of any DNA record and any samples, analyses or other documents relating to the DNA testing of such individual is issued, such record and any samples, analyses, or other documents shall, at the discretion of the possessor thereof, be destroyed or returned to such individual or to the attorney who represented him or her in connection with the application for the order of expungement.

#### **§ 995-d. Confidentiality**

1. All records, findings, reports, and results of DNA testing performed on any person shall be confidential and may not be disclosed or redisclosed without the consent of the subject of such DNA testing. Such records, findings, reports and results shall not be released to insurance companies, employers or potential employers, health providers, employment screening or personnel companies, agencies, or services, private investigation services, and may not be disclosed in response to a subpoena or other compulsory legal process or warrant, or upon request or order of any agency, authority, division, office, corporation, partnership, or any other private or public entity or person, except that nothing contained herein shall prohibit disclosure in response to a subpoena issued on behalf of the subject of such DNA record or on behalf of a party in a civil proceeding where the subject of such DNA record has put such record in issue.

2. Notwithstanding the provisions of subdivision one of this section, records, findings, reports, and results of DNA testing, other than a DNA record maintained in the state DNA identification index, may be disclosed in a criminal proceeding to the court, the prosecution, and the defense pursuant to a written request on a form prescribed by the commissioner of the division of criminal justice services. Notwithstanding the provisions of subdivision one of this section, a DNA record maintained in the state DNA identification index may be disclosed pursuant to section nine hundred ninety-five-c of this article.

#### **§ 995-e. Applicability**

This article shall not apply to a forensic DNA laboratory operated by any agency of the federal government, or to any forensic DNA test performed by any such federal laboratory.

#### **§ 995-f. Penalties**

Any person who (a) intentionally discloses a DNA record, or the results of a forensic DNA test or analysis, to an individual or agency other than one authorized to have access to such records pursuant to this article or (b) intentionally uses or receives DNA records, or the results of a forensic DNA test or analysis, for purposes other than those authorized pursuant to this article or (c) any person who knowingly tampers or attempts to tamper with any DNA sample or the collection container without lawful authority shall be guilty of a class E felony.