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Report of Investigation
of the Onondaga County Health Department
Center for Forensic Sciences

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EXECUTIVE SUMMARY

On November 30, 2012, the Inspector General received a referral from the New York State Commission on Forensic Science (Forensic Commission) of a complaint involving a number of allegations of misconduct by the Onondaga County Health Department Center for Forensic Sciences (Crime Lab). The Syracuse Police Department had made the complaint to the American Society of Crime Laboratory Directors/ Laboratory Accreditation Board (ASCLD/LAB), which referred the matter to the Forensic Commission.

The Inspector General has been designated by the Forensic Commission, pursuant to federal law, as the governmental entity responsible for conducting independent, external investigations into “allegations of serious negligence or misconduct substantially affecting the integrity of forensic results committed by employees or contractors of any forensic laboratory system.” Even though most of the allegations by the Syracuse Police Department did not rise to this level of concern, the Inspector General investigated each allegation, recognizing the importance of public confidence in the operation and results of the Crime Lab.

The Inspector General determined that there was no serious negligence or misconduct substantially affecting the integrity of forensic results committed by the staff or management of the Crime Lab. Rather than alleging actual misconduct of this nature, the Syracuse Police Department’s complaint appeared to reflect its misconception that the responsibility to communicate on case matters lies primarily with the Crime Lab. The Inspector General’s investigation found that in a number of instances, Syracuse Police failed to adequately communicate with the Crime Lab, and, at times, did not appear to fully understand the Crime Lab’s procedures and authority.

The Inspector General notes that the Crime Lab has routinely provided training to agencies using the laboratory’s services, including the Syracuse Police Department. Given its apparent lack of adequate understanding of laboratory procedures and authority, the Inspector General determined that the Syracuse Police Department failed to take steps to ensure that its command and senior staff received training by the Crime Lab. The Inspector General recommends that the Crime Lab provide training specific to the Syracuse Police Department in areas of deficiency as described in this report.

The Onondaga County Commissioner of Health advised the Inspector General that she and the Crime Lab accept the report’s findings and recommendations, and that training will be offered to the Syracuse Police Department.

INTRODUCTION AND BACKGROUND

Operation and Oversight of Forensic Laboratories in New York State

The Onondaga County Health Department Center for Forensic Sciences (Crime Lab) is a regional forensic laboratory that serves Onondaga County, including the City of Syracuse, and surrounding counties. The Crime Lab provides scientific analysis of forensic evidence for law enforcement and public safety agencies within that area. The Crime Lab consists of several sections including Latent Prints, Forensic Chemistry, Firearms, Digital Evidence, Forensic Biology/DNA, and until recently, Trace Evidence.

Kathleen Corrado, Ph.D. serves as the Director of the Crime Lab and is responsible for oversight of its operation. Corrado was appointed by the Onondaga County Executive and reports to the Onondaga County Health Commissioner.¹

All public laboratories conducting forensic testing in the state are subject to the oversight of the New York State Commission on Forensic Science (Forensic Commission). The Forensic Commission consists of various members from the forensic and legal community and is chaired by the Commissioner of the New York State Division of Criminal Justice Services.² The Forensic Commission determines accreditation standards for forensic laboratories in New York State, and, as part of its oversight responsibilities, reviews reported instances of laboratories' non-compliance with the standards. In addition, the Forensic Commission requires that New York State laboratories be accredited by the American Society of Crime Laboratory Directors/ Laboratory Accreditation Board (ASCLD/LAB).

Under the rules established by the Forensic Commission, laboratories are inspected by ASCLD/LAB representatives upon initial application for accreditation and approximately every two and one-half years thereafter. The inspection process is designed to measure the laboratory's compliance with established standards pertaining to management, operations, personnel, procedures, equipment, physical plant, security, and health and safety. In between inspections, ASCLD/LAB relies on laboratories to demonstrate continued compliance with established standards and accreditation criteria through annual proficiency testing of laboratory analysts and self-reporting of deviations from the standards and criteria.

¹ The appointment of the Crime Lab Director was the subject of a Memorandum of Agreement between Onondaga County and the City of Syracuse adopted by the Onondaga County Legislature in 1997. The Memorandum states, "The parties desire, and ASCLD recommends, that the Crime Lab be under the direction of a Crime Lab Director with an advanced natural science degree whose position will neither report to the Sheriff's Department nor the Police Department. The Crime Lab Director shall be appointed by the County Executive, after consultation with the Mayor of the City of Syracuse, the District Attorney, the County Sheriff, and the Chief of the Syracuse Police Department."

² Onondaga District Attorney William Fitzpatrick and Crime Lab Director Corrado are both members of the Forensic Commission.

The Crime Lab also receives funding as part of the Paul Coverdell Forensic Science Improvement Grants Program, which is administered by the United States Department of Justice. The Coverdell program provides funds to state and local governments to improve the timeliness and quality of forensic science and medical examiner services, and to eliminate backlogs in the analysis of forensic evidence.

Under the Federal Justice for All Act of 2004, entities applying for Coverdell funding are required to certify that “a government entity exists and an appropriate process is in place to conduct independent external investigations into allegations of serious negligence or misconduct substantially affecting the integrity of forensic results committed by employees or contractors of any forensic laboratory system . . . that will receive a portion of the grant amount.” The Forensic Commission has designated the New York State Inspector General’s Office as the governmental entity responsible for conducting the independent external investigations, as required by the Act.

Allegations by the Syracuse Police Department of Improper Actions by Crime Lab

In a letter dated October 15, 2012, Syracuse Police Department Deputy Chief Shawn Broton complained to ASCLD/LAB about a number of allegedly improper actions by the Crime Lab. The Syracuse Police Department’s letter included eight categories of complaints, some of which cited specific case examples. The categories of complaints were as follows:

- 1. Inappropriate line of communication with the District Attorney’s Office during open investigations;*
- 2. Lack of communication between [the Crime Lab] and the police department;*
- 3. Results of firearms unit during 2005 may be inaccurate;*
- 4. Termination of trace evidence section;*
- 5. Use of police reports;*
- 6. Examination requests made to [the Crime Lab] by the police department are disregarded;*
- 7. Incomplete examinations; and*
- 8. Improper laboratory procedures.*

ASCLD/LAB conducted an investigation of the allegations. ASCLD/LAB also reviewed written responses to the complaints submitted by the Crime Lab and by Onondaga County District Attorney William Fitzpatrick. In its report, ASCLD/LAB concluded there was “no finding of nonconformance of any ASCLD/LAB-International accreditation program

requirements [by the Crime Lab].”³ ASCLD/LAB also forwarded the Syracuse Police Department’s complaint letter to the Forensic Commission, which referred the matter to the Inspector General for investigation.

THE INSPECTOR GENERAL DID NOT SUBSTANTIATE THE ALLEGATIONS

The Inspector General’s investigation included a review of each of the Syracuse Police Department’s allegations including each of the referenced case examples. The Inspector General also reviewed the Crime Lab’s and Onondaga County District Attorney’s responses to the complaints. The Inspector General conducted more than 20 interviews of staff of the Crime Lab, police department, and district attorney’s office, and other individuals. The Inspector General also obtained and reviewed case files and numerous other documents obtained from these entities.

A number of the allegations and specific cases cited in the complaint failed on their face to raise “serious negligence or misconduct substantially affecting the integrity of forensic results” – the threshold for referral to the Inspector General. However, because of the importance of public confidence in management, operation, and results of the Crime Lab, the Inspector General’s investigation included each of the allegations and case examples cited in the Syracuse Police Department’s complaint.

The Inspector General notes that several of the allegations do not directly involve the performance of the Crime Lab, but rather arise from the Syracuse Police Department’s questioning the actions of the Onondaga County District Attorney and his office. During interviews with both Deputy Chief Broton and District Attorney Fitzpatrick, it was clear that the relationship between the two offices is currently strained with both offices publicly criticizing the other in recent months. It is important to note that the Inspector General’s jurisdiction does not include the District Attorney’s Office or the Police Department.

The Inspector General’s findings as to each of eight categories of the Syracuse Police Department’s allegations are discussed in detail below:

1. Inappropriate Communication Between Crime Lab and District Attorney’s Office During Open Investigations

In his sworn testimony to the Inspector General, Broton complained that the Crime Lab appears to operate under the belief that it works for the Onondaga County District Attorney’s

³ A copy of ASCLD/LAB’s report of its investigation is attached.

Office and is less responsive to the Syracuse Police Department, which is the laboratory's primary customer. Broton asserted that while the police department makes decisions as to testing performed by the Crime Lab during open investigations prior to arrest, the district attorney drives the decision making once an arrest has been made in a case and the court process has commenced. Broton conceded, however, that the district attorney should be involved in discussions about testing because the cases will ultimately be prosecuted by that office. When interviewed by the Inspector General, District Attorney Fitzpatrick contested Broton's assertion that it is accepted practice that the police are solely responsible for making pre-arrest testing decisions. According to Fitzpatrick, the district attorney's office is not involved in many pre-arrest cases because those cases have not yet been brought to his attention; however, his office often is actively involved in the most serious pre-arrest cases, especially homicides.

As expressed by Broton, the Crime Lab neither adequately responds to Syracuse Police Department requests for testing nor communicates sufficiently with the department. On the contrary, Broton contended, the Crime Lab relies too heavily on requests and guidance from the Onondaga County District Attorney. In fact, the District Attorney, as the chief law enforcement official in the county, is possessed of both the knowledge and legal duty of ensuring the appropriate utilization of evidence in the prosecution of cases, and the Crime Lab's responsiveness to requests and guidance from that office is appropriate and necessary.⁴

However, it is clear that the Crime Lab does not, and should not, work for either entity. The Crime Lab is separate from and independent of both the district attorney's office and submitting law enforcement agencies. The Crime Lab specifically advises submitting agencies of the following:

The [Crime Lab] will accept evidence submitted by prosecutors, law enforcement agencies or the Medical Examiner's Office.

The [Crime Lab is] responsible for determining the appropriate test methods utilized for analysis.

The customer(s) agrees to allow the [Crime Lab] to determine, based upon existing policies, when submitted items will not be examined as requested.⁵

Broton cited two cases as examples of the alleged "inappropriate communication" between the Crime Lab and the District Attorney. In the first case, Broton alleged that during an open homicide investigation the Crime Lab conducted a muzzle-to-target distance determination using non-primer related gunshot residues on an article of a victim's clothing at the request of the Onondaga District Attorney, despite a Syracuse Police Department request not to do so based on its concern that the muzzle-to-target distance test might contaminate possible trace evidence.

⁴ See *People v. Pitts*, 4 NY3d 303 (2005).

⁵ *Information for Submitting Agencies* is posted on the Crime Lab's Web site.

However, the Inspector General determined that Syracuse Police did not express any concerns about the test until after the District Attorney's Office had requested the Crime Lab to perform it. Moreover, the Inspector General's investigation found although the test was performed at the request of the District Attorney's Office as alleged, it was not improper and did not negatively impact the integrity of forensic results.

Specifically, the test at issue was designed to determine the proximity of a shooter to the victim. The Crime Lab had advised submitting agencies in January 2012 that this test was available and that analysts were fully trained and competent to perform such test. Onondaga County Assistant District Attorney Matthew Doran, the Homicide Bureau Chief, requested the test because he thought it might be ultimately useful in this case.⁶ Doran advised the Inspector General that it was only after he requested the test that he learned from a subordinate that Syracuse Police had concerns about the test. Syracuse Police, however, never communicated their concerns directly to the Crime Lab.

While the Crime Lab could have contacted the Syracuse Police Department prior to conducting the test, it acted on a lawful and reasonable request from the District Attorney's Office. In addition, communications between the District Attorney's Office and the Crime Lab were not improper.

In the second case cited under this heading, Broton alleged that the Crime Lab contacted the District Attorney in a pending homicide investigation to "intervene and stop transfer of evidence to an outside lab." The Inspector General determined that this allegation was unsubstantiated.

Syracuse Police submitted evidence in this case to the Crime Lab on October 2, 2012. Detective Terrence McGinn, a member of the police Crime Scene Unit, stated that in addition to the items that he submitted to the Crime Lab, he also recovered, but did not submit, a small piece of copper jacketing that appeared to have "fibrous material" on it. McGinn explained that he thought the item should be submitted to a trace expert for potential fiber analysis to determine if the fiber matched the clothing of one of the individuals who had been shot.

Broton explained that the item was not sent to the Crime Lab because Syracuse Police were aware that the Crime Lab would no longer be conducting trace evidence analysis, and were concerned that this item of trace evidence would not be analyzed. In fact, on August 2, 2012, the Crime Lab had advised submitting agencies that the Trace Evidence Section would be eliminated, and on October 12, 2012, the Crime Lab had formally notified submitting agencies that the Trace Evidence Section would be eliminated effective November 1, 2012. The Crime Lab further advised that comparative trace analysis requests could be submitted to the New York State Police or FBI forensic laboratories, and that the Crime Lab would assist with such requests.

⁶ The Onondaga County Medical Examiner's Office, during its involvement in the homicide investigation, had initially recommended that the test be conducted.

The Crime Lab continued to inspect submitted items for trace evidence and retained the ability to recover such evidence for submission to other laboratories where appropriate.

The Crime Lab's Firearms Section completed an analysis of the submitted items by October 8, 2012. However, Justine Kreso, the Firearms Section Supervisor, upon reviewing the list of recovered items the Syracuse Police had input into the computerized submission system, noticed items that had not been submitted. Kreso contacted the Onondaga County District Attorney's Office to determine why items had not been submitted, and Assistant District Attorney Doran advised Kreso to contact the police. Kreso was then contacted by a Syracuse Police Department detective who advised her that because one of the items had potential fibers on it, police intended to send it to a different laboratory. Kreso advised the detective that the Crime Lab was able to collect trace evidence and would also be able to process the projectile for DNA. The detective advised her that the decision to go to another laboratory was "over their heads." Kreso then advised Doran of this conversation. Neither Kreso nor anyone else at the Crime Lab requested that the District Attorney intervene.

Syracuse Police then transported the copper jacketing to the New York State Police Forensic Investigation Center in Albany. The State Police advised Syracuse Police at that time that they no longer performed trace evidence analysis of hairs and fibers, and, as a result, did not accept the evidence. Syracuse Police then requested the FBI to conduct an analysis of the trace evidence. The FBI agreed, and Syracuse Police sent the item to that agency.

On October 15, 2012, the Onondaga County District Attorney learned that the evidence had been sent out of state to the FBI laboratory for testing. The District Attorney, upon his own initiative, took steps to have the evidence returned. As District Attorney Fitzpatrick stated in his written response to the complaint, "[n]obody at [the Crime Lab] directed anyone at my office to stop the transfer of evidence. I did." Fitzpatrick stated that he did so because, in his opinion, trace evidence from a projectile found on the ground had very little evidentiary value. Fitzpatrick also stated that the additional handling of the evidence had the potential to destroy any valuable DNA that might have been on the copper jacketing. Assistant District Attorney Doran also noted that involving forensic experts from a laboratory outside the county might require their presence in Syracuse to testify, resulting in additional scheduling issues and costs to the county. The suspect in this case has been indicted for Murder in the Second Degree.

The Crime Lab also had concerns about the value of examining the copper jacketing for fiber evidence. After the item was returned by the FBI, the Crime Lab's trace evidence expert, Tamara Danner, did in fact examine the item and confirmed the belief that it had little evidentiary value.⁷ Danner stated, "I examined the evidence. The white cotton fibers were very dirty, they came off the floor . . . when I see dirty fibers I think dust bunny . . . when I examined it I immediately thought it was some stuff that was picked up from the floor." Danner also

⁷ Since this case was submitted prior to November 1, 2012, the Trace Evidence Section was still in operation.

explained that a colorless cotton fiber such as the one on the copper jacketing has little forensic value. Danner later issued a report to that effect and further stated, “No further examination can be conducted on these fibers.”

The Crime Lab’s communications with the District Attorney’s Office were appropriate and part of an effort to ensure that all the evidence in the case was submitted and tested. It is important to note that Broton alleged that the Crime Lab failed to adequately communicate with the Syracuse Police Department, but in this case, Syracuse Police failed to initially advise the Crime Lab or the District Attorney that it intended to send an item of evidence to another laboratory. Had they done so, this matter could have been resolved without the rancor that ultimately arose. Furthermore, the District Attorney, upon his own initiative, commenced action to retrieve the evidence at issue from the FBI. Broton’s complaint, therefore, is unsubstantiated and misplaced.

Indeed, as previously stated, a number of the allegations in Broton’s complaint, including this one, appear to be attempts to hold the Crime Lab accountable for decisions of the District Attorney with which the Syracuse Police disagree. The decisions of the District Attorney regarding prosecutions of criminal cases are beyond the scope of this report.

2. Lack of Communication Between the Crime Lab and the Syracuse Police Department

Broton, citing one example, further complained that the Crime Lab failed to adequately communicate with the Syracuse Police Department. According to Broton, the Crime Lab neglected to inform Syracuse Police in April 2012 of a bed bug “infestation” in the laboratory. The Inspector General found the characterization of this matter as an “infestation” to be a gross exaggeration and that the Crime Lab had in fact communicated it to Syracuse Police.

The “infestation” referred to involved three bed bugs (two dead, one alive) found on articles of clothing submitted to the Crime Lab for testing by the Syracuse Police Department. After the discovery, Crime Lab Director Corrado contacted the Onondaga County Health Department and developed and implemented a plan to address the situation. Further, the Crime Lab documented that when it returned the evidence to the Syracuse Police Department’s property officer, it clearly marked “caution bedbugs” on the packaging and attached a photograph of the bed bugs. The Crime Lab took appropriate action to address the matter and to notify the submitting agency. Moreover, this issue did not impact the Crime Lab’s ability to perform its assigned function or the reliability of its test results.

In his testimony to the Inspector General, Broton also complained that the Crime Lab often provides the District Attorney with laboratory reports before the Syracuse Police

Department. This assertion is inaccurate. The Crime Lab explained that it enters completed reports into the computerized BEAST (Bar coded Evidence Analysis Statistical Tracking) system, which is simultaneously accessible by the District Attorney and all submitting agencies, including Syracuse Police. The BEAST system is designed to provide information management support specifically for forensic laboratories and medical examiners.

Although Broton provided only this single example under this heading, concerns related to communications from the Crime Lab were a common theme throughout the complaint. Broton contended that the Crime Lab fails in its responsibility to adequately communicate with the Syracuse Police Department. Crime Lab Director Corrado disputed this assertion. In her written response to ASCLD/LAB, Corrado provided numerous Phone/Case File Reports documenting examples of Crime Lab personnel contacting or attempting to contact Syracuse Police. Corrado also noted that the Syracuse Police Department is the Crime Lab's largest submitting agency, and that the cases cited in the complaint represent an extremely small percentage of the cases submitted by Syracuse Police. Broton agreed, and further acknowledged that the Crime Lab performs very well in many respects. This issue of communications will be discussed further as it applies to additional allegations cited in the complaint.

3. Results of Firearms Unit During 2005 May be Inaccurate

Broton alleged that a Crime Lab firearms examiner made an error in a 2005 examination of evidence in the case of a shooting involving Syracuse Police and then switched evidence to conceal his error. The Inspector General's investigation found no basis to this allegation.

On July 21, 2005, two Syracuse Police detectives, Eric Carr and Kevin Hamberger, were involved in a high speed chase and shooting incident in Syracuse. Carr was driving a police vehicle; Hamberger was a passenger. The detectives reported that during the course of a routine investigation, they heard shots fired from behind them. When the two detectives looked behind them, they saw the occupants of two vehicles exchanging gunfire. The two vehicles, a minivan and a sedan, then passed the police vehicle on either side, and the detectives observed someone in the sedan firing at the minivan. The detectives began to pursue the two vehicles. Both detectives reported that Hamberger fired two shots at the shooter from the passenger side window of the police vehicle. Carr and Hamberger were inconsistent as to whether the police vehicle was moving or had come to a rolling stop at the time. Both detectives further reported that Carr, while driving, fired one shot at the shooter. None of the rounds fired by the detectives struck anyone. When the minivan turned right, the detective continued their pursuit of the sedan, which proceeded straight. During the pursuit, the detectives called for assistance and a large number of Syracuse Police officers responded.

Ultimately the sedan crashed into a house and the occupants of the vehicle fled on foot. Responding officers, however, apprehended the occupants of both vehicles. The driver of the minivan was found to have been seriously injured by shots fired from someone in the sedan.

As stated above, both detectives reported that Carr fired one round and Hamberger fired two. At the time of the incident, Syracuse Police were issued .45 caliber sidearms. When asked if they counted the rounds in their weapons after the incident, Carr and Hamberger stated that they removed the clips from their weapons and confirmed that they had fired one and two rounds, respectively, by examining their magazines. The detectives explained that the magazines had openings in them and by looking through the openings they were able to determine how many rounds remained in the magazines. When asked if they or anyone removed the rounds from the magazine to physically count them, they stated that no one did so. When asked if their weapons were taken by Syracuse Police, both stated that they retained their weapons. The detectives further stated that in officer-involved shootings, the normal practice is for the weapons to be taken into custody and the officers to be issued replacement weapons. Neither detective was able to explain why these steps were not taken in this instance. When questioned by the Inspector General, Deputy Chief Broton also could not explain why normal practice was not followed.

On July 22, 2005, the Syracuse Police Department submitted to the Crime Lab shell casings and other evidence recovered at the scene. This evidence included three .45 caliber shell casings. Syracuse Police did not identify this case as an officer-related shooting when submitting the evidence, and, as discussed, did not collect the detectives' weapons for submission to the Crime Lab as consistent with established protocol.

On July 28, 2005, Crime Lab Firearms Examiner Peter Marcheterre examined the submitted firearms evidence. The evidence consisted of the three .45 caliber shell casings and numerous 9mm shell casings. Marcheterre determined that all three .45 caliber shell casings were fired from the same weapon. Pursuant to Crime Lab policy and practice, a second Firearms Examiner, Gary Pratt, verified these findings. Pratt, a retired Syracuse Police Officer and certified Firearms Examiner, had been contracted by the Crime Lab to work in the Firearms Section. On August 11, 2005, the Crime Lab issued a report of these finding.⁸

On September 29, 2005, the District Attorney's Office contacted the Crime Lab advising that the report was inconsistent with the accounts of Detectives Carr and Hamberger, who, as noted, had both reported that Carr had fired one round and Hamberger had fired two. On September 30, 2005, Lab Director Corrado directed Marcheterre to repeat the comparison testing of the rounds and for Pratt to again review the results. Marcheterre and Pratt did so and both again concluded that the three shell casings were fired from the same weapon. It was then

⁸ During the course of this investigation, a transcription error was discovered in the report, specifically that the Firearms Examiner's report did not match his examination notes. This error was unrelated to the results for the three casings at issue. Upon discovery of the error, the Crime Lab issued a correction memorandum.

determined that the detectives should submit their firearms to the Crime Lab for test-firing and comparison to the three shell casings at issue.

Rather than surrendering their weapons, the detectives appeared at the Crime Lab, handed the weapons to laboratory personnel for test-firing while they waited, and then retook possession of the firearms when the testing was complete. Marcheterre conducted the test-firing of both weapons, one in the morning and one in the afternoon. Marcheterre then compared the three spent cartridge cases to the test-firing results and determined that all three rounds had been fired from Carr's weapon. Pratt again confirmed this result. Justine Kreso, the current supervisor of the Crime Lab's Firearms Section, was present for the test-firing.

On October 13, 2005, during a meeting of members of the Onondaga District Attorney's Office, the Crime Lab, and the Syracuse Police Department to discuss the Crime Lab's findings, it was decided that the shell casings and test-firing results would be sent to the Monroe County Public Safety Laboratory for examination. John Clark, a Firearms Examiner and now Acting Director of the Monroe County Public Safety Laboratory, examined the shell casings and confirmed the results reported by Marcheterre.

Broton alleged in his complaint that, "[i]t is possible that the original evidence in this case was switched with later fired (by the lab) ammunition to support their conclusions." No evidence exists to support this allegation. When the Inspector General asked what evidence he had to substantiate this allegation, Broton stated that he did not have proof "beyond a reasonable doubt," but stated, "I think there is reasonable cause to believe that my theory is correct." Broton then explained that he based this belief on the testimony of the two detectives and the crime scene unit analysis of the scene. Broton argued that the collection of three .45 caliber shell casings confirmed the detectives' reports. He further stated that after the test-firing, Pratt, in a conversation with him and the detectives, "alluded" to a large backlog of evidence testing at the Crime Lab and stated that the testing of the casings was "quick and dirty." Broton further alleged that Pratt "alluded" to not looking at the shell casings until after the test-firing.

The Inspector General interviewed Marcheterre and Pratt. Marcheterre defended his analysis and denied switching shell casings from the test-firing. Similarly, Pratt stated that he reviewed and confirmed Marcheterre's results both before and after the test-firing. Pratt denied saying otherwise to Broton or anyone at the Syracuse Police Department, and denied using the term "quick and dirty." The Inspector General's review of the Crime Lab's file regarding this matter confirmed that Marcheterre conducted an examination of the shell casings and that Pratt confirmed his results before the test-firings and again after them.

Marcheterre and Pratt surmised that Syracuse Police might not have recovered all the shell casings from the scene, which could at least partially explain the discrepancy between the Crime Lab's finding and the detectives' recollections. Broton dismissed this suggestion out of hand, stating he was confident that all shell casings were recovered. Despite Broton's claimed

confidence, it appears possible that one or more shell casings were not recovered. The incident, as described by police, was a high-speed pursuit involving multiple cars over a considerable distance. In addition, multiple Syracuse Police vehicles responded to the scene. There are various possible explanations for one or more shell casings to have been missed or unrecovered: a shell casing could have landed in the detectives' car, been buried in the dirt along the roadways, or lodged in the tire of a vehicle driving through or responding to the area. Both Marcheterre and Pratt also questioned why the detectives' weapons had not been taken into custody by the Syracuse Police Department pursuant to established and proper protocol. No Syracuse Police official, including Broton, was able to answer that question during the Inspector General's investigation.

The Inspector General found no evidence that Marcheterre's results were erroneous. The results were confirmed by Pratt at the Crime Lab and later by the Monroe County Public Safety Laboratory. There is also no evidence to support Broton's allegation that Marcheterre or anyone else switched shell casings after the test-firing. The most likely explanation appears to be that the two detectives were mistaken about the number of rounds they fired in a situation that was chaotic, fast-moving, and dangerous.

4. The Crime Lab's Termination of its Trace Evidence Section

Broton complained about the termination by the Crime Lab of its Trace Evidence Section. Prior to its termination, the Crime Lab's Trace Evidence Section was accredited by ASCLD/LAB to perform forensic analysis of hairs, fibers, tape, glass, headlamps, and physical matching. One analyst was assigned to the section. As mentioned above, the Crime Lab terminated the section effective November 1, 2012.

The Crime Lab stated in its response to the complaint that the decision to terminate the Trace Evidence Section was, "due to the limited information that trace evidence analysis can usually provide and to the increase in sensitivity in DNA analysis." The Crime Lab also noted that many forensic laboratories in New York State and throughout the United States have also eliminated hair and fiber comparison for these same reasons. Crime Lab Director Corrado explained that DNA testing has replaced trace evidence in many cases. For example, DNA analysis of hair is often possible, and is far more reliable than trace evidence analysis. In addition, while hair comparison, at best, allows an analyst to determine that two hairs are "consistent," DNA testing can connect hair evidence to a specific person.

Corrado further explained that the Crime Lab had not received sufficient testing requests for its staff to remain proficient in all the areas included in the Trace Evidence Section. The Crime Lab reported that only two hair comparisons were requested in 2011 and 2012, and no fiber comparisons or other comparisons were requested in the last three years. In order to

maintain proficiency as established by ASCLD/LAB, the Crime Lab must present a body of work of actual comparisons; however, given the small number of comparison submissions, it was unable to do so.

The Crime Lab's decision to terminate its Trace Evidence Section was within its authority and in no way improper. Neither the Forensic Commission nor ASCLD/LAB requires any laboratory to provide a particular service. Rather, both require that when a laboratory does perform forensic analysis in a particular area, the analysis must be performed competently, accurately, and subject to appropriate accrediting criteria. Indeed, the Crime Lab's decision to terminate its Trace Evidence Section resulted in part from its concerns about maintaining its accreditation and proficiency in light of the small number of comparison submissions.

5. Use of Police Reports

Broton also alleged that the Crime Lab routinely uses police reports, which it accesses online, and that the use of these reports could potentially taint the Crime Lab's objectivity. The Inspector General found nothing improper in the use of police reports by the Crime Lab, nor any evidence that such use taints the Crime Lab's objectivity.

Crime Lab Director Corrado reported that it uses police reports for various purposes. For example, it uses them to verify the correct spelling of names. The Latent Print Section also uses the reports to ascertain correct dates of birth for suspects and/or victims in order to obtain the correct fingerprint cards from the various fingerprint database to compare to developed prints. Crime Lab personnel also refer to the reports to determine if an arrest has been made to assist in prioritizing work.

In addition, the Crime Lab inputs DNA profiles into the New York State DNA Database, which is part of the Combined DNA Index System (CODIS).⁹ New York State has a rigorous verification process to ensure that only DNA samples that are authorized by law are included in the database. The Crime Lab is required by federal and state regulation to verify the origin of evidence collection and is subject to periodic inspections and audits regarding these requirements. The Crime Lab uses the police reports to verify CODIS eligibility. The Crime Lab is also required to document its efforts to identify the source of DNA entered into the database. Police reports are often included in the case file to document such efforts.

With regard to the allegation that the reports potentially taint the objectivity of Crime Lab personnel, the Crime Lab reported that only supervisors have direct access to the reports and that they only share with analysts information the analysts need to perform their duties.

⁹ CODIS is a computer program operated by the FBI which includes local, state and national databases of DNA profiles from convicted offenders, unsolved crime scene evidence, and missing persons.

Broton advised that in making this complaint, he was primarily concerned that the Crime Lab used the police reports to obtain information regarding a case rather than contacting Syracuse Police. Although the Crime Lab could potentially make greater efforts to contact investigating detectives, the allegation that it improperly uses police reports is unsubstantiated.

6. Examination Requests Made to the Crime Lab by the Police Department are Disregarded

Broton alleged that the Crime Lab disregarded examination requests, citing six cases. The most significant case was a homicide that occurred on December 1, 2009. In that case, evidence was submitted to the Crime Lab for latent fingerprint analysis on December 10, 2009, but was not analyzed at that time. On August 18, 2010, Syracuse Police arrested two suspects in the homicide for an unrelated armed robbery in which a shot was fired at an officer. Broton contended that if the items had been analyzed in a timely manner, the suspects might have been in custody prior to the August 18, 2010 incident.

While far short of serious negligence or misconduct affecting laboratory results, the Inspector General found that this case demonstrates a breakdown in communication within the law enforcement community, for which the Syracuse Police Department, the Onondaga District Attorney's Office, and the Crime Lab share responsibility. However, the Crime Lab's effort to ascertain the status of the case was ultimately the impetus for the analysis to move forward.

The homicide occurred in a parking lot in Syracuse. At the scene, police found on the ground a bus pass identification of one of two suspects. Despite this discovery, insufficient evidence existed at that time to make an arrest. As stated above, additional evidence in this case was also submitted to the Crime Lab on December 10, 2009, by the SPD Crime Scene Unit. A large number of items of evidence were submitted for analysis. The computerized BEAST laboratory submission request listed numerous items for latent print examination, including more than 50 compact disks recovered from the victim's van that was found near the scene.

The Crime Lab receives testing requests almost exclusively through the BEAST lab computer system. Submitting agencies input the evidence items collected and annotate items with a two-letter code to indicate the test or tests requested. For example, if DNA testing is requested, the submitting agency annotates the item of evidence with "FB" for forensic biology or "FA" for firearms. In this case, the items were annotated with "LP" for latent prints. The BEAST system also includes a case type inputted by the submitting agency and used by the Crime Lab to prioritize cases based upon the severity of the crime.

This case was initially reported as a "Shot(s) Fired" case in the BEAST system rather than a homicide. As the Crime Lab assigns highest priority to homicides, this case received a

lower priority because it was not initially reported as a homicide. Syracuse Police personnel explained that the case was initially reported as a “Shot(s) Fired” because the victim was still alive at the time of the report. The victim died the following day, and Syracuse Police provided a printout showing that the case status was changed to a homicide in the BEAST system on December 16, 2009. However, when SPD personnel were asked if updating the case type in the system generates a notice of the change to the Crime Lab, they said they did not know. In fact, the Crime Lab advised the Inspector General that an update does not generate such notice. The Inspector General also found that Syracuse Police made no attempts to advise the Crime Lab of the change of status.

As a result, the Crime Lab continued to prioritize the case as other than a homicide, although it acknowledged in its response that the submitted items could have been processed more quickly. The Crime Lab explained that due to the voluminous nature of the examination request, it eventually made efforts to contact the Assistant District Attorney assigned to the case to determine which items actually had evidentiary value for testing.

On July 5, 2010, Mark Mills, the Crime Lab’s Latent Fingerprint Section Supervisor, sent an e-mail to the Assistant District Attorney assigned to the investigation, advising that the Syracuse Police Crime Scene Detective had submitted numerous items for latent print examinations. He further advised that he was holding off on conducting such examinations pending direction as to which tests actually were necessary. The Assistant District Attorney did not respond to that e-mail. Mills subsequently sent similar e-mails on August 5, 2010, September 21, 2010, March 7, 2011, and on June 2, 2011, none of which were answered by the Assistant District Attorney, who subsequently left the District Attorney’s Office. On September 30, 2011, Mills e-mailed Assistant District Attorney Matthew Doran who promptly responded that he would look into the matter.

As noted, on August 17, 2010, the two suspects in the homicide were involved in a robbery in which they fired at a police officer. Both suspects were arrested. One suspect, who was previously identified by the bus pass left at the homicide scene, confessed to the robbery and indicated he was involved in the December 1, 2009 homicide. The other suspect declined to make any statement to the police. The two individuals were prosecuted and convicted for the robbery/shooting incident. One was sentenced to 25 years to life, the other to 10 years in prison.

On October 17, 2011, Syracuse Police Detective Thomas Murfitt contacted the Crime Lab to inquire as to the status of the original analysis request. This was the first inquiry by the police regarding the request, and occurred nearly two years after the crime. On October 18, 2011, Murfitt again contacted the Crime Lab and advised it to hold off on all requested latent fingerprint requests until after he met with Assistant District Attorney Doran. On November 7, 2011, Murfitt contacted the Crime Lab to advise that only three of the items submitted needed to be tested. The analysis of the three items was completed and a laboratory report was issued on January 13, 2012.

The Crime Lab's report stated that the fingerprints on one of the items, a soft drink bottle recovered at the homicide scene, belonged to the suspect in the robbery/shooting who had refused to speak with police. The suspect who had been identified by the bus pass was indicted for the murder based on, among other evidence, the bus pass and his statement to police. The suspect whose prints were found on the soda bottle still has not been charged in the homicide.

When questioned about the Crime Lab's claim that the case was initially mislabeled as a "shot(s) fired" rather than a homicide, Broton conceded that the Syracuse Police Department bore some responsibility, but that the Crime Lab should have advised the police of the delay in testing. Broton considered this a communication failure by the Crime Lab. This characterization, however, ignores the fact that no one from the Syracuse Police made an effort to contact the Crime Lab to inquire about this case from December 2009 until October 17, 2011. When asked about this failure, Broton acknowledged that the police were partially responsible for not following up. Broton explained that the police department has since changed its practices to include a follow-up session after a laboratory request has been submitted. The Inspector General also noted that the Crime Lab indicated in its response that when it was advised that the case was a homicide, it did conduct the testing. Broton conceded that statement was true.

Broton alleged that, "had the items requested for analysis been processed by the [Crime Lab] as requested by our department and in a timely manner, this suspect would likely have been in custody for the previous crime and not needlessly endangering the public and a police officer." This statement is speculative at best. To date, even after the completion of the latent fingerprint analysis, the suspect identified by the latent print has not been arrested on the homicide case. There is no indication that a more timely analysis would have resulted in the arrest of this suspect prior to the August 18, 2010 robbery/shooting.

As stated above, communication failures in this case are shared by the agencies involved. However, the Crime Lab initiated the inquiry that led to this case ultimately being processed. It appears from this case, as well as others discussed in this report, that the Syracuse Police Department considers communication as the primary responsibility of the Crime Lab. This assertion is flawed and Syracuse Police share responsibility for communication and coordination with the Crime Lab. They failed to do so in this instance.

In another case cited, Broton alleged that a wooden box which was evidence in a burglary case was not tested for latent fingerprints as requested. The box, however, was processed shortly after the police inquired about it. The Crime Lab acknowledged that the processing was not conducted for almost a year after its submission due to a testing backlog and that the case, a property crime, was given lower priority than violent crimes. The request, however, was not disregarded. The Crime Lab was unable to recover any latent prints suitable for comparison from the box when processed.

In another case, Broton alleged that the Crime Lab ignored a request that a firearm be examined for DNA and latent fingerprints. The Crime Lab provided documentation that it was contacted by the Assistant District Attorney assigned to the case who advised that he needed a firearms operability report immediately for court purposes. According to New York State Criminal Procedure Law section 180.80, the District Attorney is required to conduct a preliminary hearing or Grand Jury presentment within 144 hours of arrest for any defendant in custody; failure to do so results in the release of the defendant regardless of the severity of the crime. In this case, an operability report was required for such proceedings. The Assistant District Attorney specifically advised the Crime Lab that, in order to obtain the required operability report in the requisite time, he withdrew the request for the latent prints and DNA testing, which, he noted, were not necessary as the firearm was recovered from the suspect's body.

These types of cases are referred to by the Crime Lab, Syracuse Police, and the District Attorney as "fast track" cases due to the aforementioned Criminal Procedure Law time requirements. Furthermore, because an arrest had been made in this case, the District Attorney's Office was actively involved in the prosecution. Given Syracuse Police's assertion that testing and testing priority in such cases is generally determined by the District Attorney, it is unclear why Broton complained about this occurrence. The request by the District Attorney's Office was necessary for the prosecution of the case and reasonable given the circumstances. Similarly, the Crime Lab acted reasonably and properly in responding to the District Attorney's request.

The Crime Lab also noted in its response that this case had occurred more than two years and seven months earlier. The Crime Lab stated that since that time, it has changed its policies regarding latent prints on handguns. The Crime Lab reported that since late 2010 it has taken steps to ensure that virtually all handguns are fully analyzed for latent prints. The Crime Lab also noted that this change was made as a result of concerns raised by the Syracuse Police Department.

In another case, Broton alleged that Syracuse Police submitted evidence for trace analysis in a sexual offense case, but the Crime Lab disregarded the request. In point of fact, this case represents a request for unnecessary testing by the Syracuse Police Department. In this case, police completed a sexual assault kit and submitted it to the Crime Lab. The Crime Lab's Forensic Biology Section analyzed the kit and found that the defendant's bodily fluids were present on the victim and her clothing. Further, the defendant admitted that he had had sexual contact with the victim and claimed, as a defense, that the contact was consensual. The Assistant District Attorney assigned to the case specifically advised the Crime Lab that the trace analysis requested by SPD was not needed.

It appears that the trace evidence analysis was requested by a Crime Scene Unit officer who was not aware of the facts of the case. As noted above, the identity of the defendant was not at issue. Rather, the issue at trial was the victim's consent. This case demonstrates why the

Crime Lab often consults with the District Attorney's Office prior to commencing analyses requested by a submitting agency. The District Attorney has appropriately made it clear to his staff that they should make every effort to assist the Crime Lab in limiting unnecessary analyses.

In two other cases, Broton erroneously alleged that requested analyses were not conducted. In one case, the Syracuse Police Department submitted to the Crime Lab for DNA testing on August 31, 2010, a partially burned, hand-rolled cigarette recovered in a burglary case and asserted that no testing had been conducted. In fact, the item was tested and a report issued on November 11, 2010. The Crime Lab also tested the item for drugs, but this testing did not interfere with the requested DNA analysis.

In another case, Broton alleged that the Crime Lab failed to examine a firearm for trace evidence. This complaint also proved inaccurate. The Crime Lab collected and reported the existence of a hair. The Syracuse Police Department, however, never submitted any hair for comparison to the hair found.

7. Incomplete Examinations

Broton alleged that the Crime Lab did not conduct a complete firearms/ballistics examination of shell casings submitted in a shooting incident. The Crime Lab received the casings on June 18 and June 19, 2012, and entered them into the National Integrated Ballistic Information Network (NIBIN) system by July 3, 2012.¹⁰ The Crime Lab issued a report stating that, "[A] supplemental report will be issued if associations are made with existing database images."

In its response to the complaint, the Crime Lab explained that it prioritized cases based upon the severity of the crime, pending court dates, the need for investigative information, and the likelihood of obtaining probative results. The Crime Lab evaluates every fired shell casing for entry into NIBIN, but limits microscopic comparisons to high-priority cases and cases in which there are specific requests by submitting agencies. Crime Lab Director Corrado stated in the Crime Lab's response to the complaint that this practice has been communicated to submitting agencies, including Syracuse Police. In this case, the Crime Lab entered three of the shell casings into NIBIN and issued a report to that effect.

Upon receipt of this report, the Syracuse Police Department did not request further testing. The Syracuse Police Department is under the misconception that after the initial request for Firearms analysis, the Crime Lab is required to contact it to explicitly advise what testing was and was not done. The official report issued by the Crime Lab, however, constitutes such

¹⁰ NIBIN is an automated ballistic imaging system that aids law enforcement agencies by using digital images of shell casings to link violent crimes involving firearms and subsequently identifying firearms users.

communication to the police. In this case, the report clearly communicated the action taken by the Crime Lab.

The Inspector General determined that the Crime Lab fully and accurately reported the actions it had taken and additional analysis was available upon request. In this case, the Crime Lab appropriately exercised its authority to prioritize its work and determine the scope of its analysis.

8. Improper Crime Lab Procedures

Broton cited a number of cases allegedly involving “improper lab procedures” by the Crime Lab. The Inspector General found that none of the cases reflected improper laboratory procedures. While a transcription error occurred in one case report, the Crime Lab acknowledged the mistake and amended the report.

In the first case, Broton alleged that the Crime Lab lost a piece of evidence. The Inspector General found this allegation to be unsubstantiated. As part of a homicide investigation, Syracuse Police submitted a lead fragment with a red stain on it to the Crime Lab on December 8, 2010. The fragment was extremely small and was submitted in a small cardboard box in a sealed paper bag. On January 7, 2011, the Crime Lab’s DNA examiner unsealed the bag, then opened the box, but did not see the fragment. He immediately advised his supervisor, Sheila Gentile, who supervises the Forensic Biology/DNA Section. Gentile then contacted Syracuse Police and confirmed that the fragment had in fact been submitted in the box. On January 10, 2011, while Gentile and the analyst again examined the packaging, the metal fragment fell to the bottom of the bag. Gentile and the analyst surmised that the fragment had fallen out of the box and had become lodged in the folds of the bag. Gentile advised Syracuse Police that the item was in the outer bag.

The fragment never left the Crime Lab and was contained in the outer packaging at all times. It was not lost. The DNA analyst acted properly in contacting his supervisor and the supervisor took reasonable steps to address the situation, including contacting Syracuse Police. Upon finding the item, the Crime Lab had no further responsibility to report the incident, and this occurrence did not affect the reliability or integrity of the Crime Lab’s results.

In the second case, Broton alleged that Crime Lab Director Corrado dictated to the District Attorney which evidence could be submitted in a homicide investigation because of concerns about bed bugs. The Crime Lab provided documents showing that this case was fully discussed with the District Attorney and the Syracuse Police Department. As concern existed about possible bed bug contamination of the Crime Lab from contaminated evidence, Corrado suggested considering analyzing only the minimum evidence necessary so as to limit

contamination. District Attorney Fitzpatrick advised the Inspector General that Corrado did not “dictate” what could be submitted. Furthermore, the District Attorney’s Office consulted with the judge assigned to the case and defense counsel regarding the concerns, and both agreed to the testing plan proposed by Corrado. The Crime Lab’s actions were proper and taken in consultation with the relevant parties.

Broton further alleged in a third example involving three non-homicide cases that the Crime Lab improperly handled fired shell casings which precluded latent prints from being processed. Mark Mills, supervisor of the Latent Prints Section, advised the Inspector General, and the Inspector General confirmed, that Crime Lab policy is to process discharged shell casings only in homicide cases. This policy has been communicated to all the submitting agencies, including the Syracuse Police Department.

Mills further noted that, as a matter of regular practice, discharged shell casings are not processed for latent prints by many forensics laboratories nationwide. Mills explained that because of the heat, pressure, and friction that shell casings are subjected to when discharged from a weapon, there is an extremely low success rate in obtaining latent prints from fired shell casings. Mills referenced relevant published studies, which, he noted, report that fired shell casings have latent print success rates of less than 1 percent, rendering such testing unviable.¹¹ Mills noted that the Crime Lab makes an exception in homicide cases and conducts latent print examinations on all submitted casings even without a request. Mills added, however, that he recalls no homicide case in which the Crime Lab successfully obtained a useable print from a discharged shell casing. The Crime Lab also cited published research studies indicating that limiting the processing of certain items, such as cartridge cases, is a sensible means of controlling latent fingerprint testing case loads.¹²

The Crime Lab followed its published policy and practice. The Syracuse Police Department acknowledged it was aware of this longstanding policy, but claimed that the Crime Lab should have made an exception in this case. Notwithstanding this assertion, the Crime Lab’s policy is rational and based upon workload and scientific considerations, and adherence to it is proper.

In a fourth case, Broton alleged that the Crime Lab switched two items of evidence. As noted above, after this matter was brought to the Crime Lab’s attention, it reviewed its report and found that, in a transcription error, the report reversed two item descriptions. After identifying the mistake, the Crime Lab issued an amended report. Syracuse Police Detective McGinn stated that he noticed the error in July 2012. However, rather than alerting the Crime Lab at that time

¹¹ Spear, Clark, Guisto, Khoshkebari, Murphy, and Rush, *Fingerprints & DNA on Cartridges and Cartridge Cases; How Likely?* California Criminalistics Institute, California Dept. of Justice, Bureau of Forensic Sciences (2005).

¹² The Scientific Working Group on Friction Ridge Analysis, Study and Technology, Document #101, *Limited Examination Considerations for Latent Print Sections Position Statement*.

so that the matter could be corrected, he waited so as to include it in Broton's October 2012 complaint to ASCLD/LAB.

In a fifth case cited by Broton, the Syracuse Police Department submitted two computers to the Crime Lab for examination in a rape/sexual assault/child pornography investigation. Broton alleged that the Crime Lab improperly failed to provide Syracuse Police with a copy of images downloaded from the computer. This complaint is more appropriately addressed to the Onondaga County District Attorney's Office, not the Crime Lab. The Crime Lab explained that, upon recommendation of the District Attorney, it only makes one copy of images when performing digital evidence analysis of computers containing child pornography. District Attorney Fitzpatrick confirmed that he made that recommendation, which he stated was based on principles included in the United States Department of Justice's Internet Crimes Against Children program.¹³

This issue should be addressed by the Syracuse Police Department and the District Attorney's Office. The Crime Lab, however, did not act improperly in following the legal recommendation of the prosecuting agency. As the Inspector General has stated in previous reports, forensic laboratories should seek guidance from the prosecutorial agencies that will ultimately handle the cases at issue in situations where legal issues arise.¹⁴

FINDINGS AND RECOMMENDATIONS

The Inspector General's mandate under the federal Paul Coverdell Forensic Science Improvement Grants Program is to conduct independent investigations into allegations of serious negligence or misconduct substantially affecting the integrity of forensic results committed by employees or contractors of any forensic laboratory system. The Inspector General's investigation found no serious negligence or misconduct by the Crime Lab or its personnel. In fact, most of the allegations in the complaint did not, on their face, question the integrity of the forensic results of the Crime Lab.

During the course of this investigation, the Inspector General specifically asked members of the Syracuse Police Department, including Deputy Chief Broton, the signatory of the complaint, if any of the allegations question the integrity or accuracy of forensic results reported by the Crime Lab. Broton and the others stated that the allegations in the complaint did not question the scientific results of the Crime Lab with one exception – the 2005 incident in which officers discharged their weapons. The Inspector General found no evidence of any error or misconduct by the Crime Lab with regard to that incident. To the contrary, the Inspector General

¹³ A thumb drive with the images on it was eventually turned over to the Syracuse Police Department.

¹⁴ "Report of Investigation of the Nassau County Police Department Forensic Evidence Bureau" (November 2011) and "Report of Investigation of the Monroe County Public Safety Laboratory" (June 2012). Both reports are available on the Inspector General's Web site.

determined that the Crime Lab took reasonable steps to address the discrepancy between the two detectives' accounts of the incident and the results of Firearms Examiners' analyses, including requesting a review of the evidence at issue by an outside laboratory.

Other allegations involved concerns by the Syracuse Police Department about the Crime Lab's policies and practices relating to case load, prioritization of case work, and scope of forensic services provided. These allegations are not, for the most part, within the scope of the Coverdell purview as they do not allege serious negligence or misconduct affecting the integrity of forensic results. These areas all fall within the scope of the Crime Lab's authority and are essential to ensuring that the Crime Lab operates independently of submitting and prosecutorial agencies.

A common theme of the allegations was that the Crime Lab failed to adequately communicate with the Syracuse Police Department on case matters. The Syracuse Police Department is under the misconception that the responsibility for communication lies primarily with the Crime Lab. In fact, Syracuse Police shares equally in that responsibility. The Inspector General's investigation found that in a number of instances, Syracuse Police failed to adequately communicate with the Crime Lab, and, at times, did not appear to fully understand Crime Lab's procedures and authority, or the relevance of the appropriate and necessary testing of specific items of evidence to the prosecution of cases.

The Inspector General notes that the Crime Lab has routinely provided training to agencies using the laboratory's services, including the Syracuse Police Department. Given its apparent lack of adequate understanding of laboratory procedures and authority, the Inspector General determined that the Syracuse Police Department failed to take steps to ensure that its command and senior staff received training by the Crime Lab. The Inspector General recommends that the Crime Lab offer training specific to the Syracuse Police Department in areas of deficiency as described in this report. As stated, the Inspector General's jurisdiction does not include the Police Department.

The Inspector General also found that many of Broton's complaints are more appropriately directed to the Onondaga District Attorney's Office, not the Crime Lab. The Syracuse Police Department's disagreements with the District Attorney Office clearly demonstrate Syracuse Police's lack of understanding of the District Attorney's jurisdiction, authority, and ultimate responsibility for overseeing evidentiary issues and prosecuting cases; however, such disagreements are beyond the scope of the Inspector General's jurisdiction and Coverdell mandate.

Response of the Onondaga County Commissioner of Health

Onondaga County Commissioner of Health Cynthia B. Morrow, M.D., advised the Inspector General that she and the Crime Lab accept the report's findings and recommendations, and that training will be offered to the Syracuse Police Department.

ASCLD/LAB Investigative Report

Complaint filed Against: The Onondaga County (NY) Center for Forensic Sciences
Complaint filed By: Deputy Chief Shawn Broton, Syracuse (NY) Police Department
Date Complaint Received: October 22, 2012
Date Report Accepted by the Board: March 5, 2013
Investigator: Melissa Anne Smrz, Staff Assessor

I. OVERVIEW OF THE LABORATORY

The Onondaga County Health Department - Center for Forensic Sciences (CFS) is a local government laboratory that provides services and assistance to law enforcement agencies in and around Onondaga County, New York, including the City of Syracuse Police Department. The laboratory is located at 100 Elizabeth Blackwell Street, Syracuse, New York. Dr. Kathleen Corrado is the Laboratory Director.

II. STATEMENT OF THE ALLEGATIONS

- A. A summary of the allegations was included in the complaint letter and focuses on eight (8) areas of concern:
- i. The laboratory is too closely aligned with the prosecutor's office. The allegation is that this alignment causes the laboratory to circumvent communications around the Syracuse Police Department (SPD) during open investigations and provides the appearance of impropriety.
 - ii. There is a lack of communication between the CFS and the SPD which hinders SPD operations and negatively affects inter-agency cooperation.
 - iii. The results of a 2005 firearms examination as part of police shooting investigation. The results of the firearms examination were in conflict with the police investigation results. It should be noted that while not stated in the complaint letter, the SPD is also alleging that the CFS firearms examiner who analyzed the evidence purposely switched test fire evidence to support his original results and conclusions regarding the fired evidence casings. The SPD has also alleged that the verifier of the results did not conduct a thorough verification examination.
 - iv. The laboratory recently terminated its trace evidence section citing a lack of cases affecting their ability to be compliant with accreditation. The SPD made numerous requests for trace evidence analyses which were disregarded by the CFS.
 - v. The CFS routinely uses online police reports to assist them in determining which examinations they will perform, disregarding written requests for examination when

the evidence is submitted to the laboratory. Police reports available in the online system are often incomplete.

- vi. The CFS disregards examination requests made by the SPD.
- vii. CFS trace evidence and firearms examination reports often are incomplete. These reports indicate that only preliminary analyses have been performed; the reports advise the contributor to contact the laboratory if further examination is needed, such as DNA or weapon source.
- viii. The CFS uses improper laboratory procedures.

III. DESCRIPTION OF THE SCOPE OF THE REVIEW

- A. The allegations made by the SPD were relevant to and investigated against accreditation requirements involving customer service and communications (complaint items 1,2,4, 5 and 6 and the individual sub-items listed in the complaint), use of appropriate methods (complaint items 7 and 8, and the associated sub-items listed in the complaint), and the laboratory's procedure for investigating possible non-conforming work (complaint item 3 and the associated sub-item listed in the complaint); therefore, the scope of the review was to determine if there were any findings of laboratory non-conformance in any accreditation requirement in these topic areas.
- B. The case manager investigated, to the extent possible, all aspects of the complaint to determine if the allegation could be supported by objective evidence.

IV. LIST OF DOCUMENTATION AND OTHER MATERIALS REVIEWED

The case manager reviewed the following documentation:

- A. The complaint letter submitted by Deputy Chief Shawn Broton, SPD;
- B. The CFS response letter, dated November 14, 2012;
- C. Documentation and records submitted by the CFS for specific items listed in the complaint letter (those submitted with its response letter and subsequent submissions per request);
- D. The Onondaga County District Attorney's Office (OCDAO) response letter, dated November 21, 2012;
- E. Documentation and records submitted by the SPD for specific items listed in the complaint letter (submitted per request);
- F. A letter from the head of the Onondaga County Chiefs of Police organization;
- G. A copy of the most recent ASCLD/LAB Final Assessment Report of the CFS, signed and dated on February 6, 2013 by the Lead Assessor;
- H. Notes from case manager interviews of the following individuals:
 - i. Deputy Chief Shawn Broton
 - ii. Laboratory Director Dr. Kathleen Corrado
 - iii. Onondaga County District Attorney William Fitzpatrick
 - iv. Lieutenant Patrick Conley, SPD
 - v. Lieutenant Russell Gates, SPD
 - vi. Sergeant John Linnertz, SPD
 - vii. Detective Terrence McGinn, SPD

- viii. Officer Kevin Hamberger, SPD
- ix. Officer Eric Carr, SPD
- x. Firearms examiner Gary Pratt, former contract employee of CFS
- xi. Harry Fox, III, Staff Assessor, ASCLD/LAB

It is noted here that the case manager did not interview the firearms examiner who conducted the analyses referenced in complaint item 3. The CFS Laboratory Director advised that the firearms examiner (now retired) would not be interviewed by ASCLD/LAB or the New York Office of Inspector General (NYOIG) which is conducting a parallel investigation of its own regarding the same complaints. The CFS Laboratory Director learned this through the examiner's wife, who is a current CFS employee. Later, the CFS Laboratory Director advised that the examiner had recently agreed to be interviewed by the NYOIG, but that he is currently in the hospital and seriously ill. Given the circumstances, the case manager did not pursue any attempt to independently locate or interview the examiner.

V. FINDINGS AND BASES FOR THE FINDINGS

After reviewing the submitted documentation and records, the case manager is providing a summary of the findings and bases for the findings for each of the specific events/cases cited in the complaint letter (marked as designated in the complaint letter), which is provided later in this report (after V3 below). However, during this investigation, several observations made by the case manager appear to be relevant to understanding the full nature of the complaints, as summarized below:

- i. The SPD and the OCDAO have an agreed-upon practice regarding the authorities for the investigation process and in submitting evidence for examination by the CFS. In open cases, defined as those not yet having resulted in an arrest, the SPD has the authority and responsibility for the investigation and for submitting evidence to and requesting examinations by the CFS. After an arrest has been made, the OCDAO takes over those authorities. This is not to say that the SPD and the OCDAO do not continue to work together to bring the case to prosecution after an arrest, but the practice is that after an arrest, the OCDAO has the authority to determine what laboratory examinations are required for successful prosecution. During the investigation of the complaint, there were several instances in which the OCDAO cancelled examinations that had originally been requested by the SPD. The CFS documented the original requests made by the SPD and the cancellations made by the OCDAO, but it appears that the practice of 'split authorities' results in the SPD not being informed, at least in some of the cases cited, that the original examinations had been cancelled by the OCDAO to the extent they feel is appropriate.
- ii. The CFS clearly states in its "Information for Submitting Agencies" that:

"The customer(s) agrees to allow the Forensic Laboratories to determine, based upon existing policies, when submitted items will not be examined as requested."

This same document also lists the general methodologies, per section, that the CFS uses in its examinations. The document is available at the evidence intake area and on the laboratory's website, so customers are informed of the CFS general policies regarding evidence examinations. The laboratory also provides annual training to its customers to advise laboratory capabilities, evidence submission requirements.

By practice, the CFS communicates with its customers when there are questions about the evidence examination requests either at the time of evidence submission or when the evidence is being reviewed prior to examinations. When by policy certain examinations are not conducted, the customer is notified in the report that these examinations were not conducted.

- iii. The Laboratory Information Management System (LIMS), through which the CFS customers record evidence submissions and examination requests, has a field for 'submitting officer' and another field for 'requesting officer.' Sometimes these are the same person, other times they are different, and still other times, the detective in charge of the investigation may not be listed. At times, this lack of information makes contacting the appropriate person to discuss evidence examination needs difficult.

Summary of findings and bases for findings

1a). The SPD alleges that the CFS improperly contacted the OCDAO to recommend a new type of non-primer GSR distance determination testing procedure for clothing, and subsequently conducted the analysis on clothing items in an open case which SPD was investigating, without notifying the SPD. This allegation is substantiated, in part, as it was determined that the CFS did not follow the established practice of contacting the SPD during this open investigation to discuss the possibility of conducting the new test. However, the SPD had not included the specific items (clothing items) during its initial evidence submission. Through the laboratory's response, it admits to contacting the OCDAO to determine whether the examinations would be useful in the case, after the Medical Examiner had expressed interest in the test for this case during a discussion with the CFS Laboratory Director. Through interviews with the SPD and review of the submitted communication documentation by the CFS and the SPD, it was determined that the OCDAO had requested the evidence items (clothing) be submitted for this testing, as the SPD had not made the examination request nor submitted the clothing evidence. Upon learning of the test request, the SPD spoke with the OCDAO and questioned the need for this type of testing, and recommended that the clothing items be first processed for trace evidence and other forensic evidence before the new type of testing be performed. Also, an official from SPD contacted the OCDAO after learning of the CFS conversations regarding the testing to complain that the CFS should not be contacting the OCDAO regarding open SPD investigations. According to the laboratory's response, the CFS was not aware of any discussions the SPD had with the OCDAO about concerns for trace evidence (or other) analysis on the evidence, and because the SPD had not submitted the clothing evidence, once the GSR distance determination examination was requested by the OCDAO, the CFS conducted only the GSR test on the clothing evidence.

The CFS advised its contributing agencies about the new GSR testing, through training in January 2012, through a meeting with the Onondaga County (OC) Chiefs of Police, and through its website description of the tests it offers. CFS provides training annually or as needed, and typically reviews the laboratory services and methods, along with evidence handling procedures. For the January 2012 training, SPD investigators and two officials were invited; however, the training flyer did not specifically mention 'new techniques' or 'new GSR testing method' as part of the training, so it is possible that the SPD staff members/officials making the complaint did not attend the training because they weren't aware that the new test method would be discussed.

It should be noted that an additional allegation of inappropriate communication between the CFS and OCDAO was made subsequent to the complaint letter which is somewhat related to this matter. The SPD alleged that the CFS inappropriately contacted the OCDAO about GSR testing that was part of a SUNY-ESF/SPD GSR project. It was learned that a meeting took place more than a year prior to this case (June 14, 2011), and prior to the implementation of the CFS test method, between members of the OCDAO, a SPD detective, and member of the CFS to discuss communication problems and the status of GSR testing in Onondaga County. However, the OCDAO and the CFS Laboratory Director advised that this meeting had been called by the OCDAO to discuss concerns about the SUNY-ESF/SPD GSR testing project. The OCDAO advised that because SPD or SUNY-ESF is not accredited to conduct forensic analyses in New York, he wanted to discuss the matter with the SPD detective who is part of the SUNY-ESF GSR project. The CFS Laboratory Director explained that she had advised OCDAO that she was aware of the other type of GSR testing the SPD detective can conduct, and was concerned that not disclosing this fact could be problematic, given her position on the New York Commission on Forensic Science. The SPD detective advised during an interview that he has done no GSR testing on evidence since that time.

1b). The SPD alleges that the CFS interfered with an SPD investigation which required trace analysis of a metal fragment which had not been submitted to the CFS. There is no objective evidence to substantiate this allegation. Through interviews, it was learned that the evidence had been catalogued in the CFS LIMS, and during a review of the evidence listing in the LIMS, a CFS firearms examiner contacted the OCDAO to determine whether this piece of evidence was going to be submitted for analysis, as other firearms evidence had already been submitted. The OCDAO advised the examiner to contact the SPD as it was an open investigation, which the examiner did. During that discussion (verified by SPD and CFS), the SPD advised that there was apparent trace evidence material on the jacketing and they planned to submit the item to another lab for trace evidence analysis. The examiner thought that the SPD did not understand that the CFS could process for and collect trace evidence from the item, so she contacted the OCDAO to advise that the item would not be coming to the CFS for testing, because it was her understanding that the OCDAO now expected the evidence to be submitted for firearms analysis. Although it is unclear as to when the decision was made, the OCDAO determined that the item did not require trace evidence processing and subsequently requested that the evidence be returned, after the evidence had been sent to another laboratory by the SPD.

However, through a review of the CFS communication log on this case and the laboratory's response, it appears that the CFS examiner did not follow the established practice of contacting

the SPD first regarding evidence questions during this open case. The CFS explained in its response letter that often the CFS issues a report, only to get a subsequent request from the OCDAO to conduct analyses on similar evidence that has not yet been submitted by SPD, but that is needed for Grand Jury; however, there were no records to demonstrate that the investigation of this case was in the Grand Jury phase. According to the CFS communication records on this case, once the CFS was directed by the OCDAO to contact the SPD, the CFS examiner did so, while also communicating with the OCDAO, because the OCDAO was now involved in the case. It is noted that the SPD did not want the CFS to collect the trace evidence from the item, as it believed that removing it from the item may preclude the possibility of securing information on how the trace evidence was located, embedded in or otherwise part of the evidence.

It appears that the CFS was attempting to ensure it had all the evidence it needed to complete its firearms analyses and issue one, rather than two, reports. However, the CFS should have contacted the submitting and/or requesting officer first, rather than first contacting the OCDAO. Regardless, there is no information to support the allegation that the CFS interfered with the investigation. The OCDAO made the decision to cancel the trace evidence examination, as it was not needed for this investigation.

2a) The SPD alleges that in April 2012, the CFS did not notify the SPD about a reported infestation of bedbugs at the CFS. There is no objective evidence to substantiate this allegation, and there is information to refute the allegation. Through interviews and a review of communication logs and personal notes from the CFS, it was learned that the infestation pertained to one case submitted by SPD that had 3 bedbugs (2 dead, 1 alive) in it. The laboratory took appropriate action to isolate the bedbugs and notify the SPD evidence property officer when the evidence was returned, and labeled the evidence as having contained bedbugs. It is noted here that during an earlier homicide investigation (submitted to the CFS in January 2012), (see complaint item 8b, under 'Improper Lab procedures'), another SPD case with numerous bedbugs was going to be submitted. The SPD, CFS and OCDAO worked together prior to the submission of the evidence to determine the best way to isolate and destroy the bedbugs and to triage the evidence so that only items necessary for the indictment phase of the investigation be examined. The CFS Laboratory Director contacted appropriate sources of information on bedbugs to assist in determining how to best kill the bedbugs, and all three agencies worked to determine the best items to test first and which to test later after the bedbugs could reasonably be considered dead. The OCDAO advised through interview that at no time did the delay in processing affect the prosecution of the case. It appears that the CFS, after having the first case with bedbugs, took the appropriate steps to isolate or kill the three bedbugs in the second case before returning the evidence and notifying those SPD staff members who were in contact with the evidence.

3a) The SPD alleges that the CFS erred during a 2005 firearms examination with evidence from a police shooting investigation. It further alleges that the CFS examiner switched the evidence with test fires to support his original conclusion after the firearms examination results contradicted the police investigation results. There is no objective evidence to support the allegations. The CFS investigated the matter appropriately, as demonstrated through a review of

the examination records and through interviews with the CFS Laboratory Director, members of the SPD involved during the examinations, and the former firearms contract examiner who conducted the verifications during the examinations.

In the case, two officers fired their weapons. Among the firearms evidence submitted were three casings which the CFS firearms examiner determined to have been fired by one weapon. The associations were verified by a contract firearms examiner. The firearms examination conclusion conflicted with the police investigation of the shooting which concluded that one officer fired two rounds of ammunition and the second officer fired once. When notified that there was discrepancy between the lab results and those of the police investigation, the same firearms examiners reexamined the same three casings and came to the same original examination conclusion. The associations were re-verified by the same contract examiner. A review of the CFS examination records from the case record confirms these events.

The CFS then recommended that the weapons from the two officers be submitted to obtain test fires so that a full comparison could be conducted. The two officers brought their weapons to the CFS at different times during the same day and were present during the test firing conducted by the firearms examiner (they stood outside the small room where the test fires were done, so they did not observe the actual test firings but they could hear them), as was the contract firearms examiner (both times), and an SPD official (one time). According to the CFS technician who assisted the firearms examiner (learned through interview with the CFS Laboratory Director), the firearms examiner came out of the room each time with the test fires and labeled them in front of the officers. Through interview, neither officer recalls seeing the firearms examiner label the test fires. The weapons were returned to the officers and they left the CFS. The officers were not present during the comparison of the three casings to the test fires. The firearms examiner associated the three casings to having been fired by one weapon and excluded them as having been fired by the other weapon. Through interview and review of the case notes, the contract firearms examiner verified each of the three associations and excluded the casings as having been fired from the second officer's weapon. He added that the test fires from the two weapons were very different and could be easily differentiated. Through interview, though, it was learned that the verification process followed by the contract examiner did not include confirmation of the item numbers that were on the microscope stage. However, he does recall seeing what he thought were test fires in a box on one side of the scope, and what he thought were the evidence casings in a separate box on the other side of the scope, which was typically his practice and that of the firearms examiner when conducting firearms comparisons.

At some point, it was decided that the evidence casings and the test fires be submitted to another lab for analysis. The independent analysis was conducted by a firearms examiner at the Monroe County Public Safety Laboratory and the original conclusions of the CFS examiner were verified. A review of this report and notes confirms the second analyses results.

Through interviews with various members of the SPD, it was learned that the contract firearms examiner had reportedly made comments regarding the completeness of his verifications. He is alleged to have made a comment that he did a 'quick and dirty' analysis and perhaps did not do a thorough job. During his interview, he stated that he did not use that term 'quick and dirty', but

he conceded that he may have said that 'he could have done more', meaning that he could have done an analysis of all the casings recovered from the scene and done the complete examination himself, as opposed to just the verification. He advised that he made the comment because he knew this was a difficult situation and wanted to be helpful.

There is nothing else that can be done to verify or refute the allegation that the evidence was switched, other than to interview the firearms examiner. As previously stated, the firearms examiner would not initially consent to an interview and is not available for interview at this time.

Although unrelated to the complaint, during a review of the technical notes, the case manager discovered an error in the first firearms analysis test report. The error was in the reporting of the association of different casings than those fired from the officers' weapons. The case manager advised the CFS Laboratory Director of this apparent error; the CFS reviewed the case notes and confirmed the error. The error was transcriptional in nature, and did not involve the results of the analyses of the casings in question in the complaint.

4a) The SPD alleges that the CFS did not consult with the SPD regarding the termination of trace evidence analysis services prior to them being discontinued. The SPD also alleges that the CFS incorrectly cited the lack of trace evidence requests as part of the reason for the decision. While it is true that the CFS did not consult with the SPD (or any other customer) as it was considering the termination of this service, the CFS did advise the SPD and other contributing agencies of the issues it faced with not having an adequate number of trace evidence comparison cases for accreditation and resource planning purposes and its decision to discontinue this service during a meeting in August 2012. The CFS provided statistics on the number of trace evidence comparisons during this meeting. An SPD representative attended this meeting. There is no objective evidence to support the allegation that the CFS incorrectly cited trace evidence comparison case statistics.

The SPD advised that it has submitted numerous cases for trace evidence analysis, but through interview and a review of a small sampling of evidence requests, it was learned that comparison samples are often not submitted for analysis. It was the CFS practice to report that trace evidence was collected or provide limited information on hairs (human versus animal hairs, and/or suitability for DNA analysis, if relevant), and then advise the contributor to contact the CFS if additional testing (such as fiber analysis and identification or race of hair) is necessary. The SPD believes that the laboratory should be 'providing an identification' of this evidence, which is taken to mean that class characteristics such as species, race, body area and similar information should always be determined and reported. However, it is well known that trace evidence is rarely meaningful without known/exemplar samples for comparison. Therefore, while the SPD submitted numerous requests for trace evidence, it reportedly did not submit the requisite comparison samples for testing in most of these cases, as stated in the laboratory's response and learned through interview with the CFS Laboratory Director.

The SPD also alleges that other CFS discipline examiners may not be trained to recognize trace evidence. There is no objective evidence to substantiate this claim, and in one case cited in the complaint (see complaint item 6f for details), a firearms examiner and a DNA examiner

recognized trace evidence on items that did not undergo trace evidence analysis; this existence and collection of this trace evidence was reported in the examiners' reports and a separate trace evidence report.

5a) The SPD alleges that the CFS' use of online police reports potentially taints the examiners' objectivity during examination and processing. There is no objective evidence to substantiate this allegation. Through the laboratory's response, it was learned that only CFS supervisors have access to this online database of reports, which they use to obtain and print out administrative information and to attempt to obtain the status of the investigation, when relevant. This is done to reduce the likelihood of administrative errors and to reduce time in attempting to contact SPD investigators and detectives telephonically for such information. Through interview, it was learned that the LIMS evidence submission system sometimes lacks the name of the investigating detective or other appropriate person who would have the most up to date information on the status of the case because the evidence is submitted by someone else, such as a property officer; hence, the supervisors try to obtain this information through the police reports. There was one case cited (see complaint item 6d) that the SPD cited as an example of the CFS misinterpreting the information in the police incident report database; in this instance, interview information obtained from the SPD and the CFS conflicts. No other objective information was provided to suggest or verify that CFS examiners' objectivity is tainted by having the information from the online SPD report database.

6a) The SPD alleges that a latent fingerprint processing examination was disregarded by the CFS. This allegation is refuted. By SPD's own information, the analysis was conducted after an inquiry was made about the status of the analysis. The laboratory had not prioritized this request, as it was a property crime, but when contacted, it conducted and completed the analysis promptly.

6b) The SPD alleges the CFS disregarded a latent print examination request on a piece of evidence in an open homicide investigation for a lengthy period of time (approximately 13 months). The allegation that the examination was delayed is substantiated, but the allegation that it was disregarded is refuted. According to evidence submission and laboratory communication log records, the evidence was submitted as a 'shots fired' investigation, not a homicide investigation, and therefore was given a lower examination priority by the CFS. Also, there was ongoing communication with the SPD detective investigating the case, beginning approximately ten months after the submission with a telephone call to inquire about the status. During the next few weeks, the SPD detective advised the CFS to conduct latent print examinations on only a subset of the items, which the laboratory completed approximately five weeks later. The SPD detective was also working with the OCDAO at the time. The CFS admits that this case was worked slowly and not in accordance with how it typically works homicide cases, but had the case been initially identified as a homicide, they would have initially given it higher priority. Once it was determined to be a homicide case, the CFS conducted the examinations accordingly.

6c) The SPD alleges that the CFS disregarded a request to conduct DNA and latent print analyses on a revolver in a 2010 open homicide case and that the SPD was never notified that

these examinations were not completed. This allegation is substantiated, in part. The requests made by SPD were made contemporaneously with those made by the OCDAO. The OCDAO requested an 'immediate' weapons function test and cancelled the DNA and latent print examination requests. The fact that the OCDAO was involved indicates that this may not have been an open homicide case. There are records to demonstrate that the CFS communicated with the SPD detective who requested the examinations. However, it does not appear that the CFS followed up with the SPD detective to advise him about the OCDAO's decision to cancel the request on the same day. Given the apparent miscommunication between the SPD and OCDAO, it would have been prudent for the CFS to contact the SPD detective to clarify the apparent miscommunications, given that the communications were ongoing the same day.

The CFS acknowledges that during this case, there were discussions with the SPD regarding the concern for needing latent prints and DNA analyses on what the SPD consider 'community guns' and the need to know who is handling the guns. There had been policies in place since 2008 directing the need of having latent print analyses on guns recovered in a variety of investigations and circumstances. It was decided by SPD and the CFS to revise those policies in order to assist the SPD with their community gun investigations, as needed, and to ensure that the SPD and OCDAO agrees to the need for the latent print analyses.

There were no communication records provided that pertained to the DNA analysis request, other than to show that the SPD had made the additional request after the evidence was submitted and that the OCDAO had cancelled the request.

6d) The SPD alleges that the CFS disregarded a request for DNA analysis on a partially burned, hand-rolled marijuana cigarette and that the CFS added a drug test to the examination request without contacting the SPD. The allegation regarding the DNA analysis is refuted. The allegation regarding the drug examination request cannot be substantiated, due to a conflict in the documentation provided. The SPD provided a LIMS evidence submission record that shows that only the DNA examination request had been made. The CFS provided another evidence submission record (receipt) that show that both DNA and drug testing was requested. The CFS provided a communication record that shows communication between an SPD lieutenant and the CFS regarding the status of the DNA request and that approximately three weeks after that communication, the CFS analyzed the evidence and issued the DNA report.

It appears that this part of the allegation is more about the SPD's concern about timeliness and/or prioritization of the DNA examination by the CFS. The evidence was part of a burglary investigation (offense date 6/10/2010) and was submitted to the CFS on 8/31/10. The SPD lieutenant checked on the status on 10/22/10 and the DNA report was issued on 11/11/10.

As for the drug test request, there were no communication records provided by either the CFS or the SPD that indicate the drug test examination was added by the SPD property clerk at the time of evidence submission (see CFS complaint response), or that the DNA examination had been 'disregarded' after CFS/the CFS Laboratory Director checking the police incident report and noting an arrest had been made (see SPD complaint item 6d); therefore, no further inquiry was made regarding this part of the allegation. At worst, the CFS conducted an unnecessary examination.

6e) The SPD alleges that the CFS disregarded a trace evidence analysis on two items of evidence from a sexual offense case. There is no objective evidence to support this allegation. While it is true that the CFS did not conduct the trace evidence examinations, the case had been taken over by the OCDAO after an arrest and the OCDAO had cancelled the request. In the laboratory report, the CFS communicated to the SPD that no trace evidence analyses were conducted on these items. Through interview, it was learned that the OCDAO determined there was no need for the trace evidence examinations because there were a number of probative DNA results obtained. Additionally, a review of the submitted evidence records does not show that any hair exemplars from the suspect/defendant were submitted for comparison. Since the 'agreed-upon' policy/practice for these agencies is to defer to the OCDAO for all evidence exam requests once there is an arrest in the case, the CFS was following the established practice and followed the directions of the OCDAO.

6f) The SPD alleges that the CFS failed to protect potential trace evidence and conduct trace evidence analyses on a handgun recovered during a double homicide investigation. This allegation is refuted. The CFS did collect trace evidence (hairs) on this item, as documented in a trace evidence section CFS report dated 9/19/11. In a review of the evidence submission records and laboratory reports, no hair exemplars/standards/knowns were submitted by the SPD for comparison. Further, the CFS advised the SPD in the trace evidence report to contact the lab if additional trace evidence analyses were needed. As this was an 'arrest' case, the OCDAO was directing the evidence examinations, and trace evidence examinations were cancelled for this particular item, in lieu of a firearms and operability/functions test needed immediately by the OCDAO.

7a) The SPD alleges that the CFS did not conduct a complete firearms/ballistics examination of shell casings submitted from a shooting investigation. There is no objective evidence to substantiate the allegation. There does not appear to have been any weapon submitted for test fire and comparison purposes. The casings were analyzed and three of the four were entered into the NIBIN system, per the lab's policy and practice, in order to facilitate potential associations with other cases when a firearm has not been identified. The laboratory's "Information for Submitting Agencies" states that its firearms methods include

"Microscopic comparison of evidence (submitted) ammunition components and test-fired ammunition." And "Entry and search into NIBIN/IBIS....."

The NIBIN report indicates that three of the four casings were entered seems to indicate that either 1) the remaining casing was similar enough to one of the others entered into NIBIN or 2) it did not have adequate characteristics to enter into NIBIN. The NIBIN report also indicates that the three casings were fired by three different weapons. One SPD official interviewed suggested that wording in the CFS NIBIN report was confusing, but there are no communication records from CFS or SPD to indicate that anyone discussed concerns about confusing wording or what the report meant. As for the SPD allegation that the report is not complete, the CFS report states that the SPD will be notified if associations are made from the 'existing database images.'

8a) The SPD alleges that the CFS lost a piece of evidence in the laboratory for three days. This allegation is refuted. While the laboratory could not locate the small piece of lead fragment in the proximal container (a box) in which it was packaged, it was located in the secondary container (a bag) three days later. Therefore, the evidence was not 'lost in the lab for three days before it was located in their work area.' When the CFS determined that this piece of evidence was not in its proximal container, it contacted the SPD to advise of the situation and it kept the SPD informed, until the item was located. It is believed by the CFS that the item somehow dislodged from its proximal container and fell into the secondary container bag. At no time did the item fall out of its secondary container bag or into a CFS work area.

8b) The SPD alleges that the CFS Laboratory Director dictated which evidence would be examined in a case that involved bedbug contamination. It also alleges that the CFS did not provide alternatives to processing the evidence. There is no objective evidence to substantiate these allegations. It appears that this part of the complaint and that noted in item 2a involved separate cases in which bedbugs were present on the evidence from cases that were being investigated by the SPD. During this cited investigation, there are communication records which show that meetings took place between the CFS, the SPD and the OCDAO on which items that had bedbugs needed 'testing at this time.' It is true that the items requiring testing was reduced, but given the nature of the problem, the CFS, the SPD and OCDAO appropriately reviewed the submission request and adjusted accordingly. There are also CFS records that demonstrate that the CFS Laboratory Director took steps to determine the best way to destroy the bedbugs, which required freezing for a period of months. It is not clear why the SPD is not satisfied with the approach taken, given its concern about bedbug 'infestation', as stated here and in complaint item 2a. No further investigation was conducted.

8c) The SPD alleges that the CFS improperly handled ballistics items (casings) which precluded future latent print (and other forensic evidence) processing in four SPD cases. This allegation is not substantiated. The SPD was aware of a CFS policy that latent print processing would only be conducted in death investigations, unless requested by the contributor to make an exception. This policy was implemented due to workload considerations and the well-researched and documented low rate of success in retrieving latent prints suitable for comparison. The SPD made a request for an exception to the policy, as it believed that three cases were related, but when the request was made (a day after the evidence submission), the CFS had already begun its examinations of the evidence casings, and the routine handling during these examinations would have likely removed any latent print ridges, so the SPD request was denied. Because the SPD reportedly did not make the request for exception to the examination policy at the time of submission and did not make known the reason for the request ('community gun' concern), the CFS followed its normal course of action with this type of evidence.

It should be noted that after this case, the SPD and CFS revisited the policy for clarifications and no additional issues have arisen.

8d) The SPD alleges that two items of evidence may have been switched during analysis by the CFS. This allegation is substantiated, in part, to the extent that an error was discovered in a CFS laboratory report. The CFS, once aware of the allegation in the complaint, reviewed the case

records and determined that a transcriptional error had occurred in the test report. The descriptions of the two items were reversed in the report. The CFS conducted an appropriate review to determine that there were no technical errors, to include an evidence switch/mix-up.

8e) The SPD alleges that the CFS did not return a thumb drive with images that was produced during a computer forensics analysis in an open sexual assault/production of child pornography investigation. This is true. In the complaint letter, the SPD stated that the CFS advised that it is their policy to provide such a thumb drive with child pornography images to the OCDAO and not to the SPD. Through interviews, it was determined that the policy is not that of the CFS but of the OCDAO, due to investigative guidelines published by the US Department of Justice regarding child pornography investigations that the OCDAO has chosen to implement and follow. The SPD advised that it was told by a CFS staff member and that of another law enforcement agency that the CFS returns such thumb drives to other agencies. When asked about this, the OCDAO said this policy applies to all law enforcement agencies for which the OCDAO prosecutes such cases. The conflict in the statements of the SPD and OCDAO could not be resolved. The CFS followed a policy of the OCDAO. Apparently, the SPD was not aware of the OCDAO policy. Ultimately, the thumb drive was returned to the SPD by the OCDAO.

VI. CONCLUSIONS WITH REGARD TO THE ORIGINAL ALLEGATIONS

- A. After reviewing the submitted documentation and records, and considering the information provided during the interviews, there are very few instances of nonconformance for any issue cited in the complaint. The conclusions pertaining to the general complaint items 1 – 8 are as follows:
- i. The CFS is not improperly aligned with the OCDAO. There is no evidence of inappropriate communications between the CFS and the OCDAO. There is no objective evidence that the laboratory has purposely attempted to circumvent SPD investigations or to interfere with evidence submissions. There were two instances, however, cited in which the CFS should have followed an established practice and first contacted the SPD regarding an evidence question in an open case investigation (see ii below).
 - ii. The CFS routinely communicates with SPD detectives in cases, as demonstrated through the review of a sample of case communication logs and of notes submitted by the CFS and SPD when problems have occurred. The CFS provides information regarding its services in training sessions and in meetings with the OC Chiefs of Police organization. The CFS also sends out a customer service survey to all customers to seek input on service improvement. It is noted that there were only four (4) surveys returned by SPD personnel, three of which were positive and the fourth found an issue with examination timeliness. During the recent ASCLD/LAB assessment, the Lead Assessor advised that he did not note any complaints by SPD and that no communication issues were noted by the technical assessors during their review of case records. Finally, the CFS took action to advise its other contributors of this complaint, in writing and during a meeting with the OC Chiefs of Police, and invited comments and questions. While not directly related to the complaint, the laboratory provided a letter from the head of the Chiefs of Police

organization, stating that except for the SPD complaint, no other agencies had reported any problems with the CFS. There were two instances, however, cited in which the CFS should have followed an established practice and first contacted the SPD regarding an evidence question in an open case investigation (see ii below). However, these two instances, considering the amount of evidence submitted to the CFS and the samples of documented communications provided, do not rise to the level of a non-conformance with accreditation standards.

- a. The CFS took appropriate action to investigate the apparent discrepancy between the firearms examination results and the police shooting incident report.
- b. The CFS took appropriate action to investigate alleged discrepant firearms examination associations made in a police shooting case.
- c. The CFS appropriately advised its customers regarding its decision to terminate trace evidence analysis. The laboratory provided its statistics to the police agency representatives during a meeting and outlined the reasons for terminating the service. The laboratory gave options to its customers for having trace evidence comparisons done, reminding them of the need to use an accredited laboratory. The CFS is also continuing to collect trace evidence in the event that an agency wishes to have it analyzed by another laboratory.
- d. The CFS generally uses the cited online police report system to obtain administrative information, but admits to sometimes using it for case status updates, rather than dealing with phone call delays. However, there is objective evidence that in only one of the cited cases, it appears that the information obtained through the online police report system pertaining to the drug analysis versus DNA analysis request would have been best answered by contacting the submitting officer. This one example does not rise to the level of a non-conformance with accreditation requirements.
- e. The CFS does not disregard examination requests by the SPD. The laboratory's contract with its customers allows the laboratory to choose the examinations and this contract is communicated to its customers through website information and through notification upon evidence submission at the laboratory. While the laboratory does not generally contact the customer at the time the decision is made to not conduct a requested examination, it does advise of that decision in its laboratory reports. It should be noted here that due to the way the 'open verses arrest' laboratory submissions are made, there may be a disconnect in how examinations discontinued by the OCDAO are then communicated back to the SPD detectives in charge of the investigations. There was one instance cited in which 'same-day' communications between the CFS and the SPD or OCDAO regarding examination needs on the same item of evidence may have been more thoroughly handled by the CFS (Compliant Item 6c). Through interview with the OCDAO, it was learned that the practice of having the DA, the SPD detective(s) and a lab representative meet on violent crime cases to discuss investigative requirements has been routinely discontinued. In the instance of the 'community guns' concern (see Complaint Item 8c), communication between these agencies after this particular event seems to have resulted in a positive practice and to have resolved future such issues.

- f. The CFS does not produce examination reports without complete examination. The report examples reviewed involving trace evidence examinations (without comparison samples) and 'NIBIN entry' firearms examinations appear to be complete. It is noted that for the specific cases cited in the complaint, there were no communication records submitted that indicated that SPD had questions about or did not understand the reports.
- g. The CFS does not use improper procedures. There is one cited instance in which the laboratory incorrectly transcribed an evidence description in the report. When it was brought to the laboratory's attention, it investigated the matter and corrected the error (Item 8d in the complaint). In the other cited instances in this section of the complaint, the laboratory either acted appropriately and according to its policies and procedures, or acted appropriately to address concerns brought to its attention. It is noted here that the information in Items 8a, 8b and 8c of the complaint was either incomplete or inaccurate, based upon a review of the records submitted.

VII. RECOMMENDATIONS

- A. There are no findings of nonconformance of any ASCLD/LAB-*International* accreditation program requirements; however, the following recommendations for improvement are offered:
 - i. The laboratory may want to consider advising the appropriate investigator at SPD (or another appropriate management representative of SPD who is knowledgeable of the investigation status and need) whenever original SPD requested examinations are cancelled by the OCDAO to ensure that SPD does not have other valid investigative reasons for the examination requests. The cases cited in the complaint in which communications issues reportedly occurred are few in number, considering the number of SPD laboratory submissions. In a review of a sample of communication records from other SPD investigations (submitted by the CFS), there appears to be overall good communication between the SPD, CFS and OCDAO.
 - ii. Related to VII.a.i above, given the practice of the OCDAO and SPD to change the examination request 'authority', the laboratory should consider ways to facilitate a team approach to communicating examination decisions made by the investigating agencies. However, it may not be appropriate for the laboratory to make suggestions regarding OCDAO and SPD investigation authority as it pertains to these requests.
 - iii. It was stated by both the CFS and a detective at the SPD that the LIMS does not always include accurate information regarding the best person to discuss evidence examination needs for each investigation, and sometimes the submitting SPD officer may not be the best person from whom to acquire investigation status information. If this is seen as a wide spread problem, the CFS may want to continue to work with the SPD to find ways to improve the requesting officer (or investigating officer) information input into the LIMS or a similar improvement to optimally have this needed contact information for CFS examiners.