

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



**REPORT OF INVESTIGATION
OF THE TRACE EVIDENCE SECTION
OF THE NEW YORK STATE POLICE
FORENSIC INVESTIGATION CENTER**

December 2009

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I. EXECUTIVE SUMMARY

This report presents the findings of an investigation by the New York State Inspector General of misconduct in the trace evidence section of the Forensic Investigation Center operated by the State Police. Scientists in the trace evidence section examine fibers, arson residue, footwear impressions, glass, hair, and other evidence to assist law enforcement in criminal investigations.

The Inspector General commenced this investigation after receiving a referral from the New York State Commission on Forensic Science and the State Police that State Police Forensic Scientist Garry Veeder had failed to conduct required tests while examining fiber evidence and had falsified records to conceal his misconduct. The Commission on Forensic Science, which oversees public forensic laboratories, has designated the State Inspector General as the independent entity to investigate allegations of serious negligence and misconduct in laboratories under its jurisdiction.¹ Furthermore, as the forensic center is operated by the State Police, the Inspector General possesses jurisdiction under Executive Law Article 4-A to investigate allegations of fraud, criminal activity, conflicts of interest and abuse in the laboratory and to review laboratory procedures in regard to prevention and detection of such.

The Inspector General determined that Veeder, while assigned to the State Police forensic laboratory in Albany, routinely failed to conduct a required test when examining fiber evidence, then falsely indicated in case records that he had performed the test. When, after an outside audit, laboratory management learned of Veeder's violations, it conducted a flawed internal inquiry which summarily dismissed Veeder's assertions that his misconduct was a product of deficient training and supervision possibly implicating the work of other laboratory trace evidence staff. In fact, the Inspector General ascertained that Veeder was substantially accurate in his statements to laboratory supervisors as his training and supervision were significantly deficient.

¹ The federal Paul Coverdell Forensic Science Improvement Program requires recipients of its grants to designate an independent entity with authority to investigate allegations of serious negligence or misconduct by laboratory personnel substantially affecting the integrity of the forensic results.

The Inspector General determined that Veeder's longstanding violations of laboratory protocol escaped detection because laboratory staff's technical, or peer, reviews of Veeder's fiber examinations were substandard, overlooking obvious indications that Veeder had omitted the required fiber test. Notably, the scientist who was chosen by laboratory management to perform most of Veeder's technical reviews was patently unqualified for this responsibility, having conducted only three fiber examinations in his career, none within the previous 10 years, and had been deemed unqualified to conduct fiber analysis after having failed his own proficiency test. As this disqualification was known or should have been known to laboratory supervisors prior to his appointment, conferring on him the duty of assessing Veeder's aptitude and results was irresponsible.

All 322 cases handled by Veeder from 1993 to 2008, involving fiber and other types of trace evidence, subsequently were reviewed by a group of independent forensic experts retained by the State Police. The independent experts determined that 29 percent of Veeder's cases were substantively deficient either in their conclusions or documentation, raising serious questions as to his competency. As a result of these findings, the State Police contacted the 44 district attorneys' offices that had been provided evidence associated with Veeder and advised them of the experts' conclusions.

The series of events that preceded the Inspector General's investigation of Veeder's misconduct and the subsequent investigation and related matters are summarized below.

In April 2008, the American Society of Crime Laboratory Directors / Laboratory Accreditation Board (ASCLD/LAB), an international accrediting body, conducted a reaccreditation audit of the State Police Forensic Investigation Center. During the audit, an ASCLD/LAB assessor discovered anomalous results in a proficiency test of fiber analysis completed by Veeder.² When the assessor queried Veeder about the

² A proficiency test is a periodic internal examination completed by scientists to determine and confirm their ongoing competence to conduct analyses.

questionable entry, Veeder was unable to explain how he obtained the aberrant result. The assessor also noted that Veeder was unable to articulate or perform basic tasks in fiber analysis including proper operation of a microscope used in several key tests in fiber examinations. Additionally, the assessor found that two case files involving impression examinations lacked required documentation central to Veeder's findings.

As a result, ASCLD/LAB proposed three Level 1 Corrective Action Requests – reports of deficiencies the assessor deemed to directly affect the work product of the laboratory or the integrity of the evidence. This Level 1 designation required the laboratory to correct the highlighted problems before it could be re-accredited to conduct fiber and impression analyses. As Veeder was the only fiber analyst employed in the State Police forensic laboratory system at the time and his work was found fundamentally deficient, in order to avoid jeopardizing the reaccreditation, the State Police decided to cease fiber evidence examinations altogether. This action removed fiber analysis from the scope of the audit, thus rendering two of the three proposed Corrective Action Requests moot. The remaining Corrective Action Request pertained to deficiencies in Veeder's impression cases, and to resolve this issue the State Police indicated it would counsel Veeder and monitor his work. However, upon Veeder's retirement, as he was the only impression analyst, the State Police ceased conducting impression examinations at the Albany facility, although they would continue at regional laboratories.

The forensic center then commenced an internal investigation of the matter. Inspector Gerald Zeosky, Director of the New York State Police Crime Laboratory System, placed Captain Timothy Munro, who supervises the laboratory's bioscience, toxicology and chemistry sections, in charge of the inquiry. Zeosky assigned Keith Coonrod, Director of Toxicology and Drug Chemistry and Acting Supervisor of the trace section at the Forensic Investigation Center, to conduct the review. Coonrod was assisted by Bradley Brown, Supervisor of Forensic Services in the forensic center's trace section.

Coonrod and Brown commenced an internal investigation which included interviews of Veeder occurring over several days. During these interviews, Veeder

admitted to bypassing an analysis required by forensic center protocols and then creating data to give the appearance of having conducted an analysis not actually performed, an act by scientists known as “dry-labbing.” When Veeder was questioned by Coonrod and Brown about the suspicious entry on his proficiency test, he confessed to not actually having performed a required test, the Becke line analysis, which determines the relative refractive index of a fiber.³ Veeder explained that he had conducted another required test, the Fourier-transform infrared spectroscopy technique (FTIR), and then compared the FTIR result with a reference chart to backfill the information, thereby creating the appearance that he had completed the Becke line method test. Moreover, when further questioned by Coonrod and Brown, Veeder admitted that even when completing actual casework where he expressed the refractive index result properly, he had not actually performed the Becke line method test but had dry-labbed using the FTIR results and the crib-sheet.

Notably, when further queried about his routine backfilling of data, Veeder asserted that not only had he shortcut the protocol but also lacked “the capability” of actually performing the test because he “was never taught this technique,” and claimed that “It never came up in casework or other [proficiency tests]” Veeder further supplied a copy of the reference chart he routinely used and informed Coonrod and Brown that this crib-sheet was provided to him as part of his training by the prior supervisor in the trace section, Anthony Piscitelli. Veeder explained: “They told me from the past, you go to this [chart] and plug it in. . . . This is how I was trained to, how we’ve always done it.” In follow-up questioning, Veeder repeatedly asserted that he was trained to backfill the information using the crib-sheet and that this improper procedure was potentially systemic in the laboratory.

In the face of Veeder repeatedly avowing his lack of training, disclosing having received the crib-sheet from his supervisor as part of his training and affirming his belief

³ The circumvented analysis, the estimate of the refractive index of a fiber in relation to the medium in which that fiber is mounted, is utilized in forensic laboratories when determining the composition of a fiber. It produces results expressed in terms of greater than (>), less than (<), or equal to (=) a known number, the refractive index of the mounting medium.

that the irregularity was widespread, Coonrod repeatedly pressed Veeder with questions which, rather than eliciting further information regarding potential systemic issues, instead merely scrutinized the basis of Veeder's knowledge.

After extensive questioning, Veeder conceded that he could only possess knowledge of forensic center practice from his arrival in the trace section in 1995 and was ambiguous about the extent of his firsthand knowledge of systemic dry-labbing. Coonrod also questioned Veeder about other tests he had ostensibly performed, the answers to which created doubts in Coonrod's mind as to Veeder's competence. Notwithstanding Veeder's answers and the ASCLD/LAB assessor's troubling findings, Coonrod, without sufficient basis or adequate investigation, documented to his superiors that Veeder's misconduct had most likely not affected the results of any of his analyses.

On May 7, 2008, shortly after being interviewed by Coonrod and Brown and while the Forensic Investigation Center's internal inquiry was continuing, Veeder submitted notice that he intended to retire from state service effective May 30, 2008. On May 21, 2008, Veeder was contacted to request that he appear for another interview with the State Police. Veeder declined, stating he would contact his attorney for consultation. On May 23, 2008, Veeder committed suicide.

In letters drafted immediately before the suicide, Veeder, similar to his admissions during the internal laboratory inquiry, lamented his poor judgment and failure to follow laboratory protocols. Regarding the frequency and duration of his actions, Veeder noted that his misconduct had evaded detection during the several audits since 1998, but his failure to follow protocol had been exposed in the 2008 audit.

Despite the disturbing nature in Veeder's interviews of wide-ranging deficiencies, his specific statements about his questionable training, the purported furnishing of the reference chart by his supervisor, and his implications of other scientists, Coonrod and Brown summarily discounted the possibility of systemic deficiencies in the trace evidence section. Indeed, in daily meetings with Zeosky and in a subsequent

memorandum summarizing their internal investigation, Coonrod substantially mischaracterized Veeder's interview responses implicating other scientists in the laboratory and confined any deficiencies solely to Veeder. Coonrod went so far as to claim that Veeder had "recanted" and "folded" regarding the culpability of other scientists, conclusions that were unsupported and, in fact, contradicted by Veeder's interview. Based upon this misleading information, when Zeosky ultimately reported the misconduct to the State Police Internal Affairs Bureau (IAB) and the state Commission on Forensic Science, he omitted any reference to Veeder's allegations of systemic misconduct. While Coonrod's skewed characterization of Veeder's interviews undoubtedly contributed to Zeosky's incomplete referral to IAB and the Commission on Forensic Science, Zeosky still possessed sufficient information to conclude that the violation of laboratory protocol was potentially a broader issue than Veeder's individual misconduct.

The State Police commenced its inquiry by attempting to locate every case in which Veeder was associated by analysis, testimony, chain-of-custody, and technical review. Simultaneously, the State Police contacted the respective district attorneys and informed them of Veeder's actions and that they would be informed of the impact, if any. Soon thereafter, the State Police retained the assistance of several independent fiber experts to review the cases in which Veeder had played a role. The Inspector General recognizes the vitally important assistance provided by State Police personnel in gathering relevant documentation requested as part of this independent investigation.

Upon receiving a referral from the Commission on Forensic Science and the State Police, the Inspector General launched a comprehensive investigation of the allegations. In the first phase of the investigation, the Inspector General conducted an audit of State Police records to ensure that the State Police had identified and segregated all analyses in which Veeder was involved in any fashion. This inquiry required the hand-review of thousands of pages of documents covering the period 1993-2008. While this extensive audit process proceeded, IAB obtained Coonrod's memorandum and its more detailed attachments concerning Veeder's implication of other scientists. Colonel Anthony Ellis

of the IAB immediately contacted the Chief Counsel to the Inspector General to inform him of Veeder's implication of other scientists and further directed IAB to investigate why this information was not previously provided to IAB, the Commission on Forensic Science, or the Inspector General.

The Inspector General determined that the forensic center's internal investigation inappropriately and precipitously dismissed Veeder's implication of other scientists and the deficient training he had received. The Inspector General investigated Veeder's claims and, although no conclusive evidence of dry-labbing by other scientists was unearthed, the Inspector General did determine that Veeder's allegation that he was insufficiently trained in the prescribed Becke line method specifically and fiber analysis in general was true. The Inspector General further found that Veeder's claim that his former supervisor, Anthony Piscitelli, had provided him with the reference chart to use as a crib-sheet was, as will be explained below, mostly likely accurate.

Piscitelli, supervisor of the trace evidence section from the early 1980s until his retirement in 2003 and the individual who trained Veeder in fiber analysis, testified that despite State Police protocol, he was not a "believer" in the determination of refractive index. Piscitelli informed the Inspector General that he did not require scientists in the trace section, including Veeder, to conduct this test. Substantiating Veeder's testimony, Piscitelli further advised the Inspector General that he routinely either determined the relative refractive index after having conducted the FTIR or skipped the determination completely. Piscitelli volunteered that the refractive index could be obtained from a generally available reference chart and was familiar with the chart Veeder used as a crib-sheet. An examination of Piscitelli's casework corroborates his testimony for it reveals that he routinely omitted any entry of relative refractive index from his notes or worksheets in instances where those results should have been entered. While the Inspector General found no evidence that Piscitelli dry-labbed relative refractive index results, his proficiency tests do contain refractive index values and Piscitelli could not conclusively remember what method he utilized to obtain these results

In contrast to Piscitelli, the other fiber analysts in the forensic center interviewed, all of whom had extensive background and training in fiber analysis prior to joining the State Police, attested to the value of the refractive index determination and a review of their casework reflects seemingly appropriate refractive index entries. Notably, several of these scientists did express concern about the quality of technical review of the trace evidence section. In fact, one highly trained fiber analyst, Cathryn Levine, had formally complained about the process in 1994 to the director of the laboratory after Piscitelli had apparently ignored her peer review findings. Levine received no response to her memorandum and, despite her ample qualifications, was essentially removed from conducting peer reviews after her complaint. As a result, even though Veeder conducted approximately 40 fiber analyses following Levine's 1994 letter until she left in 2000, Levine technically reviewed only two of these cases while Piscitelli, who intentionally eschewed the required analysis, conducted almost three-quarters of them.

Indeed, another area of investigation by the Inspector General revealed that Veeder's improprieties should have been discovered during ongoing internal technical review of Veeder's fiber cases but was not.

Upon Piscitelli's retirement in 2003, Veeder was the only fiber analyst at the forensic center qualified to conduct fiber analyses. Rather than arrange for a technical review by an outside laboratory, hire new staff, re-train existing staff, or close the section, the forensic center, at the recommendation of Coonrod, appointed R. Michael Portzer as Veeder's peer reviewer. As stated above, this appointment was made despite Portzer's dearth of expertise and actual disqualification in fiber analysis.

Additionally, when interviewed by the Inspector General, Portzer demonstrated ignorance of both State Police protocol regarding relative refractive index and how to actually conduct the test. During Portzer's tenure as Veeder's technical reviewer, Veeder issued four fiber reports and two proficiency tests containing values that could not have been ascertained using State Police protocol. In addition, Veeder authored six fiber reports that did not contain any relative refractive index values, and in at least two

instances, it appears the relative refractive index should have been determined. Nonetheless, Portzer approved these reports indicating that the “work performed is in compliance with applicable technical test methods, procedures and instructions.”

During the course of the Inspector General’s investigation, an allegation from a confidential source was received regarding misconduct by Major Richard Nuzzo while he served in his former position as Assistant Director of the Forensic Center. As this allegation concerned the trace evidence section and involved witnesses interviewed during the Inspector General’s ongoing inquiry, the allegation was joined in the Inspector General’s ongoing investigation.

The allegation claimed that Nuzzo attempted to influence a questioned document examiner, Deborah Alber, in order to coerce her to alter her findings regarding a matter in which Nuzzo’s brother was the assigned investigator. Alber denied altering her results and the Inspector General found no proof that she had. Nonetheless, Nuzzo, a non-scientist supervisor, acted in a manner which could be reasonably perceived as attempting to influence the conclusions of a trained forensic examiner in a matter in which he had a personal interest and may have violated State Police ethics guidelines.

II. BACKGROUND AND INTRODUCTION

This report presents the findings of an investigation by the New York State Inspector General of misconduct in the trace evidence section of the Forensic Investigation Center operated by the Division of State Police. The Inspector General commenced this investigation after receiving allegations that State Police Forensic Scientist Garry Veeder failed to conduct required tests while examining fiber evidence and then falsified documentation to conceal his misconduct.

Forensic laboratories provide a vital service in the criminal justice system by conducting scientific testing of various kinds for use in investigations and prosecutions. In New York State, 14 crime laboratories and six post-mortem toxicology laboratories perform forensic testing. The federal Paul Coverdell Forensic Science Improvement Program awards grants to states and units of local government to help improve the quality of forensic science. In order to enhance confidence in laboratory operations, recipients of Coverdell grants are required to certify that there exists an independent entity with authority to investigate allegations of serious negligence or misconduct by laboratory personnel substantially affecting the integrity of the forensic results. To ensure the reliability and credibility of the forensic laboratory accreditation program in New York State and to comply with the Coverdell program, the New York State Commission on Forensic Science has designated the New York State Inspector General's Office as the independent investigatory entity.

In addition to authority conferred by the Commission on Forensic Science, because this investigation concerns a laboratory operated by the Division of State Police, the Inspector General also possesses jurisdiction under the state's Executive Law. Executive Law Article 4-A provides that the Inspector General has the duty to investigate allegations of corruption, fraud, criminal activity, conflicts of interest or abuse in executive branch agencies such as the State Police. The Inspector General is further vested with the authority to review the policies and procedures of these agencies and make recommendations with regard to prevention and detection of these abuses.

A. Oversight of Forensic Laboratories in New York State

Executive Law Article 49-B mandates that all public laboratories conducting forensic testing within the state are subject to the oversight of the state Commission on Forensic Science. The 14-member Commission, which is chaired by the Commissioner of the Division of Criminal Justice Services, determines accreditation standards for public forensic laboratories in New York, and, as part of its oversight responsibilities, reviews reported instances of laboratories' non-compliance with the standards.

The Commission on Forensic Science also requires that laboratories are accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB), a nonprofit professional organization of crime laboratory directors and forensic science managers which promotes the development and maintenance of optimal standards of practice in the field. In 2004, ASCLD/LAB implemented a dual-track accreditation program. Its ongoing accreditation program was then referred to as the Legacy Program, and a second program, ASCLD/LAB-International, which incorporated additional, more rigorous requirements, was added. In 2008, ASCLD/LAB received formal international recognition.

Under rules established by the Commission, laboratories are inspected by ASCLD/LAB representatives upon initial application for accreditation and thereafter at regular intervals. Laboratories must demonstrate that their management, operations, personnel procedures, equipment, physical plant and health and safety procedures meet standards.

Between inspections, ASCLD/LAB relies on laboratories to maintain compliance with established standards and accreditation criteria through annual proficiency testing — an assessment of a scientist's skill in a specific discipline conducted using the same protocols as in actual casework. ASCLD/LAB also requires that a designated percentage of scientists' case results be subject to technical review by qualified peers and

administrative review by supervisors. Laboratories are required to notify ASCLD/LAB of deviations from the standards and criteria.

An ASCLD/LAB assessor who discovers a deficiency, or “non-conformity,” in a laboratory during an inspection assigns the deficiency a level number, either Level 1 or Level 2, reflecting the significance of the finding. A Level 1 designation means the assessor finds that: “The nature or cause of the non-conformity directly affects and has a fundamental impact on the work product of the laboratory or the integrity of the evidence.” In contrast, the less significant Level 2 designation indicates the assessor finds that: “The nature or cause of the non-conformity does not, to any significant degree, affect the fundamental reliability of the work product of the laboratory or the integrity of the evidence.”

At the conclusion of an ASCLD/LAB audit, a summation conference is held between laboratory officials and ASCLD/LAB assessors. Pursuant to ASCLD/LAB rules, when any Level 1 or Level 2 Corrective Action Requests are issued during this conference, the laboratory must communicate its proposed corrective action to the lead ASCLD/LAB assessor within 30 days. Because of the fundamental nature of Level 1 non-conformities, laboratories seeking to renew their accreditation must take corrective action to the satisfaction of the ASCLD/LAB assessor within 120 days. Moreover, ASCLD/LAB standards provide that a laboratory will not be deemed to have fully complied with all applicable re-accreditation standards until all Level 1 non-conformities “have been corrected to the satisfaction of the Lead [ASCLD/LAB] Assessor.” In fact, only after all Level 1 corrective actions have been taken by the laboratory to the satisfaction of the lead assessor, may the assessor submit a final assessment report containing all Corrective Action Requests and all corrective action taken by the laboratory in response. This final report is then submitted to the ASCLD/LAB Executive Director and Board for review and approval. Level 2 deficiencies do not require full amelioration prior to re-accreditation or carry a strict time frame for corrective action.

The non-conformities found by the ASCLD/LAB assessor of the State Police Forensic Investigation Center relevant to this report were all Level 1 non-conformities meaning that they were determined to directly affect the integrity of the laboratory's trace evidence section. Therefore, the laboratory had a short time to propose corrective action and could not receive re-accreditation without remedying the deficiencies.

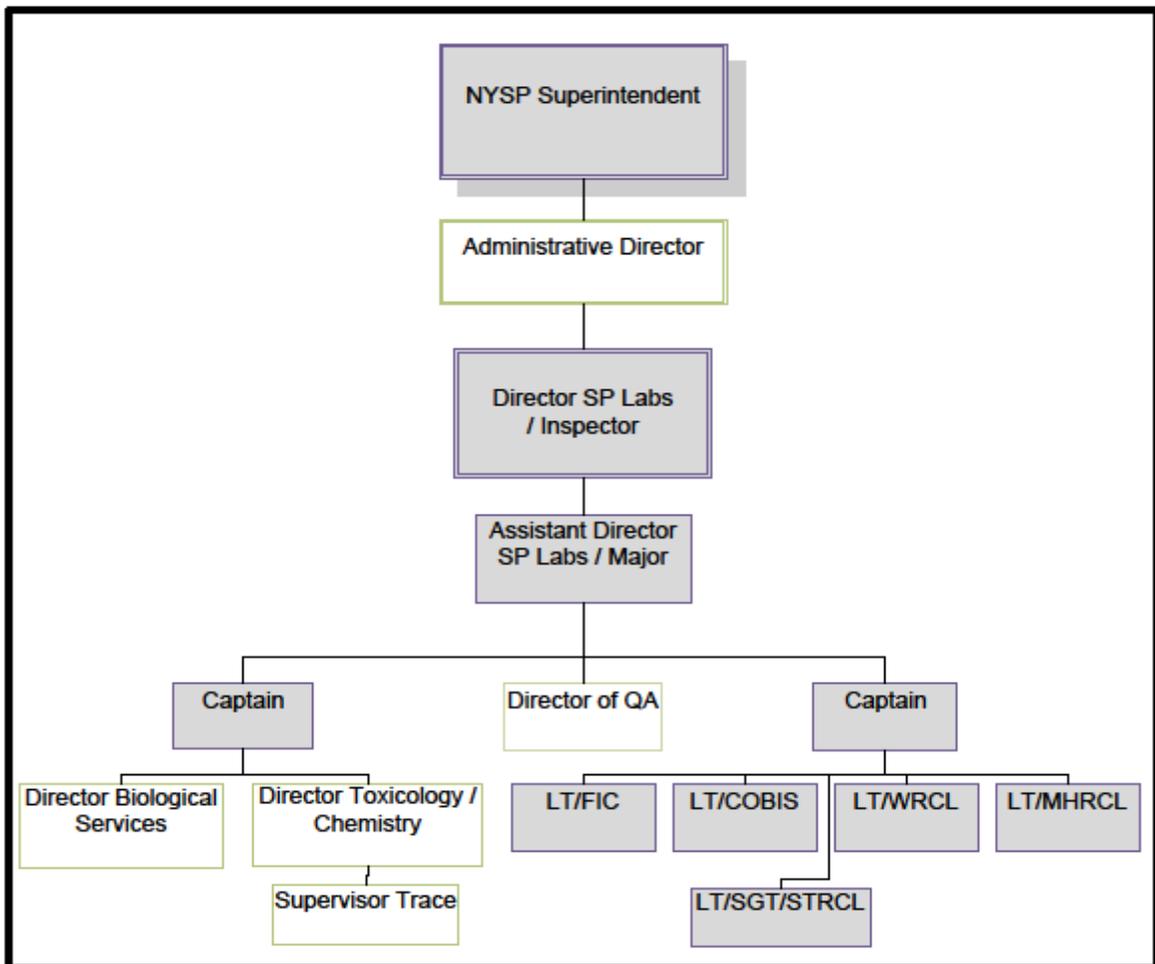
B. The New York State Police Crime Laboratory System

The State Police has operated a crime laboratory system which, since 1936, has provided forensic science services to the entire state criminal justice system. The crime laboratory system currently is composed of the Forensic Investigation Center in Albany, and three satellite laboratories: Mid-Hudson Regional Crime Laboratory in Newburgh, Southern Tier Regional Crime Laboratory in Port Crane, and Western Regional Crime Laboratory in Olean. The system contains sections responsible for biological sciences (DNA, the DNA Databank, and serology), breath testing, drug chemistry, firearms, forensic identification (latent prints), questioned documents, toxicology, and trace evidence, as well as units that are responsible for administration, clandestine drug laboratories, field response, evidence receiving, interagency relations, training, photography and quality assurance. The importance of the State Police laboratory in the state's criminal justice system is reflected in the laboratory's workload. During the past three years the laboratory has handled more than 40,000 cases, specifically 13,670 in 2006, 13,271 cases in 2007, and 13,500 in 2008.

The issues addressed in this report emanate from the Forensic Investigation Center's trace evidence section, which consists of several sub-disciplines: fiber, arson residue, footwear impressions, glass, hair, headlight, physical match, and product tampering (unknown substances). This investigation primarily concerns activities relating to fiber analysis in the trace evidence section.⁴

⁴ Trace evidence represents a small portion of the work of the New York State Police Crime Laboratory system. For example, in 2008, the system issued 1,416 reports of DNA analysis, compared with 22 reports of trace evidence analysis. The Inspector General did not examine the conduct of scientists in other sections of the laboratory as they are outside the scope of this investigation.

The State Police laboratory system is headed by a director, who holds the State Police rank of Inspector, and an assistant director, a Major. The current director is Gerald Zeosky, who has held the position since 2003. Richard Nuzzo served as assistant director from 2003 to September 18, 2008. Reporting to the director and assistant director are two Captains, who supervise section directors. The section directors include two civilians at the Forensic Investigation Center and three Lieutenants at the regional labs. The director and assistant director supervise the laboratory's Director of Quality Assurance, a civilian. In total, the system currently employs 19 employees who are sworn members of the State Police and 161 civilian scientific and technical personnel at the four laboratory sites. The laboratory system's organizational chart appears below:



C. State Police Laboratory Protocols for Fiber Evidence Analysis

State Police forensic scientists are required to conduct examinations in accordance with established protocol. The State Police maintain policies and procedures, memorialized in technical manuals, which outline the protocols for the examination of evidence. The protocols for fiber analysis, contained in the Trace Technical Manuals, guide the forensic scientist through fiber examinations which are divided into two main categories – fiber identification and fiber comparison. Fiber identification may be useful when a standard or known fiber source is not available for comparison. Fiber comparison, on the other hand, involves the evaluation of the characteristics and properties of an unknown fiber to that of a known fiber source to determine if they are consistent with having originated from the same source. For example, a scientist may be asked to compare carpet fibers from the trunk of a suspect’s car with fibers from a piece of a victim’s clothing.⁵

In either category, the scientist may choose from a series of analyses, some required and some optional. After fibers have been recovered and mounted on slides, microscopic examination of a fiber’s characteristics and determination of its optical properties are required as preliminary steps. According to protocol, the examiner should document the results on a fiber data worksheet to assist the technical reviewer who later examines the analysis.

A technical review is an evaluation of case and proficiency test reports, notes, data, and other documents to ensure that appropriate conclusions supported by sufficient

⁵ Fiber evidence significantly contributed to conviction in two cases that gained widespread attention. One case was the Wayne Williams Atlanta murders. Between 1979 and 1981, the bodies of 29 victims were found dumped throughout the metro-Atlanta area. Williams was convicted in 1982 of the murders of two of the victims based in part on fiber evidence: microscopic match of fibers found on the victims’ bodies and fibers found in Williams’s car and home. The other was the case of Robert Buell and murders in Ohio. On July 17, 1982, an 11-year old girl was abducted from a Marshallville, Ohio park. Six days later her body was found. Approximately 15 months later, authorities identified the girl’s killer as Buell, after he was convicted of raping and kidnapping a 29-year old woman. The evidence included a match of fibers found on the victim and fibers found in the Buell’s van and home.

scientific bases were made and that those results were also properly documented in the laboratory case file. This review is intended to be conducted by a second qualified individual suitably experienced in a specific discipline through documented training and expertise. This review allows for possible discrepancies to be identified and remedied prior to the release of a report. Technical review is an essential validation which guards against errors in a scientific field where all work is expected to be exemplary and mistakes can have severe consequences.

Microscopic examination (used in both fiber identification and fiber comparison) includes the use of various microscopes to evaluate a fiber's color, diameter, cross-sectional shape, presence and amounts of delusterants (compounds that reduce a fabric's sheen), surface characteristics, indication of texturizing, and fluorescence, among other attributes. In fiber comparisons, the number of tests a scientist utilizes may vary depending on the results. For example, a scientist may observe a different color or cross section when comparing two fibers, thereby eliminating the need for further tests. Examination of a fiber's optical properties involves using different microscopes to assess properties such as interference colors, pleochroism,⁶ sign of elongation,⁷ birefringence,⁸ and refractive index.

i. Determination of a Fiber's Refractive Index

The laboratory protocol violations which are the focus of this report relate to the determination of the refractive index of a fiber relative to the medium in which it is mounted, which provides information used to ascertain the identity of a fiber. Section (2.)(a.) of the State Police trace evidence protocol reads:

After microscopic examination, the refractive index relative to DPX (or Permout) is determined. (I.) When the microscope is focused upward

⁶ Pleochroism is the property that causes a substance to show different absorption colors when exposed to polarized light coming from different directions.

⁷ Sign of elongation refers to the elongation of a fiber in relation to refractive indices.

⁸ Birefringence is the numerical difference in refractive indices for a fiber.

(i.e. working distance increased), the Becke line is observed to move toward either the fiber or the mounting medium, whichever has the higher refractive index. By comparing these observations with the refractive index of common fibers (Appendix IV – 8), the fiber type can be easily identified.

Notably, the only test accepted under protocol to determine relative refractive index is the Becke line method, which involves the observation under a microscope of the movement of a bright halo surrounding a fiber when the microscope stage is manipulated. According to this protocol, a scientist *must* determine a fiber's refractive index relative to the medium, or substance, in which the fiber has been mounted on a slide for microscopic examination. Protocol requires that a fiber be mounted in either "DPX" or "Permount," both of which are synthetic resins. This procedure, the Becke line method, produces results expressed in *relative* terms: greater than (>), less than (<), or equal to (=) a known value rather than an absolute number. Although other analyses exist which produce an *absolute*, or non-relative refractive index of a fiber, these other methods are not recognized by State Police forensic center laboratory protocol.

ii. The Fourier-transform infrared spectroscopy technique (FTIR)

After a fiber's relative refractive index and several other optical properties have been determined, protocol prescribes that the Fourier-transform infrared spectroscopy (FTIR) be performed on all synthetic fibers. The FTIR is a measurement technique used to determine a fiber's polymeric makeup through analysis of its infrared spectra and comparison to a library of known fiber values. The FTIR ascertains a fiber's composition, but does not use or determine a refractive index to do so.

D. Scope and Methodology of the Inspector General's Investigation

The Inspector General reviewed all trace evidence section cases associated with Veeder as well as all fiber examinations conducted by other trace scientists assigned to the Forensic Investigation Center and satellite laboratories dating over the last 20 years.

The Inspector General also reviewed all proficiency tests completed by these same scientists during this period.⁹

Concurrent with the Inspector General's review, the State Police retained experts from several states to forensically examine Veeder's trace evidence reports. The expert's findings were reviewed by the Inspector General. In addition, the Inspector General consulted with an expert in the field of fiber analysis for technical assistance and to provide his opinion of the impact of Veeder's practices.

Voluntary interviews were conducted of 23 individuals including five sworn members, 18 current and former civilian scientists, ASCLD/LAB representatives and an expert consulted by the Inspector General.

The Inspector General reviewed ASCLD/LAB standards, the laboratory's Trace Methods Manuals in force over the relevant years, and the State Police's internal investigative, personnel, training and disciplinary files. Additionally, to become acquainted with these technical issues, the Inspector General reviewed general reference materials pertinent to this subject matter.

The Inspector General notes that the State Police was in the midst of an internal investigation of the Veeder matter when the Inspector General commenced its investigation. The statements, records and evidence collected by the State Police during their internal investigation were examined by the Inspector General. The State Police was advised to suspend its investigative activities pending the completion of the Inspector General's investigation.

⁹ The Inspector General recognizes the vitally important assistance provided by State Police personnel in gathering relevant materials requested by the Inspector General.

III. STATE POLICE LABORATORY INTERNAL INVESTIGATION OF VEEDER AND THE TRACE EVIDENCE SECTION

A. Background, Education, and Experience of Fiber Analyst Garry Veeder

Garry Veeder graduated from the State University of New York College of Environmental Science and Forestry and Syracuse University in 1973 with degrees in Forest Biology and Forestry, respectively. From 1978 to 1981 he attended the C.W. Post Campus of Long Island University, where he was a candidate for a master's degree in Public Administration.

Veeder joined the New York State Police as a Forensic Scientist at the Albany laboratory (later the Forensic Investigation Center) in 1977, having worked three years as a chemist in the Syracuse Police Crime Laboratory. In January 1995, Veeder was assigned to the laboratory's trace evidence section and in December 1995, after completing mentored training and a competency test in fiber identification and comparison as well as work in other trace evidence sub-disciplines, he was deemed competent by the then-director of the laboratory to conduct fiber casework.

Also during 1995, Veeder was promoted to Forensic Scientist III in the field of trace evidence. By 2001, Veeder had become the only authorized fiber scientist at the Forensic Investigation Center following the reassignment, resignation, or retirement of other scientists.

In his tenure with the State Police, Veeder attended training workshops in forensic microscopy, forensic hair and fiber microscopy, advanced infrared microscopy, properties of fibers and yarns, and infrared analysis of trace evidence, among other courses. He was qualified to provide expert testimony in the areas of trace evidence and drug chemistry and attended an expert witness seminar at the State Police Academy.

As with all scientists authorized to conduct casework, Veeder's skill in fiber examination was subject to annual proficiency tests and performance evaluations administered by the State Police. Veeder consistently received satisfactory ratings on the proficiency tests and satisfactory or highly effective ratings in his annual performance evaluations.

B. ASCLD/LAB Audit Finds Deficiencies in Fiber and Impression Cases of Veeder

Between April 14 -18, 2008, ASCLD/LAB conducted an on-site audit of the State Police Laboratory System's Forensic Investigation Center in Albany. The Forensic Investigation Center was seeking reaccreditation from ASCLD/LAB, having initially been accredited in 1993 and thereafter reaccredited.

Consistent with ASCLD/LAB's standard procedures, a team of assessors interviewed laboratory personnel and reviewed documents to determine if appropriate examinations had been performed and if laboratory reports were supported by adequate documentation. In each discipline for which the laboratory sought accreditation, the assessors reviewed a sample of case records prepared by a scientist working in that discipline. The assessors also conducted an "audit trail": a complete review of the documentation for at least one case from the time of receipt by the laboratory to completion. In addition, selected laboratory personnel were asked to demonstrate specific testing and/or calibration activities in their authorized discipline.

In advance of the audit, the Forensic Investigation Center submitted to ASCLD/LAB selected case files and proficiency tests from all of its sections. Among the trace section records submitted were a March 2008 fiber proficiency test administered to Veeder and two impression cases handled by Veeder in 2007. As discussed below, the ASCLD/LAB assessor identified fundamental problems in Veeder's fiber proficiency test and both impression cases which raised serious questions about his competency.

With respect to the fiber proficiency test, the assessor identified protocol violations relating to the required relative refractive index determination. According to the assessor's proposed Corrective Action Request, she observed in the documentation that Veeder had reported the fibers' refractive index "to three significant figures" — meaning that Veeder had reported the refractive index as a discrete numeric value (e.g. 1.47) rather than in the required form of a relative value (>DPX or <DPX, for example). The assessor wrote, "It was unclear how the analyst arrived at a number value for the refractive index. There were no methods identified that could have given him a number for fibers (nor is there one commonly used for fibers in forensic labs)." The assessor further noted that Veeder, when interviewed during the audit, displayed ignorance about basic components of the refractive index test and confirmed "there was no test he could perform to arrive at the figures recorded." The assessor noted that Veeder further claimed that "he knows the refractive index values from 'what I've seen over the years,' from 'back training and from the FTIR,' and that he was 'throwing that out as an approximation.'" According to the assessor, when she asked Veeder why he inserted an absolute value in the box on the worksheet where a relative value was required, "he said he thought that was expected because there was a box there."

Below is Veeder's 2008 proficiency test fiber comparison worksheet which the assessor had examined and which, as set forth above, included refractive index values inconsistent with State Police protocol. (Note that the refractive index values are listed as 1.47, 1.70, 1.47 and 1.54.):

EX 3D

FIBER COMPARISON WORKSHEET
CASE# 08PT-00028

	CONTROL #1A	QUESTION #3A
SYNTH OR NATURAL	Synth	Synth
COLOR	White	White
DIAMETER	23 μ m	15/20 μ m
LENGTH	—	—
CROSS SECTION	≡ ⊗	≡
DELUSTERANT	—	— semi
REF INDEX PARALL	1.47	1.70
REF INDEX PERP	1.47	1.54
SIGN OF ELONGATION	+	+
FTIR	Acetate	Polyester
COMP SCOPE	different	different
MICROSPEC	—	—
FLUORESCENCE	—	—
DIREFRIGENCE	orange/blue	rainbow
MELTING POINT	—	—

Analyst: DEV

Date: 3/19/08

END OF DOCUMENT

Approved By: Keith K. Conrad, Director Drug Chemistry/Toxicology Print Date: 3/7/2008

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Additionally, the assessor asked Veeder to demonstrate how he would determine a particular fiber's relative refractive index, and reported the following results:

The analyst sat at the polarized light microscope and said he would need to refresh his memory by reviewing the references. The analyst was asked what refractive index was and he said he knew it had to do with the Becke line, but was unable to define it. When asked how he would get an actual number for the refractive index for a fiber the analyst said that there were methods but that he would have to review them.

The assessor added:

The analyst was unable to perform specific tasks foundational to fiber analysis based upon the examination documentation of the record reviewed (2008 fiber proficiency test), verbal acknowledgement from the analyst in the course of the interview, and the inability to demonstrate the use of the polarized light microscope or to determine a refractive index.

When interviewed by the Inspector General, the assessor elaborated that Veeder was unable to articulate the methods by which he arrived at the refractive index values contained on his 2008 fiber proficiency test. She believed that Veeder's refractive index values could not have been obtained by any methods prescribed under State Police fiber protocol and undoubtedly should have been detected during the technical review. Additionally, according to the assessor, Veeder was unable to demonstrate basic technique in operation of a polarized light microscope, the instrument used to conduct at least two critical examinations in fiber analysis, the birefringence and sign of elongation tests.

In addition, the assessor's proposed Corrective Action Request reported that examination of Veeder's two impression cases revealed that both case files were missing photographs or other materials used by Veeder in his analyses. The assessor wrote, "In the two trace evidence cases there are conclusions made in the comparison of footwear marks or rubber grip on glove marks. There is not documentation to support the conclusions such that another competent analyst could interpret the data."

On April 21, 2008, the ASCLD/LAB lead assessor held a summation conference with Forensic Investigation Center management. At or about this time, ASCLD/LAB also provided the laboratory management with two proposed Corrective Action Requests requiring the laboratory to correct the deficiencies identified in its review of Veeder's fiber proficiency test. Both cited Veeder's violation of ASCLD/LAB standard 5.2.1, which reads, "Personnel performing specific tasks shall be qualified on the basis of appropriate education, training, experience and/or demonstrated skills, as required"; and standard 4.13.2.5, which reads, "Documentation to support conclusions shall be such that in the absence of the analyst, another competent analyst or supervisor could evaluate what was done and interpret the data." In addition, ASCLD/LAB issued the laboratory a Corrective Action Request relating to Veeder's two impression cases, citing violations of standard 4.13.2.5.

Significantly, the deficiencies found by the ASCLD/LAB assessor in Veeder's fiber proficiency test and impression cases were all designated Level 1 non-conformities directly affecting the integrity of the laboratory's trace evidence section. Therefore, the laboratory had a short time to propose corrective action and could not receive re-accreditation without remedying the deficiencies.

C. The Forensic Investigation Center's Response to the Audit Findings

The Forensic Investigation Center took a number of actions in response to the ASCLD/LAB findings. To prevent Veeder's deficiencies in fiber analysis from jeopardizing its reaccreditation, the laboratory decided almost immediately that it would no longer conduct fiber evidence examinations. This stark measure removed the trace evidence sub-discipline of fiber analysis from the scope of the audit, thus rendering the two proposed Corrective Action Requests moot. Bradley Brown, Supervisor of Forensic Services in the trace section, in his testimony to the Inspector General, characterized this action as a "huge hit" to the laboratory.

On April 22, 2008, the Forensic Investigation Center also commenced an internal inquiry into the problems the ASCLD/LAB assessor had identified in Veeder's fiber proficiency test and impression cases. Inspector Gerald Zeosky, Director of the Forensic Investigation Center, placed Captain Timothy Munro, who supervises the laboratory's bioscience, toxicology and chemistry sections, in charge of the inquiry.

i. Laboratory Inquiry into Veeder's Fiber Analyses

As part of the inquiry into Veeder's fiber work, Zeosky directed Keith Coonrod, Director of the Toxicology and Drug Chemistry and Acting Supervisor of the trace section, to interview Veeder. Coonrod, joined by Brown, questioned Veeder on April 22-25, 2008, at the Forensic Investigation Center. Although the interviews were not recorded or transcribed, Brown took detailed notes of Coonrod's questioning of Veeder on which memoranda drafted by Coonrod and Brown at the conclusion of the interviews were based.¹⁰ In addition, while the interviews were ongoing, Coonrod provided regular verbal briefings to Zeosky, Munro, and Major Richard Nuzzo, Assistant Director of the Forensic Investigation Center, regarding the information Veeder was providing.

As documented in Coonrod's and Brown's contemporaneous memoranda, the interviews corroborated the findings of the ASCLD/LAB assessor and provided indisputable evidence, including Veeder's own admissions, that Veeder violated laboratory protocols when analyzing fiber evidence by failing to perform the required refractive index test. The interviews further proved that Veeder falsely indicated in case documents that he had performed the required test. When a scientist professes to have conducted a test not actually performed, it is referred to as "dry-labbing." More troubling, Veeder indicated that his misconduct was the product of his training and that other scientists in the laboratory potentially may have engaged in similar conduct.

¹⁰ The Inspector General sought to obtain Coonrod's and Brown's notes, but was advised that these original notes either could not be located or no longer existed.

ii. Veeder Admits in Interviews That He Violated Laboratory Protocols

In the interviews, Coonrod reviewed Veeder's 2008 fiber proficiency test which the ASCLD/LAB assessor had determined to be deficient, and requested that Veeder explain fiber microscopic characteristics and optical properties, and "walk [him] through" the methods he had employed. Coonrod also questioned Veeder about an actual fiber case that Veeder had handled in 2006.

In the course of reviewing the proficiency test, Veeder admitted to Coonrod and Brown that he did not perform the Becke line analysis to determine the fiber's relative refractive index. Rather, he stated, he bypassed this analysis and proceeded directly to the FTIR to identify the fiber in question. Using the FTIR results, Veeder confessed, he consulted a reference chart of known fibers and their corresponding refractive index values, selected the appropriate value, and entered it on the fiber comparison worksheet. In his memorandum, Coonrod reported his questioning of Veeder regarding the refractive index on his proficiency test that elicited unequivocal admissions from Veeder. Coonrod's memorandum read in pertinent part:

Q – Did you conduct the analysis protocol for determining the refractive index (RI) as listed in . . . the NYSP Trace Evidence Technical test methods manual?

A – No.

Q – Was the examination you utilized to determine the RI approved as a test method to do this determination?

A – No.

Later in the interviews, when reviewing documentation from an actual fiber case he had handled in 2006 in which his entries appear in the correct format (<, >, +), Veeder further admitted that he had violated protocol in that case by failing to conduct the refractive index test, relying instead on the FTIR results. Coonrod's memorandum reported the following exchange:

Q – How did you determine the results noted on the worksheet marked pg #12 for REF INDEX [RI], shown as >DPX?

A – The same way as I did with the [proficiency test]. I performed the FTIR first and then looked up the corresponding values [on a reference chart] based on the FTIR data but listed this as being greater than the mounting medium DPX versus listing an actual RI number.

Significantly, in the above exchange Veeder also admitted that in this actual fiber case he entered information on the case worksheet to create the false impression that he had performed the refractive index test. As set forth above, a correctly determined refractive index value, based on the required Becke line method, is expressed as less than (<), greater than (>) or equal to (=) DPX or Permount (or their corresponding refractive index values), the medium in which the fiber is mounted on a slide. In contrast, Veeder's used the result of the FTIR, an entirely separate test, to determine a fiber's composition then consulted a reference chart to obtain the fiber's refractive index, which he expressed as a specific numeric value such as 1.47. In this instance, however, Veeder did not express a specific numeric value, but rather entered ">DPX" on the worksheet, which created the appearance that he had conducted the required refractive index determination, despite his own admission that he had not.

An example of a State Police fiber comparison worksheet where the RI values have been reported in a manner consistent with State Police protocol follows (note that the RI values are listed as > or = to DPX):

FIBER COMPARISON WORKSHEET

CASE # 06SL-260

	CONTROL	QUESTION
	#3B	#2A
SYNTH OR NATURAL	Natural	Synthetic
COLOR	Black	Black
DIAMETER	20 μ m	\approx 12-20 μ m
LENGTH		
CROSS SECTION		
DELUSTERANT	-	semi-dull
REF INDEX PARALL	>DPX	>DPX
REF INDEX PERP	\geq DPX	>DPX
SIGN OF ELONGATION	+	+
FTIR		Polyester
COMP SCOPE	different	different
MICROSPEC		
FLUORESCENCE		
BIREFRINGENCE		watermelon
MELTING POINT		
	Cotton	Polyester

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Veeder further acknowledged that, given the form in which he entered the relative refractive index on the worksheet in this particular case, a reviewer of his work would not easily detect his violation of protocol. Coonrod's memorandum further read:

Q – Are the results you list for the RI by utilizing the FTIR in the same format meaning eg < > DPX identical to what results would look like following the protocol under section 2.,a.,i?

A – Yes.

Q – Therefore, by looking at a result such as >DPX, one would not be able to tell that you did not obtain these results utilizing section 2.,a.,i?

A – Correct.

However, as will be discussed later in this report, the Inspector General identified a number of fiber examination cases where Veeder entered an FTIR-derived numeric value on the worksheet where a relative value obtained from a Becke line analysis was required. As discussed below, these obviously incorrect entries by Veeder should have been detected during a technical review of his cases and proficiency tests, but were not.

iii. Veeder's Dry-Labbing in Casework

As Coonrod's questioning of Veeder continued, additional and more wide-ranging allegations with respect to refractive index tests at the Forensic Investigation Center came to light. Both Coonrod's and Brown's memoranda on the interviews made clear not only that Veeder failed to perform the required refractive index analysis on his 2008 proficiency test and in a specific 2006 fiber case, but also that he omitted this required step in all his fiber casework. He had done so because he allegedly had not been trained to conduct the refractive index measurement and might not even have known how to conduct this analysis. Further, Veeder stated that the handwritten reference chart of refractive index values he used was given to him by Anthony Piscitelli, the trace section supervisor who had trained him in fiber examination techniques.

On these issues, Brown's memorandum reported the following exchange and interaction between Coonrod and Veeder:

Coonrod: The RI (refractive index) . . . How do you come up with this?

Veeder: The situation with RI. We don't have the capability for this. I was never taught this technique. It never came up in casework or other [proficiency tests]

Coonrod: But where did the [RI] number come from?

According to Brown's memorandum, Veeder, in response to this question, retrieved a handwritten chart which he reproduced on a copying machine in the interview room and handed to Coonrod. Asked if he had created the chart, Veeder answered:

It's a Tony Piscitelli thing . . . from training. They never showed me how to do it. It's my mistake.

The reference chart of known fiber refractive index values that Veeder referred to and produced during his interview is reproduced below. The Inspector General ascertained that the chart in this handwritten form, not including the additional notations appearing at the bottom of the page, was among materials distributed to participants in an FBI fiber evidence training class that was held sometime between 1977 and 1987.

Exhibit 2

~~Microscopic~~

+ n₂

COMMON FIBER TYPES

**LEAD BY INCREASING
N₂ (ISOTROPIC REFRACTIVE
INDEX)**

	N ₁₅₀	N ₁	N ₂	N ₁ - N ₂
TRIACETATE	1.469	1.469	1.469	21.000
SEC ACETATE	1.474	1.476	1.473	+ .003
POLY PROPYLENE	1.507	1.530	1.496	+ .034
ACRYLIC	1.513	1.511	1.514	-.003
VISCOSE RAYON	1.527	1.542	1.520	+ .022
MODACRYLIC	1.534	1.535	1.533	+ .002 ^{TR}
VINYON	1.538	1.541	1.528	+ .005
NYLON	1.541	1.548	1.522	+ .056
POLYESTER	1.549	1.706	1.546	+ .160

DPN 1.52

$\frac{1}{3} (n_{11} + 2n_2)$

Permanent is 1.525

↑ working distance ↑ n

↓ " " ↓ n

When the Inspector General later interviewed Coonrod about his questioning of Veeder on these points, Coonrod described his reaction to Veeder's revelations. Coonrod stated, "And clearly, that started telling me he was not even in tune [with] what was in the freaking [standard operating procedure] because he couldn't even articulate what was in it or what was not."

As described in Brown's memorandum, Coonrod, in the following day's interview, pressed Veeder about his claimed inability to conduct the refractive index test:

Coonrod: Can you determine the RI [refractive index] of a fiber, or tell me how you would do it?

Veeder: From (the) FTIR, and experience.

Coonrod: Are you saying, without the FTIR, you can't determine the RI?

Veeder: Cumulative things — striations, color, fiber. I've seen this before . . . You're asking me to articulate from experience. FTIR gives it to me chemically. As I said yesterday, I was given this sheet [refers to Tony Piscitelli's RI chart].

Brown's memorandum continued:

Coonrod: But are you telling me you have to go to FTIR for RI?

Veeder: I know it's in DPX. They told me from the past, you go to this [chart] and plug it in . . . This is how I was trained to, how we've always done it.

It is evident from Brown's memorandum that Coonrod recognized the serious and potentially far-reaching implications of Veeder's claims — that the omission of the required refractive index test in fiber examinations was a common practice in the laboratory. Coonrod sought clarification from Veeder:

Coonrod: I need to understand very thoroughly. I don't want to misspeak. This stuff goes to the [Forensic] Commission. So then our test method says only one option for RI. That's not what we did, and you've never been trained on what's listed here.

Veeder: That's correct.

Coonrod, in his memorandum, accurately summarized Veeder's extremely troubling assertion: "Mr. Veeder explained that this is the way everyone had done the RI determination portion of the examination and the way he had been taught."

iv. Veeder's Implication of Other Scientists at the Forensic Investigation Center

The following day on April 25, 2008, which was also the final session of the interviews, Coonrod pursued with Veeder his claim that “everyone had done the RI” in the same improper manner as Veeder. As described below, while Veeder’s responses to questions are sometimes indirect, and rarely absolute, Veeder clearly alerted Coonrod and Brown to likely systemic deficiencies and violations of protocol in the Forensic Investigation Center.

Initially in this interview, according to Brown’s memorandum, Coonrod confirmed Veeder’s statement from the previous day’s session:

Coonrod: We were talking about refractive index. This is the way we’ve always done. Not by following procedure. We have done it by going to chart.

Veeder: Right.

Coonrod then focused his questioning on whether the violations of protocol in fiber examinations admitted by Veeder were a laboratory-wide practice. The conclusion of Brown’s memorandum reads as follows:

Coonrod: The thing that we dealing with-in the method-optical properties always conducted. RI relative to DPX is determined. Then we go to the procedure, referring to 2a. We didn't do the specific procedure here.

Veeder: For those specific samples.

Coonrod: What I’m wrestling with now is that you’re telling me that we haven't been following this as a fiber section.

Veeder: It was probably developed at one time to get it.

Coonrod: I have to answer now. You’re telling me that our fiber section has not been determining RI, but have been determining it from a chart.

Veeder: From chart, right.

Coonrod: Now I am faced with you telling me that the lab system,

Tony Piscitelli, other fiber examiners, Cathy Levine, have not been following procedure. This is escalating. I don't have a situation where just Garry didn't follow procedure. That's fine with that. I can answer that. But what you telling me, now I have to go back to day one, looking at all the cases asking them (Tony, Cathy) if they followed procedures. Now there's a much broader question, was it laboratory practice not to follow protocol. Now, I have to take corrective action, expand it, talk to Tony P., talk to Cathy Levine.

I've traced this protocol back to pre-1992. The protocol hasn't changed. I have all the obsolete manuals.

Veeder: I can't speak to them. I know what I was left with.

Coonrod: I need to ask the question again, you told me that this is the way things done with fiber examinations. If so, I've got to broaden the scope of the [inquiry]. I owe it to the customers. Did Tony not follow procedure because this was not common practice? Did Cathy not follow procedure because this was not common practice?

What I don't have an answer on . . . you're telling me that Tony and Cathy did not follow procedure.

Veeder: I arrived in January 1995. Did I ever see them take out the liquids?¹¹

Coonrod: (Points to procedure.) This procedure doesn't deal with that. We're talking about determining RI relative to DPX. 2ai. Did they do it or not?

Veeder: I did not see them perhaps do this. I don't know from '95 back.

Coonrod: Tony was doing fibers in 95. From 95 forward do you have firsthand knowledge if they were or were not doing this? Could they have done it and you not know?

Veeder: (Restates last sentence.) Yes, because there were large rooms I was doing my thing.

Coonrod: Can you tell me, were they or were they not doing 2ai?

Veeder: May.

Coonrod: You mentioned yesterday that they weren't. What makes you think that they weren't?

¹¹ The term "liquids" appears to be a reference to the use of immersion oils in the microscopic examination of fibers. The question of the Forensic Investigation Center's use of such oils is discussed later in this report.

Veeder: All I can say, during the course of when I was doing my cases, if they were looking at what I was putting on my form, entering a number, and we had this chart. I'm entering a number, say, from the RI, they're training me.

Coonrod: To split this, you can't tell me that they weren't doing this.

Veeder: I don't know. Let's keep Cathy out of this. She's not involved. Tony trained me.

Coonrod: Based on what you said yesterday, I have to go back and review cases from Cathy, Tony and Tom Walsh.

Veeder: And Cliff. [Forensic Scientist Clifford Brant]

Coonrod: Cliff was doing fibers?

Veeder: Yes.

Coonrod: The entire reputation of the laboratory is in question. You're saying you didn't know if they did or not.

Veeder: Tony, Cathy, Cliff and me, the Micro section combined with the Crim. section to form Trace.

Coonrod: You're saying that when you were doing RI Tony was training you.

Veeder: Yes, Cathy was working on her PhD.

Coonrod: So Tony would review your entries . . . In what format were your entries back then? >DPX?

Veeder: Yes.

Coonrod: Would you put say 1.47 like on the [proficiency test], way back then?

Veeder: Maybe not.

Coonrod: Tony did peer review of your cases?

Veeder: Yes. He came up with the sheet as far as I know.

Coonrod: Did Tony know, or did the two of you talk about getting it from the [FTIR], checking the chart?

Veeder: It's just I doing it.

Coonrod: He sees (pulls out case) a worksheet and ><DPX.

Veeder: Right.

Coonrod: So he knew you were putting these results down?

Veeder: Correct.

Coonrod: Did he know that you didn't do this procedure 2ai, and that this entry was based on not doing this?

Veeder: Perhaps. It's how this ran, polyester or nylon . . . it's what it is.

Coonrod: I need to know whether this is systemic dealing with the entire lab system or not? When they saw >DPX, did they know your result was not from doing the method but from the [FTIR] chart?

Veeder: Perhaps.

Coonrod: So you have read this procedure here?

Veeder: Yes, familiar with.

Coonrod: (Restates the question.)

Veeder: Yes. To me > and < is kind of a gross thing.

Coonrod: Now my question is. Do we have reason to believe that based on what you're saying, do I have to go back and look at everyone's cases? Do you have firsthand knowledge that this wasn't done and I have to look at everyone's cases?

Veeder: To soften this, because it's pretty brutal, the technology has changed, so I go into the FTIR room, I had nylon 6, and nylon 6,6, hanging on the wall. Now, perhaps you don't have to do a melting point, say.

You're asking me if I have firsthand knowledge.

Coonrod: If you're telling me you have firsthand knowledge, then I have to take the next step, I'm wrestling with this.

Veeder: If they were looking at me, and Tony would be on me in setting up this chart, then perhaps that's what we (illegible) too.

Coonrod: But, do you have firsthand knowledge, because if you do, then I have to go back and look at all of their cases.

Veeder: I'm giving you what they're dealing with me. I'm not reviewing their cases, they don't.

Coonrod: So is it a fair statement that you don't have firsthand knowledge that they weren't following procedure?

Veeder: Not really sure.

Coonrod: But you didn't tell him your response was based on the FTIR chart?

Veeder: No, I wouldn't tell him that. [Emphasis on that]

Coonrod: But you may have been taught BECKE lines?

Veeder: Well, maybe a once — over, and here's a book on it.

Coonrod: (Discussed what he has to do with ASCLS/LAB.)

Veeder: Cliff was here before me.

v. Coonrod's Concerns about Veeder's Abilities on Fiber Tests other than the Determination of Relative Refractive Index

While he mainly focused on the relative refractive index determination, Coonrod, in the course of the interviews, also questioned Veeder about other steps in fiber examinations required by laboratory protocol. These tests are conducted to determine characteristics such as color, diameter, cross-section, and other optical properties, like birefringence and sign of elongation. While Coonrod in his testimony to the Inspector General ultimately expressed confidence in Veeder's ability to perform these various tests, Coonrod also harbored doubts about Veeder's competence.

In his testimony to the Inspector General, Coonrod, describing his interviews of Veeder, stated that Veeder "was having a tough time articulating to me what he did of all these steps." However, Coonrod also maintained, inconsistently, that Veeder "could articulate what he was supposed to do, but when it came to actually doing it, he wasn't able to." Both Coonrod and Brown testified to the Inspector General that, with the exception of the refractive index test, Veeder expressed and demonstrated proper use of the microscope to conduct tests required by protocol. Notably, Coonrod's and Brown's views on this point appear to be at odds with the observations of the ASCLD/LAB assessor, who, as set forth above, noted Veeder had difficulty operating the polarized

light microscope when asked to demonstrate his use of this standard piece of laboratory equipment.

Coonrod, in his April 28, 2008 memorandum summarizing the results of his interviews of Veeder, also expressed concern about Veeder's lack of knowledge of the principles underlying the FTIR procedure. Coonrod wrote:

When asked [in the interview] about the importance for examiners to understand the theory about how the FTIR operates so they know the science behind the analysis/examinations they conduct, Mr. Veeder could not articulate basic [FTIR] theoretical principles such as bond vibration, stretching or rotation. He stated that "that is why people have degrees in chemistry and have PhDs."

The Inspector General asked Coonrod if, during his interview of Veeder, he had observed Veeder operate the FTIR. Coonrod responded:

I can't remember if he actually ran the FTIR. I mean, I know he was there when the training was going on from the instructor on the new model and stuff. So I knew he was capable of running the FTIR. So I actually seen him press the button and run out? I'd want to say 'yes.' But there's a slim possibility . . . So I don't know whether I actually physically had him run the FTIR or not.

Concern about Veeder's ability in yet another area of fiber analysis — the description of a fiber's cross-section — is reflected in a May 23, 2008 draft report on the laboratory's Veeder inquiry written by Captain Timothy Munro, director of the laboratory's bioscience, toxicology and chemistry sections. Referring to Coonrod's interview of Veeder, Munro stated that "Veeder was unable to explain how the conversion from the gradient to the diameter is calculated."

In his testimony to the Inspector General, Coonrod said he concluded that Veeder, apart from his refractive index deficiencies, had the ability to conduct the fiber examination tests required by laboratory protocol. Coonrod stated, "The bottom line is that I felt that what I saw was consistent with what he was reporting." Based upon his

superficial investigation at the time, it is not entirely clear what formed the basis of Coonrod's confidence in Veeder.

vi. Coonrod Minimizes Veeder's Implication of Other Scientists

The Inspector General determined that Coonrod and Forensic Investigation Center management minimized and precipitously discarded the seriousness and extent of problems relating to the laboratory's refractive index tests in fiber evidence cases. While concluding that Veeder had violated laboratory protocol, Coonrod, in his communications with superiors, substantially mischaracterized Veeder's interview responses implicating other scientists in the laboratory. Nonetheless, there exists no doubt that laboratory management possessed sufficient information that Veeder's individual misconduct implicated potentially broader systemic issues, but failed to take appropriate action. This failure is especially troubling in light of the Inspector General's findings, discussed later in this report, that Veeder's declarations regarding systemic deficiencies relating to his training and supervision were substantially true.

D. Veeder Removed from Fiber Casework as a Result of Coonrod Inquiry

Based on the interviews of Veeder and review of laboratory procedures, Coonrod's April 29, 2008 report to Zeosky found that Veeder had violated laboratory protocol by failing to perform the required refractive index test in fiber evidence examinations. Additionally, Coonrod concluded that Veeder had made entries in case documentation to falsely create the impression that the refractive index test had been performed. As set forth above, the information obtained from Veeder in the interviews and documented in Brown's detailed memorandum including Veeder's own admissions, abundantly supports Coonrod's findings.

Coonrod's report recommended that Veeder be removed from all further fiber casework in the laboratory. This step had in effect already been taken as a result of the Forensic Investigation Center's decision, in response to the ASCLD/LAB audit finding,

to cease conducting fiber examinations. Coonrod's report also recommended that the laboratory conduct an "external assessment of past fiber examinations/test methods." Within the next several weeks, the Forensic Investigation Center began executing this review by retaining independent experts to examine all of Veeder's trace evidence cases, including his fiber examinations. This review of 322 cases over the following several months is discussed in detail below.

E. The Laboratory's Failure to Inquire into Veeder's Implication of Other Scientists

Despite the information Veeder provided in the interviews indicating his lack of training in the refractive index test technique, the sources of the reference chart he used as a crib sheet, and that other scientists had also violated protocol, Coonrod's April 29, 2008 report omitted any mention of these critically important issues, focusing solely on Veeder's individual actions. In addition, in briefings to laboratory management during the course of the interviews, Coonrod sought to confine the problems in the laboratory's refractive index practices to Veeder.

Coonrod, joined by Brown, provided regular daily verbal briefings on the Veeder interviews to the Forensic Investigation Center's top managers, Zeosky and Nuzzo. Munro, whom Zeosky had directed to head the internal inquiry, was also present at the briefings. In his testimony to the Inspector General, Coonrod averred that because the interviews extended over several days, "I made a point every time to let Inspector Zeosky know that this is what Garry had said . . . this is not something that I just held with inside and didn't make anybody aware of."

Significantly, as stated in their testimony to the Inspector General, in the course of these briefings Coonrod and Brown reported Veeder's assertion that other Forensic Investigation Center scientists also had violated laboratory protocols in determining a fiber's refractive index. Zeosky, Nuzzo, and Munro confirmed to the Inspector General that Veeder's allegations were discussed in the briefings. However, all those present at

the briefings also testified that Coonrod presented Veeder's claims in a manner that afforded them no credibility.

In his testimony, Coonrod stated that he discounted Veeder's allegations because he believed that Veeder had withdrawn the claims when pressed during the interviews. Coonrod testified:

That's when I started questioning, did you see anybody else? Do you [have] firsthand knowledge? Did you see any evidence of it? And the bottom line is, at the end *he completely folded and said no, I did not.* [Emphasis supplied]

Coonrod elaborated:

I asked Garry, I said, we acknowledge Tony was the supervisor. And he acknowledged that. And did Tony know, this was after the questioning about everybody had done it, and then *he completely recanted it.* [Emphasis supplied]

Coonrod further testified:

And so, based on my 30 some odd years of experience, talking with him and everything, I still to this day feel absolutely positive that [the fiber unit as a whole] was not doing it that way. It was him.

Brown testified that he too put no credence in Veeder's assertions about other scientists. "I just didn't believe it," Brown testified, adding, "And I . . . think that he kind of threw people under the bus without thinking. . . . I think he just blurted it out."

Attributing their views to Coonrod's presentation about Veeder's statements, the laboratory managers testified they too disbelieved Veeder's allegations. Munro testified:

The flavor I understood was that there was no meat to any of his allegations about the other people being involved in similar activities.

* * *

I think anyone that was present during any one of the briefings would have left the briefing with the understanding that there was no merit to these at all.

So I thought [Coonrod] covered the base pretty well, and had shot holes in any of Garry's claims, or became very apparent through the questions that he was asking that he asked appropriate questions and there was no merit to [Veeder's] claim.

Similarly, Zeosky testified, "It was characterized to me and I understood it as he was running on his own and nobody knew about it in terms of supervision, and Tony [Piscitelli] was mentioned."

Following the briefings he provided laboratory management, Coonrod prepared an April 28, 2008 memorandum, addressed to Zeosky, summarizing the results of the interviews of Veeder. Here, too, Coonrod characterized Veeder's response to Coonrod's query about the involvement of other scientists as a flat denial. In the memorandum, Coonrod reported the following exchange with Veeder:

Q – Do you have any firsthand personal knowledge to support that other examiners were not following the RI protocol under section 2.,a.,i.

A – No

As set forth above, this summary and selective quoting from the interview with Veeder is misleading and more informative regarding the biases of the investigators than it is of the validity of Veeder's claims.

i. Coonrod's Briefings and Memorandum Misrepresent Veeder's Allegations and Minimize Potential Deficiencies in the Laboratory

A comparison of Coonrod's characterizations of Veeder's allegations in his memorandum and his briefings of laboratory management with Brown's memorandum of Veeder's interview statements reveals that Coonrod failed to fully and fairly present

Veeder's assertions that other scientists at the Forensic Investigation Center also violated protocol by omitting the refractive index test in fiber analyses.

Coonrod's description of Veeder, under questioning by Coonrod in the interviews, as having "completely folded" and "completely recanted" his allegation about other scientists is substantially contradicted by Brown's more detailed account of the interviews, suggesting that Coonrod summarily and imprudently discredited Veeder's claims. Significantly, at no point in the interviews, as documented by Brown, did Veeder directly or unequivocally deny having knowledge of protocol violations by other scientists in the laboratory. On the contrary, Veeder's responses to a number of Coonrod's questions, although sometimes indirect and seemingly inconsistent, strongly indicated a systemic problem in the laboratory regarding refractive index tests. At the very least, Veeder's statements that he conducted fiber examinations in the manner he was trained by Piscitelli, and that Piscitelli was the source of the refractive index reference chart which Coonrod himself referred to in testimony to the Inspector General as a "cheat sheet," should have alerted laboratory management to potentially broader violations of protocol, given Piscitelli's supervision of the fiber unit for a number of years.

ii. Additional Mischaracterizations in Laboratory Internal Inquiries into Veeder's Conduct

Coonrod failed to note or pursue another critically important issue that Veeder's interview statements should have raised. As documented in Brown's memorandum, Coonrod questioned Veeder at some length about an actual fiber case, concluding that Veeder's failure to follow the refractive index protocol in this case would be difficult to detect during a technical review because his worksheet notations were correct, despite no refractive index having been obtained. However, during the interview, Coonrod also closely examined with Veeder his 2008 proficiency test that originally had alerted the ASCLD/LAB assessor to his protocol violation. In the proficiency test, Veeder had entered a refractive index value obviously not derived by proper procedure, which was readily detectable by a technical reviewer. Brown, in his testimony to the Inspector

General, acknowledged that “you’d question the competence of [the technical reviewer]” who conducted Veeder’s proficiency test but missed this error. The Inspector General finds it disturbing, therefore, that Coonrod in his April 29, 2008 report made no mention of the inadequacy of the technical reviews of Veeder’s fiber examination. If the issue was raised during Coonrod’s briefings of laboratory management, it apparently was dismissed by him along with Veeder’s allegations.

Additionally, in his memorandum to Zeosky, Coonrod declared: “A review of past fiber cases completed by Mr. Veeder was conducted. While the results of the RI examinations listed on these cases were not obtained as prescribed in the Trace Evidence Technical Manual and were based solely on the MicroFTIR results, it appears that the overall final conclusions and opinions reported were not affected.” The Inspector General subsequently was advised by Coonrod that his review solely included an examination of Veeder’s fiber cases then in the physical custody of the laboratory, excluding archived records stored elsewhere. He reported the review included approximately four years of cases between 2004 and 2008. The Inspector General notes that Veeder conducted approximately 20 cases during this period

Coonrod’s memorandum created the misimpression that a meaningful review had been conducted of Veeder’s casework and a reliable determination had been made that Veeder’s misconduct had no impact on his ultimate results. This conclusion, based on a limited and apparently superficial examination of records, was, at best, premature and misleading. Notably, when all 322 of Veeder’s trace section cases subsequently were submitted to outside experts for independent review, Veeder’s conclusions in numerous cases were questioned. As noted, the experts’ review of Veeder’s cases is discussed in detail below.

F. Laboratory Director Zeosky Refers Veeder’s Conduct to State Police Internal Affairs Bureau

On May 1, 2008, Zeosky and Munro referred Veeder’s laboratory protocol violations to the State Police’s Internal Affairs Bureau (IAB) in a meeting with IAB

Inspector George Beach. The resulting IAB complaint described the basis for the referral as follows:

The Forensic Investigation Center was audited by ASCLD/LAB-International in April 2008. During the audit an assessor reported that Forensic Scientist III – Garry Veeder was unable to demonstrate or articulate what analyses he did on cases reviewed to the satisfaction of the assessor. A preliminary review of Mr. Veeder’s case work reveals he is not following established laboratory procedure.

As the complaint indicates, and Zeosky and Munro confirmed in their testimony to the Inspector General, the referral to the IAB was limited to Veeder’s conduct without any mention of Veeder’s allegations that other scientists in the laboratory had engaged in similar protocol violations. Asked by the Inspector General if he and Zeosky advised IAB of Veeder’s claims, Munro testified:

I don’t think so . . . I don’t have a specific recollection of telling [IAB] Inspector [George] Beach or being there when Inspector Zeosky told Inspector Beach that there was an allegation against any other employees. So I don’t know that they would have —. Could it have come up? It’s possible, but I don’t have a recollection of it so I can’t say it did.

The Inspector General asked Munro, “So the focus was really on Veeder?” Munro answered, “Yes, absolutely.” Similarly, Zeosky confirmed the narrow scope of the referral to IAB:

Q: You yourself spoke with IAB, is that correct?

Zeosky: “In terms of, in terms of, yes.

Q: “In terms of what Garry Veeder was doing.

Zeosky: Exactly.

Even given the referral to IAB, further investigation of Veeder remained essentially a Forensic Investigation Center responsibility, still headed by Munro. Munro testified to the Inspector General about the arrangement with IAB on the Veeder matter:

[IAB Captain Scott Coburn] and I could work it together, but I'd be the main guy and I could use Scott when I needed him.

* * *

My recollection is that Captain Coburn's services were offered to me if I needed them as I got into this thing, but it wasn't like starting tomorrow you guys will be paired at the hip and do everything together.

G. Laboratory Assistant Director Nuzzo Instructs Munro to "Expand the Inquiry"

As set forth above, Coonrod and Brown had created several documents resulting from the Veeder interviews. The documents included Coonrod's report of April 29, 2008, his April 28, 2008 memorandum summarizing the interviews, and Brown's April 25, 2008 detailed memorandum on the interviews. As noted, Brown's transcript-like memorandum included information strongly suggesting that scientists other than Veeder had also violated protocols on the refractive index test. Although addressed to Zeosky, the documents initially were forwarded to Munro.¹²

The respective testimonies of Coonrod, Brown, and Munro indicate that these documents most likely were produced several days after the interviews. If so, then Munro might not have read them prior to his and Zeosky's meeting with IAB on May 1. Nonetheless, Munro was aware from Coonrod's and Brown's briefings that Veeder had made claims with potentially broader and more serious implications. It is certain, however, that Munro as well as Nuzzo read the documents within days after the referral to IAB. Nuzzo, too, as noted, had attended the briefings.

On May 8, 2008, Nuzzo, having received the documents from Munro, returned them to Munro with the written instruction that the laboratory's inquiry "*needs to be expanded to other fiber analysts based upon q & a between Keith [Coonrod] and Veeder.*" [Emphasis supplied]

¹² While Brown's detailed memorandum was addressed to Donald Kirk, the laboratory Quality Assurance Manager, it was sent to Munro along with Coonrod's report and memorandum.

Despite this instruction, consistent with Veeder's allegations, both Nuzzo's and Munro's testimony to the Inspector General suggested that they had prejudged the matter and therefore didn't expect the inquiry to uncover broader problems in the laboratory. Recalling Coonrod's dismissal of Veeder's claims, Nuzzo testified:

I trusted . . . Keith's [Coonrod's] interpretation of it . . . I trusted that what [Veeder] was saying was to cover himself, but we need to verify it. We need to actually pull cases, and at least cover those bases.

Munro, whom Nuzzo directed to broaden the inquiry to include other scientists, similarly expressed the view that such an inquiry most likely would have proved fruitless. Munro testified to the Inspector General:

I think we all knew that we had to address [Veeder's implication of other scientists] as far as, you know, he brings it up, but there's really no merit to it. But when you look at a document, you know, on its — you just need to address it, put that to bed. So we knew we wanted to put it to bed at some point and it would have to be addressed, but I didn't see any urgency to it and I didn't see any merit to his claims. But I think I knew I needed to do the paragraph to address it. Or Keith would have to do a paragraph or two to address it in the ultimate report.

I would have interviewed each one of the people listed in Garry's statement, just to say, you know, just to cover that base. Not actually just to cover that base. To look into, to see if there was any merit. If they in fact said "Yeah, that's what we used to do." So I would have looked into it, talked to each one of those people, and even — I'm not sure who he lists but anyone that was in the section around that era, I would have wanted to talk to. Just to be able to say that we talked to them and they said "No, that wasn't the case . . ."

Thereafter, Munro examined Veeder's proficiency test, which the ASCLD/LAB assessor had reviewed and found problematic; reviewed Trace Evidence Technical Manuals; and initiated efforts to identify and secure all casework associated with Veeder. However, the Inspector General found no indication that Munro, between May 8, 2008, when he was directed to broaden the investigation, and May 23, 2008, when he drafted a report of his investigation, took any action to interview, or review, the case work of other

scientists. In his testimony, he acknowledged this fact: “I never completed whatever the Major’s assignment or request was.”

H. Critical Documents Relating to Veeder’s Conduct Delayed in Reaching Zeosky

The Inspector General determined that critically important documents did not reach Zeosky until more than three months later. These documents included, most significantly, Brown’s April 25, 2008 memorandum describing the results of Veeder’s interviews by Coonrod and Brown. As noted above, this memorandum provided a near-verbatim account of Coonrod’s questions and Veeder’s responses, and strongly indicated that other scientists in the laboratory might also be violating the refractive index protocol. It appears that Brown’s memorandum, which was addressed to Quality Assurance Manager Donald Kirk, as well as Coonrod’s reports and memorandum addressed to Zeosky, went no further than Nuzzo and Munro. Zeosky acknowledged in his testimony to the Inspector General that after he read the memoranda for the first time in July 2008, he realized that “it begged for . . . answering questions.”

However, the Inspector General notes that while Brown’s memorandum would have provided him more detailed information, Zeosky knew of Veeder’s implication of other scientists from Coonrod’s and Brown’s briefings to laboratory managers. Regardless of Coonrod having effectively dismissed Veeder’s claims in the briefings, Zeosky, as laboratory director, was obligated to investigate. Further, this information should have been communicated by Zeosky and Munro to IAB on May 1, 2008.

I. Veeder Commits Suicide

On May 7, 2008, while the Forensic Investigation Center’s internal inquiry was continuing, Veeder submitted notice that he intended to retire from state service effective May 30, 2008. On May 21, 2008, Veeder was contacted to request that he appear for another interview with the State Police. Veeder declined, stating he would contact his attorney for consultation. On May 23, 2008, Veeder committed suicide.

In a series of letters drafted immediately before his suicide, Veeder lamented his poor judgment and failure to follow protocols while employed at the laboratory. He believed his actions, short-cutting examination procedures, to be foolish and to have placed him in jeopardy. Regarding the frequency and duration of his actions, Veeder wrote that despite having evaded detection during the several ASCLD/LAB audits since 1998, his failure to follow protocol had been exposed in the 2008 audit. Veeder accepted responsibility for his actions and, in these letters, did not indicate if other scientists in the laboratory were engaged in similar conduct.

J. Laboratory Inquiry and Subsequent Actions Relating to Veeder's Impression Cases Cited by ASCLD/LAB

As directed by Zeosky, Coonrod also conducted an inquiry into the two impression evidence cases handled by Veeder that the ASCLD/LAB assessor had identified as lacking required documentation. One case involved Veeder's examination of a footwear impression, the other a glove print. As set forth above, ASCLD/LAB's Corrective Action Request to the laboratory cited the missing case file evidence as constituting a Level 1 violation requiring prompt remedial action by the laboratory.

The two files had earlier been reviewed by Brown and Coonrod for completeness. However, when ASCLD/LAB reviewed the case files, it was discovered that the photographs or exemplars for two cases were absent from the file. When questioned by Brown regarding the missing documentation, Veeder's initial reaction was, "Somebody took them out." Brown recalled:

Keith and I had both looked, reviewed these cases prior to the audit, the envelopes with the photographs were there . . . I'm confident the pictures were in there . . . I believe Garry took the pictures off my credenza. Why, I have no idea.

Oddly, upon completion of the audit, Veeder approached Brown and produced the photographs for one of the cases. According to Brown, Veeder claimed he had found them in an examination room but could not provide an explanation as to why they were

there. The documentation from the other file was never recovered. Brown told the Inspector General that he had heard from a laboratory employee that Veeder would “like nothing better than to see you fail in this audit.”

Coonrod too commented, “I think he was trying to tank the accreditation. I think that he was trying to make Brad [Brown] look bad.” Brown speculated that because he had recently been promoted to trace section supervisor, a position that Veeder had unsuccessfully sought, Veeder, out of spite or jealousy, intentionally misplaced the photographs to sabotage the audit piece under Brown’s purview.

In an April 30, 2008 memorandum to Zeosky on this matter, Coonrod reported:

A review of past impression cases completed by Mr. Veeder was conducted. While the supporting documentation is currently absent in more recent case jackets (2006-2008) there was sufficient examination documentation present to the technical reviewer at the time the review was conducted to support the conclusions rendered by Mr. Veeder. Therefore it appears that the overall final conclusions and opinions reported were not affected.

Coonrod also noted in the memorandum that the cases examined pre-2006 contained the required documentation to support the conclusion as required by the State Police policy.

As remedial action, Coonrod noted that on April 25, 2008, Brown had counseled Veeder on the issue of case documentation and that he, Brown, would closely monitor Veeder’s future work. In its June 13, 2008 formal response to ASCLD/LAB on this matter, the Forensic Investigation Center further advised that it would no longer conduct impression evidence casework at the Albany Forensic Investigation Center. By thus removing the impression sub-discipline from the scope of the ASCL/LAB audit, this action effectively resolved the ASCL/LAB Corrective Action Request pertaining to Veeder’s impression cases.

Much like Coonrod's misleading memorandum regarding the fiber corrective action plan, his trace impression corrective action plan again created the false sense that a meaningful review had been conducted of Veeder's impression casework and a reliable determination had been made that his misconduct had no impact on the results. Coonrod recalled that he had administratively reviewed the two impression cases at issue, and he was certain that the supporting documentation was present at that time. However, Coonrod had no method of determining what documentation was present in the other case files at the time of the technical review, and to assume that the documentation was present at the time merely because the report had been technically reviewed was imprudent speculation. Given the Inspector General's findings of deficiencies in the trace technical review process, which will be discussed later in this report, this assumption was based on a weak foundation and was inappropriate.

IV. MISCONDUCT AND DEFICIENCIES IN TRACE EVIDENCE SECTION OF FORENSIC INVESTIGATION CENTER

In a letter dated June 1, 2008, Zeosky advised Gina Bianchi, Deputy Commissioner and Counsel of the Division of Criminal Justice Services, of the ASCLD/LAB audit findings regarding Veeder.¹³ Zeosky's letter also advised that a State Police IAB investigation had been initiated and that a "comprehensive investigation into Mr. Veeder's cases is underway." Notably, Zeosky omitted mention of Veeder's implication of other scientists.

The Inspector General was copied on Zeosky's letter to Bianchi. On June 6, 2008, Denise E. O'Donnell, Commissioner of DCJS and Chair of the Commission on Forensic Science, formally referred the matter to the Inspector General, in accordance with Commission procedures and the requirements of the Coverdell Forensic Science Improvement Grant Program. In the letter, O'Donnell stated, "[I]t appears that the issues regarding Mr. Veeder's laboratory practices rise to the level of 'serious negligence or misconduct' which warrant investigation" by the Inspector General. In a separate letter of June 6, 2008, O'Donnell advised ASCLD/LAB of the referral to the Inspector General.

As set forth above, when Zeosky notified IAB regarding the findings of the internal laboratory inquiry, he omitted any information regarding violations of protocol by other scientists or systemic deficiencies in the forensic center. In mid-July 2008, IAB Deputy Superintendent Anthony Ellis contacted Inspector General Chief Counsel Nelson Sheingold to inform him that IAB had reviewed Coonrod's and Brown's April 2008 memoranda of their interview of Veeder and found what they believed was sufficient evidence that Veeder had implicated other forensic scientists. Ellis immediately launched an IAB probe into the reasons for the incomplete referral. It is important to note that, as exemplified by Colonel Ellis's prompt notification, while the Inspector General finds great fault in the internal forensic center inquiry into the Veeder matter, IAB and the

¹³ According to a note in his day book, Zeosky had contacted Catherine Levine, a Commission staff employee and formerly a forensic scientist in the Forensic Investigation Center, about the Veeder matter four days earlier, on May 27, 2008.

State Police have fully supported and cooperated with this investigation and assisted in the provision of any materials requested by the Inspector General. IAB has further advised that it is poised to commence a full audit of the forensic center pending the findings and recommendations of this report.

In June 2008, the State Police retained independent experts in the field of forensic science for the purpose of reviewing Veeder's laboratory casework and determining if Veeder's actions or non-actions had improperly affected his findings. The experts were selected with the assistance of ASCLD/LAB, which determined their qualification to review and audit cases involving fiber evidence, among others. The experts included: Jeffery Lynn, a Laboratory Quality Assurance Administrator at the Ohio Bureau of Criminal Identification and Investigation; David Green, a Criminalist with the Lake County (Ohio) Crime Laboratory; Steve Roberson, the Assistant Laboratory Director of the Texas Department of Public Safety Crime Laboratory; Sandy Parent, a Forensic Scientist with the Texas Department of Public Safety Crime Laboratory; and Amy Michaud, a Forensic Chemist with the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives National Laboratory Center. On June 19, 2008, 15 cases, which had been determined to be "high-priority" because Veeder had either testified or his findings were a key factor in the case, were sent to the experts for review.

In all, the State Police identified 328 cases associated with Veeder. The State Police provided these case files to the experts as the records were identified and located, a process that continued over several months.

A. The Inspector General's Audit of State Police Records of Veeder's Casework

As noted, DCJS Commissioner and Commission on Forensic Science Chair Denise O'Donnell reported Veeder's actions to the Inspector General on June 6, 2008. Shortly thereafter, the State Police briefed the Inspector General on the status of the IAB inquiry. The Inspector General subsequently launched a multi-faceted investigation.

In one phase of the investigation, the Inspector General conducted an audit of State Police records to determine if the State Police had identified and segregated *all* analyses in which Veeder was involved in any fashion. The Inspector General assigned five investigative and audit staff to this effort, which required the review of thousands of pages of documents covering the period 1993-2008.

In order to ensure that the State Police was successful in identifying all Veeder-associated cases,¹⁴ the Inspector General reviewed a statistical sample of ostensible non-Veeder cases maintained at the State Police and New York State archives. The Inspector General reviewed, by hand, 664 randomly selected cases and found none associated with Veeder. This statistical sample ensured with 99 percent certainty that the State Police was successful in identifying all Veeder associated cases.

The Inspector General found that the State Police had two main sources of information on cases: computerized case databases and chain-of-custody records. In addition, the State Police maintained a small number of records of court testimony given by laboratory analysts.

On or around August 2001, State Police's record keeping practices for laboratory cases changed, from a database called "Management Information Network (MIN)," which contained some basic information on laboratory cases, to a more comprehensive database entitled "Laboratory Information Management System" (LIMS). Unlike its predecessor, LIMS tracked the name of laboratory analysts who worked on a case and what specific analyses they performed or reviewed, as well as contained the chain of custody records. As such, MIN could not be relied upon to provide an accurate reporting of all cases associated with Veeder.

¹⁴ "Associated" cases include those where Veeder performed an analysis, was a recipient in the chain-of-custody of evidence, provided testimony, technically reviewed a case, as well as records related to cases found within Veeder's work areas.

As it would be impractical to physically search all of the aforementioned paper files to identify all Veeder cases, the Inspector General: 1) confirmed Veeder's involvement in cases already identified by State Police; and 2) reviewed a statistical sample of all other laboratory cases to assess the likelihood that Veeder had worked on additional cases not identified by the State Police. To meet the first goal, the Inspector General reviewed the 328 laboratory cases that the State Police had identified as being associated with Veeder and confirmed Veeder worked on all 328 cases.

As for the second goal, the Inspector General sought to obtain a listing of the universe of all cases processed by the State Police laboratory system between 1993 to July 2008, from which a statistical sample would be drawn to search for Veeder records. In response, the State Police provided a digital file containing 564,971 unique laboratory case numbers, from which the Inspector General culled all non-relevant cases.¹⁵ This left 254,384 cases representing all *possible* laboratory cases in which Veeder could have been associated, but which the State Police had not identified.

In order to draw a conclusion as to whether Veeder worked on any of these other cases, the Inspector General reviewed a random statistical sample of 664 of the 254,384 cases.¹⁶ These case files, located at the State Police and the state archives, were obtained and reviewed and the Inspector General found no evidence indicating Veeder's association with any of these 664 cases. Thus, the Inspector General could conclude with 99 percent certainty that Veeder did not work on any State Police cases beyond the 328 previously identified. Stated differently, the Inspector General concluded with 99 percent statistical certainty that State Police had identified all cases associated with Veeder.

¹⁵ "Non-relevant" cases included proficiency tests, cases whose records would have been destroyed under State Police retention policy, Combined Ballistic Identification System cases (as Veeder did not work on such cases), and the 328 known Veeder cases.

¹⁶ The appropriate sample size was determined based on a 99 percent confidence level with a tolerable error rate of +/- 5 percent. The Inspector General relied on the Creative Research Systems website (<http://www.surveysystem.com/sscalc.htm>) to calculate its required sample size based on the Inspector General's desired confidence level and interval.

The original list of Veeder cases State Police provided to the Inspector General in July 2008 comprised 269 cases. Between then and November 2008, the State Police added 58 cases to its Veeder case population, bringing the total to 328. At least 45 of the 58 cases were added based on inquiries made by the Inspector General during its audit. For example, the Inspector General found that the State Police initially did not review cases that lacked a “Date Completed” in its MIN database. After informing the State Police of this oversight, it reviewed all such cases and found 28 additional cases on which Veeder had worked.¹⁷

B. Examination of Veeder’s Trace Evidence Cases by Independent Experts

To determine the extent and seriousness of Veeder’s actions, the Inspector General and the State Police commenced independent reviews of the 328 cases associated with Veeder. At this same time, the State Police contacted the 44 county District Attorney Offices that had used evidence or other forensic services associated with Veeder and informed them of Veeder’s actions and that they would be later be advised of the impact, if any. As noted, upon the completion of each case review by both entities, the State Police transmitted Veeder’s analysis reports and supporting documentation to the retained independent technical experts for review. In the end, a total of 322 identified Veeder cases were submitted to the experts, because the remaining six cases did not result in an analysis report issued by the State Police.

The experts were asked to examine Veeder’s case analyses reports and supporting documentation and, with respect to each case, answer the following questions:

1. Do the submitted photocopied case files contain all of the notes, worksheets, photographs, spectra, printouts, charts and other data to support the conclusion?

¹⁷ Subsequent to the Inspector General’s sample review, State Police notified that it had identified an additional case associated with Veeder. This case had not been included in the 328 identified Veeder cases. However, the identification of this case does not impact the audit finding.

2. Are the conclusions reasonable and within the range of acceptable opinions of peers within this discipline?

Each Veeder case file was examined by a single expert, who then answered on a form the two questions and included, in some instances, a brief comment. The results of the experts' reviews are as follows:

- A total of 228 cases, or 71 percent, were deemed to have the proper data to support the conclusions, and the conclusions were within the range of acceptable opinion.
- 20 cases, or 6 percent, failed both questions. These cases lacked sufficient documentation to support the conclusions, and the conclusions were neither reasonable nor within the range of acceptable opinion.
- 7 cases, or 2 percent, were found to have the supporting documentation but the conclusion failed to be determined within the range of acceptable opinion.
- 18 cases, or 6 percent, did not contain appropriate supporting documentation but the conclusion was determined to be within the range of acceptable opinion.
- 49 cases, or 15 percent, were found to be inconclusive on one or both of the questions.

Of the 322 cases submitted to and examined by the experts, a total of 61 cases were fiber evidence cases handled by Veeder. With respect to these 61 cases, the experts found as follows:

- 44 cases, or 72 percent, were deemed to have the proper data to support the conclusions and the conclusions were within the range of acceptable opinion.
- 5 cases, or 8 percent, were found to fail both questions, lacking sufficient documentation to support the conclusions, and reaching conclusions neither reasonable nor within the range of acceptable opinion.
- 2 cases, or 3 percent, were found to have the supporting documentation but the conclusion failed to be determined within the range of acceptable opinion.
- 5 cases, or 8 percent, did not contain appropriate supporting documentation but the conclusion was determined to be within the range of acceptable opinion.
- 5 cases, or 8 percent, were found to be inconclusive in one or both of the questions.

In summary, the experts determined that 29 percent of 322 trace evidence cases handled by Veeder were substantively deficient. Of Veeder's 61 fiber evidence cases, 28 percent similarly were deficient.

The results of the experts' reviews raise serious questions about Veeder's competence as a forensic scientist and the quality and integrity of his work at the Forensic Investigation Center. The gravity of this conclusion is magnified by Coonrod's dismissive memorandum crafted in direct contradiction of Veeder's admission that he had violated laboratory protocols and that the relative refractive index values he had reported on worksheets in his fiber evidence cases had not been determined by proper procedure or by any test at all.

Upon receipt of the results of the experts' review, the State Police again contacted the respective District Attorneys and advised the offices of the experts' findings.

C. The Inspector General's Examination of the Fiber Analyses of Other Trace Section Scientists

The State Police identified nine scientists who were associated with fiber analysis cases during the time Veeder was employed at the Forensic Investigation Center and a total of 78¹⁸ fiber analysis cases handled by these scientists. Of the nine scientists, one had relocated out of the state and could not be contacted and one was deceased. The Inspector General interviewed the remaining seven scientists. The records and testimony of these scientists – Anthony Piscitelli, Cathryn Levine, Thomas Walsh, and R. Michael Portzer, Denis Kebabjian and Laurence Murphy – are discussed below.

i. Anthony Piscitelli

As discussed above, when questioned by Coonrod and Brown regarding his determination of refractive index, Veeder responded,

The situation with RI. We don't have the capability for this. I was never taught this technique. It never came up in casework or other PTs . . . I know what it is from the FTIR. Not the x-section, just the RI.

Subsequently discussing the “cheat-sheet” reference chart he used to backfill the refractive index, Veeder specifically informed Coonrod and Brown, “It's a Tony Piscitelli thing . . . from training. They never showed me how to do it. It's my mistake.” Veeder also stated that refractive index was not completed at the forensic center and “this is how I was trained to, how we've always done it,” and “we didn't follow [the protocol requiring refractive index] because, how I'm following this, and plugging into chart. I'm following past practice and cumulative knowledge. I have to be quite frank about it.”

¹⁸ Of the 78 cases, seven were later determined to be either collection/preservation of fibers, or work misclassified. Thus, the total number of cases analyzed was 71.

Coonrod and Brown summarily dismissed Veeder's description of the general practice at the forensic center and Veeder's training as unfounded. Their opinion also was endorsed by Zeosky who failed to pass these claims on to the IAB or the state Commission on Forensic Science,. Although the Inspector General did not find evidence of dry-labbing by other scientists as implied by Veeder, the Inspector's General did substantiate many of his claims, further highlighting the need to have investigated the contention of systemic breakdown of laboratory protocol. Indeed, Veeder's statements regarding his training, laboratory disregard of the relative refractive index protocol, use of the FTIR examination as a precursor to any refractive index determination by other scientists, and the likely use of the reference chart to calculate refractive index were substantially accurate, thus belying Coonrod's, Brown's and Zeosky's perfunctory discounting of these claims.

The Inspector General conducted a sworn interview of Piscitelli, who served as supervisor of the Forensic Investigation Center's trace section from the early 1980s until his retirement in 2003, a period largely coinciding with Veeder's tenure in the laboratory. Although Piscitelli's account of State Police laboratory procedures in regard to fiber analysis is not entirely clear or internally consistent, at a minimum, Piscitelli verified Veeder's claim that the refractive index protocol was routinely circumvented at the forensic center and that Veeder was neither expected nor trained to complete this step in his casework.

In August 1991, upon his return to employment at the forensic center after a brief layoff,¹⁹ Piscitelli was trained in fiber analysis by another scientist, Catherine Levine who, though subordinate to Piscitelli, had gained substantial expertise in the field. Piscitelli testified that Levine "had her own curriculum" which consisted of relevant readings, practical exercises, and a "series of tests." In 1995, when Veeder was transferred to the trace section, Levine was on maternity leave and Piscitelli instructed Veeder in fiber and other trace evidence analyses. Piscitelli testified that his training of

¹⁹ Piscitelli was terminated for a brief period as part of a reorganization of the laboratory in January 1991 and subsequently rehired in a similar but more subordinate capacity in August 1991.

Veeder in fiber and other trace disciplines consisted substantially of “on the job” training, observing Piscitelli, and a number of readings in the field.

In addition to his hands-on training of Veeder, Piscitelli volunteered that the laboratories “procedures were written in black and white . . . and you would just follow them as they were.” Piscitelli elaborated, “There’s a methods manual [the forensic center] ha[s] . . . every person who works in the lab has the — we follow that method.” Reiterating the clear, binding dictates of the laboratory protocols, Piscitelli repeated later in the interview that “the procedure we used was in black and white and in my book. And as far as I can recall it was pretty simple with a fiber.”

As discussed above, the Methods Manual in force at the forensic center generally required a determination of relative refractive index *prior* to any potential FTIR analysis.²⁰ Contrary to this “black and white” mandate, Piscitelli informed the Inspector General that he only determined refractive index *after* he completed the FTIR examination.

Q: How would you know which oil to . . . put the fiber on?

A: Well you know what it is by then. And so you just look up in a book what the refractive index of that material is and you start there —

Q: How do you know — okay, how do you know what it is?

A: Because you would have identified it —

Q: And how would have you identified it?

A: Either microscopically or with the FTIR or both.

Q: Okay, so if I understand you correctly, the refractive index is determined after you’ve identified what the fiber is?

A: Yes

²⁰ The manual clearly provides in regard to fiber identifications that the determination of relative refractive index is to be determined before the confirmatory FTIR. While more leeway is given to scientists regarding the order of analyses in regard to fiber comparisons, Piscitelli did not distinguish between these two types of examinations during his testimony.

Piscitelli reiterated later in his interview that he “usually” determined refractive index value only after the FTIR “because that’s how you know where to start with the refractive index,” and that he “would do the FTIR first . . . to see what you were working with.” Thus, in finding a refractive index after an FTIR examination, Veeder logically conducted himself similar to Piscitelli, his supervisor and trainer.

Although Piscitelli’s memory of the purported method by which he determined relative refractive index was sketchy, his initial response to this line of questioning pointed to the use of reference material similar to the crib-sheet used by Veeder to reach this determination:

Q: But to say it was a nylon six, how would you determine what the refractive index was? How would you know what —

A: Oh then you —

Q: — what — how would you express that?

A: You know, you can look up in the book and see what the refractive index of nylon six is supposed to be. And then you do it —

Q: And then put it in?

A: We, see I don’t remember . . . as far as I remember, I, when I was running things, did not require people to do a refractive index on fibers unless there was some reason . . . and I honestly don’t remember. You’d have to look at the method manual for that period of time.

After the Inspector General provided Piscitelli with a copy of the Methods Manual and noted the provision that refractive index be determined via the Becke line method, Piscitelli retreated from his earlier testimony regarding the binding nature of State Police protocols, positing:

Yeah, see the way these are written, these are guidelines. These aren’t rigid procedures that this is what you do every single time on every single fiber.

* * *

You want me to tell you there was a rigid way to do this and there really wasn't, okay. The Method Manual was guidelines . . . The examiner followed the guidelines but was not required to run each and every examination on each and every case.

Piscitelli claimed that during his tenure he had determined the refractive index “probably seven different ways” including through the use of either the refractometer, the Fibre Finder which the laboratory had purchased from England,²¹ and Cargille oils.²² Piscitelli surmised that Veeder too determined refractive index via the “refractometer.” When the Inspector General attempted to elicit whether the Becke line method was utilized, Piscitelli provided a conflated description of a technique which appears to be an amalgam of the Becke line method, use of one of several possible instruments, and refractive immersion oils.²³ Piscitelli did concede his familiarity with the reference chart Veeder utilized to backfill refractive index values describing it as “a list of refractive indexes.” When inquired as to the possible legitimate use of such a chart, Piscitelli replied, “You’re going to ask me something that I don’t remember. Generally speaking, what you would do is . . . this would be a guideline of what the refractive index of the common [obscured] is supposed to be.” When first directly asked whether he, like Veeder, would ever use the reference sheet to fill in the refractive index after completing the FTIR, Piscitelli responded, “Not unless you were just putting in a point of information in your notes for future reference or something like that.”

Piscitelli eventually not only acknowledged calculating refractive index after the FTIR had already been completed but, in response to being asked, “would you ever just run the fiber on an FTIR and determine it’s acrylic and then not even bother to do the refractive index,” Piscitelli admitted, “Oh I did that a lot, sure.” Indeed, he informed the Inspector General that he routinely proceeded directly from a microscopic examination to the FTIR, bypassing the refractive index determination entirely because he “was not a

²¹ Piscitelli in his testimony could not remember the name of the instrument obtained from England, referring to it as a “refractometer.” Based upon his testimony, it appears that he is referring to the Fibre Finder rather than the actual “refractometer” as the instrument used. As discussed elsewhere, regardless, neither instrument was recognized by protocols and officially certified for use at the forensic center.

²² Cargille oils are a type of refractive immersion oils.

²³ Specifically, Piscitelli testified that as refractive index examinations were “always in an oil” and the Becke line method as described in State Police protocol is not oil-based.

believer in the refractive index.”²⁴ When pointedly asked, “Out of the number of cases that you did like a fiber comparison, roughly how many would you say you conducted refractive index?” Piscitelli responded, “Oh, very few. I mean very, very few.” Piscitelli elaborated:

A: They started recommending methodologies and so I, I would assume that’s where this refractive index of fibers crept into the field. And I don’t remember exactly when but it was probably in the last few years I was there. So I don’t, I don’t recall. I mean if I’m going to be honest with you I don’t recall doing refractive index on fibers period other than it’s . . .

Q: So if there’s — values in here, on your examinations, they would be obtained from —

A: No. Must be I did them but I don’t recall doing them. If something’s written in here that means that that analyst did conduct that examination.

In regard to his training, similar to his contradictory testimony regarding the laboratory protocols, Piscitelli initially averred that he had been trained by Levine in all of the steps enumerated in the manual, presumably including a determination of refractive index via the Becke line method. However, later in his interview after he had revealed his habitual omission of the refractive index determination, Piscitelli amended his position on his training:

Q: And do you believe that’s how you were — that’s how you were trained?

A: Oh yes.

Q: And then that’s how you trained Garry [Veeder]?”

A: Yes.

²⁴ In the context of his other statements, Piscitelli’s claim of having completed a refractive index analysis after the FTIR is puzzling. Once an FTIR is completed, the composition of the fiber is then known. It is unclear why Piscitelli, who admittedly did not “believe” in refractive index, would then complete such at all.

Piscitelli informed the Inspector General that he had “trained over half the people in the laboratory” with the exception of Thomas Walsh. Piscitelli testified that he could not recall but “probably” taught Veeder how to conduct a determination of refractive indices while conceding that he did not complete such himself “as a matter of routine” on casework. Piscitelli did testify as to a specific memory of one matter in which Veeder conducted a test to determine refractive index but could not recall what method Veeder had used.

Piscitelli acknowledged that even where a relative refractive index value is indicated on fiber analysis which had undergone technical review, these results could merely be the product of reference to the chart as opposed to an actual test. In regard to review of materials where the refractive index value was completely omitted, Piscitelli conceded that “as a matter of course, I don’t really recall — remember requiring refractive index when they were doing the fiber comparisons.” The Inspector General confronted Piscitelli with Veeder’s explanation of the anomalous results of his proficiency test which had triggered the ASCLD/LAB assessor’s scrutiny:

Q: And when [Veeder] was asked to explain that he, he basically couldn’t and more or less said well I just did the FTIR and went to the reference chart and put [the RI value] in like that. And if I understand you correctly that was the procedure. That was how you had trained —

A: Yeah.

Q: — him?

A: To? I don’t see what I — when I taught him how to do fiber comparisons, look I don’t remember that we required a refractive index . . . be done.

Q: So you might not have even —

A: Right. So I, I assume that, if he didn’t do a refractive index, he didn’t feel it was necessary.

Piscitelli added that he would not question the omission of a refractive index value in a technical review because he did not expect the test to be completed. Piscitelli

was then asked if he “would find it acceptable if he didn’t perform the test but he just looked at this reference chart and put in the numbers? Would that be acceptable?” To which Piscitelli replied:

That’s kind of — you know, I would want to know why he did that. I would ask him why he did that. If he didn’t perform the test why you would put down what the refractive index is. Maybe you think for some reason the matter’s going to come up in court and you want to put it in there as a reminder to yourself before you testify. But I would ask him why it was there, yeah.

When further questioned about technical reviews he had completed of other scientists, Piscitelli averred that he did not recall “when this all became an issue” as “I know that we never used to do refractive index of fibers.” Piscitelli added, “Generally speaking when I did fiber examinations, I don’t recall doing refractive indexes of fibers . . . Now maybe something came up at a point where I may have done it.”

Corroborating Piscitelli’s testimony, a review of casework records for the six fiber analyses he conducted reveals that he did not list a refractive index on fiber worksheets. As he did not require scientists under his supervision to abide by the protocol requiring a refractive index determination, much less determine this by the Becke line method, Piscitelli confirmed Veeder’s account (quickly dismissed by Coonrod and Brown) that he would not have expected any of the scientists he supervised to determine the refractive index of a fiber or enter this information on a fiber analysis worksheet.

Piscitelli testified that if a refractive index value was indicated on documentation, he assumed that the actual test had been completed and that “other than creating the impression that you conducted an examination that you didn’t conduct, I don’t know why anybody would do that. I mean, because it really does create a false impression.” Piscitelli reaffirmed that this subterfuge was not commonplace while he supervised the laboratory. Moreover, backfilling the refractive index value from a chart would have “served no purpose” because Piscitelli did not require that test at all. Similarly, Piscitelli testified that he had no knowledge of any scientist using the chart to backfill the

refractive index value during his tenure and definitively asserted, “I would have never done it and I never expected anybody else to do it.”

Piscitelli’s testimony, even allowing for the passage of time since his retirement, reveals, at a minimum, that Veeder was substantially correct when he informed Coonrod and Brown that the refractive index protocol was routinely violated at the laboratory and that he was not expected to complete this analysis. Piscitelli’s testimony further lends support to Veeder’s statement that he was trained to skip the relative refractive index test and was provided with reference material by Piscitelli. The significant distinction between Piscitelli’s examinations and Veeder’s is that Piscitelli made no pretense about conducting the analysis and simply left the corresponding space on a fiber worksheet blank; in contrast, Veeder backfilled the information, creating the false impression that the analysis had been completed. The Inspector General further could not disprove that the refractive index values on Piscitelli’s proficiency tests were not the result of actual tests.

*ii. Cathryn Levine*²⁵

Cathryn Levine commenced employment as a forensic scientist in the trace section of the State Police laboratory in Albany in 1985, remaining there until her resignation in 2000. Among the scientists employed at the forensic center who regularly conducted fiber analysis, Levine was clearly the most qualified in the field with a master’s degree in Forensic Chemistry from Northeastern University with a thesis in fiber identification and an internship in Ottawa, Canada, conducting fiber analysis.

Levine conducted fiber analyses during her entire 15-year tenure at the State Police. During this time she completed 33 fiber examinations. Levine testified that consistent with protocol she utilized the prescribed Becke line method to determine refractive index in all of her casework, and an examination of her fiber analysis

²⁵ Prior to her marriage, Levine used her maiden name, Cathryn Oakes, when first employed at the laboratory. For the purpose of consistency, this report uses only her married name.

worksheets reveals answers consistent with her having done so. Levine described the Becke line method as “very simple” and not time-consuming to conduct. Moreover, Levine informed the Inspector General that determining the refractive index via the Becke line method is a “valuable screening test” when performing a fiber analysis, especially when analyzing a multiple-fiber submission, in the laboratory. Levine explained:

[In] a case work scenario . . . if you don't know how to do the Becke test . . . how are you going to come to your, to the fibers that you can run further tests on if you don't even know what you've got because you're running through hundreds and hundreds and hundreds of fibers when you're looking at, let's say debris from a shirt or a blanket, and you don't — your notes are going to say black fiber, black fiber, black fiber, black synthetic, black cotton, uh, blue this, blue — you know, you're going to, it's not going to — I mean, if you don't do the Becke test, you can't say black polyester. So, you don't know the fact that when you go later on to look at something, you could find on the . . . say the victim, for example, is wearing a black, um, polyester shirt, and she's raped in a vehicle somewhere, and you, you know, you're not looking at the fabric of that upholstery, but any black polyesters that might've been in that back seat of that car that weren't supposed to be there. She had no — was not there before. So, so if you're looking at debris from that car, and you don't know, you don't do that Becke test, then what are you going to do? You're going to say I got lots of black and blue and red and green fibers, and how is that going to help anybody? So you could have — you could isolate all the black fibers down, but you could have 50 black fibers. You don't know which ones are polyester or nylon, and that Becke test will tell you. You could at least carve those out and then take them further. So, it's a really valuable screening test that I think . . . fiber examiners use quite a bit.

Levine confirmed that other methods in addition to the Becke line method recognized by the Methods Manual were also available for use in the laboratory. Consistent with Piscitelli, she informed these alternate methods included Cargille oils and a refractometer. However, Levine stated that she might have used these other means to determine a refractive index value once or twice, but only in a proficiency test and not in actual casework, and she did not recall other scientists in the laboratory utilizing these methods for fiber analysis. In fact, Levine testified that the refractometer was “primarily used for glass . . . I don't think it was used — as I said, if somebody used it, it was more of

a trial basis or a, or a training, you know, if possible.” Levine added that the use of Cargille oils to determine refractive index values was a tedious procedure, which “could take a few hours” and might be “dangerous” in its potential for accidentally destroying small fiber samples.

As stated previously, the documentation examined of Levine’s casework is consistent with her testimony of determining refractive index in casework via the Becke line method. The Inspector General did discover one proficiency test completed by Levine in 1995 in which she reported refractive index values in a manner that could not have been ascertained by this method. Namely, on the test, Levine reported absolute refractive index values (1.578, 1.522, 1.576 and 1.525) rather than the relative values a Becke line analysis provides. Asked about these anomalous refractive index values, Levine categorically denied merely using a reference chart to backfill the information but could not conclusively inform the Inspector General as to what instrument she used. Corroborating Levine’s denial of using the reference chart, one value Levine had listed on the fiber worksheet, corresponding to refractive index value 1.576, was not included on the reference chart available in the laboratory used by Veeder as a crib-sheet to backfill this information. Levine posited that she could have used yet another device — a Berek Compensator — but was uncertain why she might have used this non-authorized instrument and method to determine the fibers’ refractive index values for this proficiency test that she did not utilize in casework. Levine’s speculation regarding use of a Berek Compensator appears baseless as experts have advised the Inspector General that this instrument does not measure refractive index in fibers. Levine acknowledged that scientists are required to follow the same protocols on proficiency tests as in casework, and that she failed to do so in this instance. Levine further informed the Inspector General of a tendency to complete additional analyses on a proficiency test as opposed to casework and discussed other examples of supplemental tests she had completed in proficiency tests.

Of greater import, Levine informed the Inspector General of her longstanding concerns with technical review in the fiber section. In the summer of 1994, Levine was

assigned to technically review casework completed by Piscitelli. Based upon perceived deficiencies in Piscitelli's case materials, Levine authored two memoranda to Piscitelli discussing her concerns and suggestions. In the July 13, 1994 memorandum, one of the discrepancies identified by Levine was that Piscitelli's examination and conclusion did not include several hairs which were submitted to the laboratory. Levine stated, "If these hairs are **NOT** similar to the victim, they may have significant probative value to the case. They should be able to be quickly screened as to whether or not they are similar to the victim, particularly since she had blond, bleached hair." (Emphasis in original)

Levine concurred when the Inspector General asked, "Typically, when you peer review something, the scientist would come back to you and say okay, I've made these changes or I disagree with you, or something." Contrary to her understanding of the process, Levine never received a response to either of her memoranda containing peer review critiques.

Her peer review findings having been apparently ignored, Levine then wrote a memorandum, dated August 30, 1994, to Robert Horn (the then-Director of the New York State Police Crime Laboratory System) "to request clarification of the peer review process." In this memorandum, Levine informed Horn of the two memoranda she had written to Piscitelli seeking what she considered to be essential additional examination of the fibers in question and Piscitelli's lack of any response or amending of the reports. Levine then requested "clarification" of the peer review process in regard to four areas:

What is the procedure when two analysts disagree about some aspect of the report?

Is the person who originally peer reviewed the report supposed to receive the corrected report back for a final peer review? (Note: Mr. Piscitelli accepted my suggestions for changes on [one report] but only made minor changes on [the second].) I never received either report back for peer review. Therefore, my initials are not on either report and, in fact, it appears that no one has peer reviewed either case.

If my suggestions are not accepted by either Mr. Piscitelli and/or third person, should I be informed about this decision and the reasons for not changing the report?

Why are my memoranda regarding both reports not included in the case files?

Levine concluded her memorandum to Horn:

The ASCLD Accreditation Manual defines peer review as ‘the review of casework for technical correctness by a peer.’ If peer review is to mean anything, an established set of policies should be in place in order to assure others that the quality of our work product is at its highest possible level. Writer would like the above issues addressed before she is asked to peer review any further cases from Mr. Piscitelli.

Levine never received a response to this memorandum from Horn.²⁶

After this experience, Levine averred:

I did not want to be in the loop of a peer review process that was really not a true peer review. And I think that writing that memo kind of took me out of the peer review process completely, and it was more — I’m not saying I didn’t do any peer review after that point, but it, if I did, it would have probably been very minor. It was mostly Tony [Piscitelli] sending his cases down to people who had a lot less experience, like Garry [Veeder], to do a hair fiber peer review of Tony’s work, and then Garry would give Tony his cases and . . . I always had a problem with that . . . And if I could be wrong on a peer review then somebody should come back and discuss, let’s sit down and discuss. You’re wrong because of this and that’s all — we get on the same page. Let’s do a consistent report . . . I thought those were . . . blatant problems that needed to be addressed and I never got any . . . addressed.

Levine reported that, as supervisor, Piscitelli chose the technical reviewer assigned to a case and she concurred that a scientist “could do basically peer review shopping.” Levine further characterized her reputation as a technical reviewer: “When I wrote a memo on most peer reviews I was treated like I was, you know, creating a

²⁶ Levine also informed the Inspector General that prior to writing this memorandum, she verbally complained about the peer review process to her supervisors.

problem.” Levine also described the close relationship which Piscitelli had with Veeder and that, “I’m the only female in the section and, and there’s a little bit of a boys club going on there.”

The Inspector General’s survey of Levine’s technical reviews of fiber analyses following her 1994 memoranda criticizing Piscitelli’s reports reveals that she was not assigned to technically review either of Piscitelli’s two fiber analysis cases. Moreover, even though Forensic Scientists Clifford Brant, Ronald Stanbro, and Veeder also conducted approximately 40 fiber analyses during the period from after the 1994 memoranda until Levine’s resignation in 2000, Levine technically reviewed only two of these cases. As Levine stated, Piscitelli conducted almost three-quarters of Veeder’s fiber casework technical reviews during this period.

iii. Thomas Walsh

Thomas Walsh commenced employment as a forensic scientist at the Southern Tier Regional Crime Laboratory in 1982 and remained there until his resignation from State service in 1994. Walsh had extensive education and training in fiber analysis prior to his employment by the State Police and was undeniably an expert in the field. After receiving his master’s degree in Forensic Science, Walsh was employed with the State of Florida Department of Law Enforcement. In Florida, Walsh was required to complete a rigorous extensive training regimen prior to receiving certification as a “testifying analyst.” This training included extensive classroom instruction, training at various institutions across the country including various textile facilities, and working with a certified scientist for ample time. Walsh testified that Florida required training in specific microanalyses (hairs, fibers, etc.) and that a scientist was required to complete years of training in each sub-discipline. Walsh’s training in Florida concentrated on hairs and fibers. Walsh testified that upon first relocating to New York in 1982, he was unimpressed by the qualifications of personnel and tools available to conduct fiber analysis at the State Police laboratory, and he essentially trained staff in the discipline. In accordance with other witnesses, Walsh described the proficiency tests administered to

him during his tenure, which ended in 1995, as “joke tests” completely discordant with real world analysis.

Turning Piscitelli’s lack of belief in the “superfluous” determination of refractive index on its head, Walsh testified that he “always” determined refractive index “in every case” and that the FTIR was used as a confirmatory test of this determination. Walsh added that the FTIR would be the last test he would perform, explaining the limitations of this test when compared to the other tests: “I would use all the other things first because they are non-destructive and they are better. The FTIR just tells you the generic type of fiber, it doesn’t tell you anything really about the microscopic characteristics of the fiber. So that would be the last test of the confirmatory tests I would do.” Walsh testified further that he “was always trained that you use confirmatory tests. You either confirm your polarizing work with the melting point or FTIR or some other instrument that confirmed what you had done is indeed what you think it is” Walsh testified that he considered the battery of tests under the polarizing microscope to be “absolutely” identifying “in the proper hands with the proper training,” and that he conducted a confirmatory FTIR to buttress his findings if questioned in court.

Walsh testified that it “would be really reckless” to conduct an FTIR prior to completing a full range of microscopic examinations. Specifically, he opined, proceeding directly to the FTIR, the confirmatory test, without previously determining refractive index “wouldn’t be valid.” Walsh explained why using a reference chart – Veeder’s “cheat-sheet” – to identify refractive index was inapt: “[T]hat would be a very bad way of doing something for the reasons I said because [fibers] are not ever going to be exactly the same because there could be stress put on that fiber, you know, the refractive index isn’t identical to what is in the reference.”

The Inspector General reviewed Walsh’s three fiber cases and numerous proficiency tests completed during his tenure relative to refractive index determinations and found that when Walsh completed a refractive index test, the value was expressed with such specificity that it could not have been determined through *current* State Police

protocol, i.e., the Becke line method. This finding, however, is consistent with his testimony that he utilized refractive immersion oil methods to obtain these values. Because protocol was not provided for this period, the Inspector General is unable to determine if the use of refractive immersion oils was consistent with State Police policy.

Similar to Levine, Walsh expressed dismay regarding the absence of true and effective technical review in the trace section during his employ in contrast with the constant feedback he received in Florida, “That went a long ways . . . to making a proficient lab.” Walsh recounted that he “had [technical] reviews every day in Florida. I was surrounded by peer reviewers,” while in New York, “No one ever did a technical review of my reports that I know of.” The Inspector General confirmed that Walsh’s three fiber cases were not technically reviewed; however, as they predated technical review protocol provided by the State Police, it is uncertain if this violated any requirement.

*iv. R. Michael Portzer*²⁷

R. Michael Portzer received a master’s degree in Forensic Chemistry from the University of Pittsburgh in 1978, and a master’s degree in Public Administration from Marist College in 2008. He began employment with the State Police as a Temporary Chemist in 1978 and was assigned to the Mid-Hudson Regional Crime Laboratory soon thereafter. There, Portzer received outside training in fiber analysis and in-house training by Walsh in hair and fiber analysis. He was reassigned to the State Police laboratory in Albany in 1995.

At the Mid-Hudson Regional Crime Laboratory Portzer conducted his only fiber casework examinations, which included three examinations, one in 1980 and two in 1990, as well as a fiber proficiency test in 1992, which was deemed “unacceptable.”²⁸ In both 1990 cases (the State Police did not provide records for the 1980 case), Portzer did

²⁷ Portzer’s role as a technical reviewer of Veeder’s fiber casework is discussed later in this report.

²⁸ Portzer also conducted what were initially labeled as fiber examinations but later determined to be hair examinations.

not conduct a refractive index analysis, but did express a value for refractive index on the 1992 fiber proficiency test. As the State Police did not provide fiber protocols before 1997, the Inspector General is unable to determine if the casework and proficiency test were in compliance. When questioned by the Inspector General about how many Becke line analyses he had conducted, Portzer was able to articulate the Becke line procedure, but testified, “I’d actually have to say I haven’t — Well in training I did a lot.” Portzer did recall conducting other tests not related to the refractive index value.

v. Clifford Brant III

Brant received a Bachelor of Science Degree in Forensic Science from John Jay College of Criminal Justice at the City University of New York in 1978. Brant commenced work in the State Police laboratory system at the Southern Tier Regional Crime Laboratory in January 1980, and was assigned to the drug section. In August 1994, he was transferred to the trace section in the Albany laboratory. Brant reported that in the trace section he was supervised by Piscitelli and trained in fiber analyses by Levine and Piscitelli. After a year, Brant successfully completed a fiber competency examination, was authorized to do fiber casework and remained there for approximately three years. Brant testified that he routinely determined the relative refractive index utilizing the Becke line method as instructed during his college years by Peter De Forest, a highly-regarded figure in the forensic sciences field. Brant stated that although he could not recall which methods were mandatory during the mid-1990s as related to fiber refractive index analysis protocol, he would perform the Becke line method “because I have been trained in this and that’s part of it.” In fact, Brant testified, “I like to do . . . all [the analyses], that’s the way I am built.”

When questioned by the Inspector General, Brant was able to describe the Becke line method, which he considered a simple procedure, and testified that he employed it when necessary. A review of his fiber casework revealed refractive indices consistent with State Police protocol. Brant also concurred that the FTIR analysis was a confirmatory step. He stated,

That's what it's used for, it's confirmatory. Okay, and indeed if you have got that, you've got it, there's no doubt. What a confirmatory test does really with all these other tests, these tests are great and if you have a positive going all the way through, okay this one shows different, but if you had everything positive all along, well I mean up to here, up to the [FTIR], if all of these things are positive and you did an FTIR and it comes out, it comes out different than the others then all of this is out the window...

When presented with the circumstances regarding Veeder's false reporting of refractive index results, Brant stated, "That's not doing the work. If you are stating that you did it, if you state that you did the refractive index, then the way to do the refractive index is to do the work, not back step." He added, "What I am trying to say is, is if the man told me that he did the Becke line method and he said that it was 1.5789, whatever to heck it is — I would say 'You are full of shit.'"

Regarding peer reviews, Brant described a functioning process:

Okay speaking of, in terms of the trace section in '94 to '98 again it would have been those three senior people who would have done the peer review and it wasn't uncommon for them to ask me a question about something, you know, "What did I mean by that or maybe this could be written," in other words, "You did this but, you know, let's, you should put this in maybe," you know — It's not uncommon for that to happen and that's the whole point of peer review.

In June 1998, Brant was transferred from the trace section, returning to the drug section.

vi. Dennis Kebabjian and Laurence Murphy

Dennis Kebabjian began employment with the State Police as a Chemist in May 1967. He started in the drug section, but ultimately moved to the criminalistics (trace) section. During Kebabjian's tenure in the trace section, he conducted only two fiber examinations in the early 1990s, almost two decades ago, and technically reviewed approximately a dozen fiber cases. According to Kebabjian's testimony, because he retired in 1994, he never observed Veeder performing a fiber analysis. He also testified

that he found trace analysis more difficult than drug analysis and was surprised to hear that Veeder had transferred to the trace section stating, “I didn’t think he would be able to cut the mustard [in trace analysis].”

Laurence Murphy began employment with the State Police as a chemist in August 1973. Murphy also worked in the criminalistics section, but according to his testimony, he did not recall ever completing fiber casework. Rather, Murphy worked on footwear, accelerant, hit-and-run accident reconstruction, and physical match cases. Although Murphy recalled working with Veeder in the trace section, they worked on different types of examinations, he reported. Murphy did not review any of Veeder’s fiber casework while assigned to the trace section. Murphy retired from the State Police in September 2001.

D. Use of Unauthorized Techniques and Instruments to Determine Refractive Index

According to the State Police forensic laboratory’s Quality Assurance Manual regarding equipment:

Each instrument or item of equipment requiring QC [quality control] testing must have a “NYSP INSTRUMENT QUALITY ASSURANCE BINDER” containing the QC procedure, QC log, emergency shutdown procedures, if applicable and Maintenance/Repair log. This binder must be in place with all QC protocol approved by the section Technical Coordinator/Supervisor before any casework is initiated utilizing the instrument/equipment. Each binder will be made readily available to each analyst who utilizes the instrument/equipment. All preventative maintenance (i.e. septum changes), repairs and service calls conducted to maintain the performance of the instrument will be entered in the Instrument Quality Assurance Binders’ Maintenance/Repair log. **All operators’ manuals for instruments and/or equipment will be readily available to all analysts.** (Emphasis original)

Veeder alleged to Coonrod and Brown that the other forensic center scientists also did not perform the refractive index test, but instead used the FTIR results to consult a chart of known refractive index values. Although all scientists questioned by the Inspector General stated they did not engage in similar misconduct, several of the

scientists, when questioned about the means used to determine a fiber's refractive index value, offered varying techniques and instruments. However, a review of those techniques and instruments revealed them as neither part of State Police protocol during the relevant period nor associated with the refractive index determination. In addition, although the State Police and ASCLD/LAB require that examination instruments authorized for casework be initially validated for that specific use and thereafter periodically calibrated, no records were supplied by the State Police to the Inspector General indicating that, for the following instruments, that condition was met.

One method posited by several scientists was the use of immersion oils to determine refractive index. Walsh testified that he used immersion oils to determine refractive index and Levine stated that she too had used immersion oils to determine the refractive index once or twice, but not in casework. Brant was aware of oils used for this purpose, but believed they were used only in glass analyses. In addition, Levine stated there was an old refractometer present in the laboratory which she believed could be used to determine refractive index, but she didn't think it was used for casework. Piscitelli too testified that the laboratory had an "automated refractometer" which could be used to determine refractive index. Brant also discussed a refractometer, but claimed it was only used with liquids. Levine also recalled that she could have used a device known as a Berek Compensator to determine a fiber's refractive index. Experts consulted by the Inspector General on this issue determined that neither the Berek Compensator nor the automated refractometer should be used for the refractive index determination in fiber analysis.

These methods and instruments were not authorized by State Police protocols during the period at issue, and no documentation was provided by the State Police regarding the calibration and status of an automated fiber refractometer or a Berek Compensator. Regarding immersion oils, Coonrod noted, "I think it's pretty well known we haven't done oils in so long. I mean, I can't even remember when we've had oils and when we were using oils and when they're even available. And the whole point is — is

oils, like we're talking about when he was doing this examination, oils were not even available. We didn't have oils."

E. The Technical Review Process: Ineffective Review, Missed Opportunities and Dubious Qualifications

Veeder's violations of laboratory protocol raise serious questions about the quality and integrity of his work as a State Police forensic scientist. Nonetheless, equally if not more troubling is the length of time with which Veeder's deviations from refractive index protocol, some of them readily evident, went apparently undetected within the laboratory and only were discovered during an ASCLD/LAB audit. Specifically, mandated reviews by laboratory staff which should have identified case reports and proficiency tests containing refractive index values that could not have been determined under established fiber protocols failed to do so. These failures raise legitimate concerns about deficiencies in quality assurance and supervision in the trace section of the Forensic Investigation Center.

That evidence examinations and technical reviews of those examinations must meet standards of the highest quality is clearly recognized by the State Police. As articulated in the policy statement of the State Police Forensic Laboratory System's quality assurance manual, "Quality assurance is, and must be, a dynamic endeavor; it is both all-encompassing and never-ending." The policy statement also states:

Forensic work does not permit the rationalization of substandard work. While in some other human endeavors it may be accepted that no one is infallible, in forensic work it is widely expected that all work will be exemplary. Anything less than exemplary may be subject to criticism. Whether the criticism is fair is not an issue; the adversary nature of our system is such that the criticism will in fact ensue.

A fundamental bulwark against error and misconduct in a forensic laboratory is the technical review of a scientist's casework by a fellow scientist, or peer. (Technical reviews are also referred to as peer reviews.) ASCLD/LAB mandates that each

laboratory establish a procedure for technical reviews requiring that a number of analysis reports be reviewed by qualified peers.²⁹ The ASCLD/LAB standard reads:

The laboratory shall establish a procedure for the technical review of the examination documentation and reports. The procedure shall ensure that the conclusions of analysts are reasonable, within the constraints of validated scientific knowledge, and supported by the examination documentation. The procedure shall define the scope of the technical review, establish the parameters of the review process, specify how technical reviews are documented, and describe a course of action to be taken if a discrepancy is found.

NOTE Technical review may be carried out on a sample of completed case records (e.g., 25% or “X” number of cases, whichever is less, per examiner per month). The sampling rate may vary depending upon the situation, as defined by the laboratory’s policy. For example, a new analyst may have 100% of cases reviewed while a very experienced analyst may have only a few reviewed each month.

5.9.4.1: Technical reviews shall be conducted by individuals having expertise gained through training and experience in the discipline being reviewed.

NOTE 1 An individual conducting the technical review need not be an active analyst in the discipline (sub-discipline) or currently being proficiency tested in the discipline (sub-discipline).

NOTE 2 Technical reviews, while important to the laboratory quality assurance program, should not shift the perceived responsibility for the scientific findings from the analyst to the reviewer.

In addition to ASCLD/LAB’s mandate, the State Police has implemented policy on this subject. The State Police laboratory’s 1995 Quality Management Manual read, in part:

Peer Review of Case Records:
One Person Section

²⁹ ASCLD/LAB also requires that an administrative review always takes place but it does not speak to the qualifications of an administrative reviewer. Per the State Police Quality Management Manual, an administrative review seeks to “ensure the reports are complete, concise and within laboratory policy prior to release of any information.” All laboratory analysis reports are administratively reviewed by supervisors. The Inspector General found no issues with this perfunctory review.

Should there be a one person section in the Laboratory system, at least 25% of that person's work will be reviewed by the Technical Coordinator for the discipline. Each month, the Technical Coordinator will designate those cases to be copied in full and forwarded for review. The exception is the months in which the Technical coordinator is conducting on site reviews. A report will be submitted to the Director with all records attached listing the case numbers reviewed with comments. The report will then be forwarded to the analyst's laboratory for any necessary comments.

If there is no Technical Coordinator for the discipline, this same procedure will be followed by a peer in a different laboratory within the system. If a one person section does not have a Technical Coordinator nor a peer in that discipline within the laboratory system, then arrangements will be made with another forensic laboratory or latent print unit to have at least 10 % of the individual's work reviewed in the same manner as above. The cases will be designated by the appropriate laboratory administrator.

Reviews will be documented by initialing the first page of the case notes. The Director will review the case review report, take appropriate action and file.

Multi-person Section

With the exception of laboratories that have an administrator with technical experience in a particular discipline, at least 25% of each technical person's work product will be reviewed by another analyst of equal or higher competence level within the discipline. In most instances in the Headquarters Laboratory, the review will be conducted by the Technical Coordinator. A report will be generated by the reviewer and forwarded to the Director/Assistant Director/Regional Director listing the cases reviewed with recommendations.

Reviews will be documented by initialing the first page of the case notes. The Director/Assistant Director/Regional Director will review the case review report, take appropriate action and file.

The State Police Quality Management Manual was periodically updated in compliance with ASCLD/LAB standards. The manual defines peer as an "individual having expertise in a specific functional area gained through documented training and expertise. It defines technical review as the review of "bench notes, data, and other documents which form the basis for scientific conclusion."

Pursuant to State Police standards, the “laboratory **will strive for 100 percent peer review** of each technical person’s work product.” [Emphasis in original] If a second, qualified examiner is not available, a minimum of 25 percent of cases will be reviewed.

The Inspector General found that 80 percent of Veeder’s fiber casework and 75 percent of his proficiency tests received technical review. For the 61 fiber cases in which at least one report was issued, as well as the 12 fiber proficiency tests administered to Veeder, technical reviews were conducted by Piscitelli (39), Levine (1), or Portzer (16). With respect to Veeder’s fiber casework and proficiency tests that contained refractive index values that could not have been obtained by following laboratory protocols, the technical reviews were conducted by Piscitelli and Portzer.

i. Technical Reviews of Veeder’s Fiber Casework and Proficiency Tests by Piscitelli

Piscitelli, the supervisor of the fiber sub-discipline section, conducted the majority of the technical reviews of Veeder’s fiber casework and proficiency tests between 1995 and Piscitelli’s retirement in 2003. During this period, Veeder issued one fiber report containing refractive index values that could not have been determined using State Police protocol.³⁰ In addition, Veeder authored 21 fiber reports which did not contain any refractive index values, although in at least six instances this determination appears to have been required. Nonetheless, Piscitelli signed and approved all reports, agreeing that the “work performed is in compliance with applicable technical test methods, procedures and instructions.”

When Piscitelli was questioned by the Inspector General about his failure to notice these values, he stated that the laboratory employed an “automated refractometer” and Veeder “probably . . . did it on that instrument.” This device, according to Piscitelli,

³⁰ A second fiber analysis report was issued during this period which contained a refractive index value that could not have been determined using State Police protocol; however, no evidence was uncovered to indicate that this report had been technically reviewed.

required the use of Cargille oils as a mounting medium to determine a fiber's refractive index. According to Piscitelli, a set of refractive oils was always present in the laboratory as they were primarily used in glass analyses as well as fiber analyses. The refractometer was purchased in or around 1998, according to Piscitelli, and was utilized in the laboratory for fiber analyses at least until his retirement in April 2003.³¹

While, as noted, the Inspector General found Veeder authored several fiber reports with worksheets containing *no* values in the refractive index field, many instances exist when this omission may be appropriate per laboratory protocol. For example, a refractive index analysis may be unnecessary in a fiber comparison in which an earlier test has eliminated a fiber as dissimilar. However, the Inspector General found a number of Veeder's worksheets lacking refractive index values and not falling under any exception, omissions which should have been questioned by Piscitelli during his technical review.³² As with all of Veeder's examinations, these too were subject to outside expert review, the results of which were forwarded to the respective district attorneys.

ii. Technical Reviews of Veeder's Fiber Casework and Proficiency Tests by Portzer

Upon Piscitelli's retirement in April 2003, and recognizing that Veeder was now the sole fiber analyst at the Forensic Investigation Center, Coonrod, after discussions with Zeosky and Forensic Scientist Stuart Rosansky, approached Portzer, who was *once* authorized to conduct fiber casework but was not currently authorized, and requested that he perform technical reviews of Veeder's fiber analysis reports. Regarding this request, Coonrod reported that although he was aware Portzer had not conducted fiber examinations in more than 10 years, Portzer met both ASCLD/LAB and State Police requirements for this position. In addition, Coonrod pointed out that fiber policies and

³¹ The Inspector General notes that a review of Trace Technical Methods manuals provided by the State Police for fiber analysis protocols does not indicate that automated refractometers or refractive oils were viable instruments and techniques to be used to determine a fiber's refractive index.

³² Veeder cases with Piscitelli Technical Review 95O-1789 (Fiber identification, FTIR), 96B-1290 (Fibers identified as acetate or acrylic with only color and sign of elongation measured), 97B-705 (Comparison, several assays with FTIR), 97H-356 (Comparison, "Identical," FTIR), and 97O-1878 (Comparison, FTIR) and 99H-001743 (Wig fibers identified as Vinyl Chloride without any supporting analysis documentation).

procedures in the State Police laboratories had not substantially changed from the 1990s to the present date. Coonrod testified that if he had not taken this step, he would have been faced with what he described as less desirable options of sending Veeder's fiber analysis reports to an outside laboratory for technical review or discontinuing the service of fiber analyses at the Forensic Investigation Center. "So it's a matter of resources," he said. "It's trying to survive and being able to function."

That assertion notwithstanding, outside laboratory reviews were used in other disciplines, such as questioned documents, where all reports were sent out of state to be technically reviewed. In regard to discontinuing the service of fiber analysis, Coonrod stated:

When I throw the switch off and I stop that service, there's notifications that go out. There's Executive Law . . . that kicks in terms of accreditation. I'm officially out of the business now. In order to get back in the business . . . three years of training [is required] . . . I have to re-apply to ASCLD/LAB for accreditation . . . It takes years to flip that switch back on. So you've got to weigh that all into account.

As previously mentioned, Portzer had transferred to Albany in February 1995 after working in Mid-Hudson Regional Crime Laboratory for 18 years, where he had conducted a total of three cases involving fiber analyses. Upon transfer to Albany, Portzer was assigned to conduct DNA and serology casework.

Portzer reported that in April 2003, when Piscitelli retired, no fiber scientist employed at the Forensic Investigation Center was qualified to technically review Veeder's fiber casework. It wouldn't be until nearly two years later that Brown and a newly-hired forensic scientist, Frank Padula, commenced training in fiber analysis. According to Portzer, he was asked by Coonrod to conduct the technical reviews of Veeder's work until Brown and Padula were "on-line," or authorized to do fiber casework. Portzer claimed it was meant to be a temporary situation. However, Brown and Padula never completed their fiber training and were never authorized to do fiber

casework. “So, basically, they just let the situation roll with me doing the fiber technical reviews,” Portzer stated.

Coonrod recognized that vulnerability existed within the trace section and in September 2004 authored a letter to the laboratory director indicating that additional staff was needed. In this letter, he indicated that both Veeder and Rosansky soon would be eligible to retire, leaving only Ronald Stanbro at Western Regional Crime Laboratory to examine all trace evidence. Coonrod repeated this request in letters in February and March 2007, citing the same facts. In addition, Coonrod wrote, “It should be noted that there are currently no other examiners qualified in fiber analysis within the NYSP Laboratory System to conduct technical review of Mr. Veeder’s fiber examinations other than Michael Portzer . . . who had not performed fiber analysis since leaving the [Mid-Hudson Regional Crime Laboratory] over ten years ago.”

Of his comfort level regarding Coonrod’s request to conduct fiber technical reviews although he had not conducted a fiber analysis or fiber proficiency test in more than 10 years, Portzer testified to the Inspector General that “they said it was a temporary situation” and:

I said in the beginning I didn’t really want to do it, but I think, after that, they really came so few and far between, I didn’t question it after the first time. I didn’t say anything more about -- you know, as long as they didn’t significantly change the instrumentation, they’re actually applying to develop this, it was one of those things where, you know, I’ve done it in the past, and they need to have it done, and I completed my analysis of that.

When asked if he was qualified to conduct fiber technical reviews, Portzer said, “I did feel confident at the time” and added:

A: What the requirements are is someone previously qualified in the technology.

Q: Okay, and what is [ASCLD/LAB’s] definition of previously qualified?

A: Someone who had done some proficiency testing, or had done the work basically considered on-line, having done the case work, and having been proficiency tested in a particular discipline.

Q: Okay, so since [then-Lab Director] . . . authorized you to do casework when you were in Newburgh, that qualifies you to do the tech reviews currently, or subsequent to—

A: It has — it certainly can. It certainly can.

Although stating that he was technically qualified for the position, he conceded to the Inspector General:

I think it would be better, much better, to have someone who's actually actively testing materials do the technical review of someone else who's doing the same work. I think that would be infinitely better than relying on the previously qualified. I don't think that—you know, based on my own experience, and obviously some of the deficiencies I've seen [referring to Veeder's casework and PTs], it would appear that some things that should have been questioned...would have been better for someone who was actively working in it and actually filling out these forms on a regular basis, and knowing what was different from what they were doing.

Portzer stated that he was the only scientist conducting technical reviews at the Forensic Investigation Center not currently on-line in their respective disciplines.

Regarding Portzer's qualifications as a previously qualified analyst, it is noteworthy that his prior experience in fiber examinations included three cases: one in 1980 and two in 1990.³³ Furthermore, records obtained from the State Police indicate that Portzer completed a fiber proficiency test in 1992, which was deemed by the then-laboratory director to be "not acceptable." The notification to the laboratory director regarding Portzer's proficiency test read:

³³ Portzer also conducted other examinations that were initially labeled as fiber examinations but were later determined to be hair examinations.

The two exhibits which were called [by Portzer] as having the same properties were indeed different nylons which could have been resolved by examining their differences in melting point.

It is my recommendation that this analyst be retrained in fiber examination and no fiber cases be conducted by this analyst until the retraining is completed and another proficiency test be given and passed.

A subsequent letter from the laboratory director to the Mid-Hudson Regional Crime Laboratory director stated that, as a consequence of Portzer's failure, Portzer's supervisor was directed to conduct a review of all cases completed by Portzer and to alert the director to any discrepancies found. Records show that a review of at least one fiber examination was conducted by the State Police but no discrepancies found.

Portzer neither completed retraining in fiber analysis nor was he re-examined with a fiber proficiency test. In 1992, Portzer was rendered off-line for fiber examinations and never reinstated.

When questioned about this failed 1992 proficiency test, Portzer initially stated that he did not recall it. After reviewing the proficiency test in question, Portzer testified regarding the failed test and his subsequent appointment as the technical reviewer in that same discipline:

I honestly don't recall bringing it up . . . I didn't really . . . remember it or think about it at the time, no.

It certainly wasn't the best situation, and had I even thought about this — and quite honestly, at the time I didn't even think about this. It was several years later. I'm sure if this had been presented to me at the time I would have said obviously I shouldn't have done it.

Coonrod was queried about his assignment of Portzer to review Veeder's fiber work and replied, "He was the only person in-house that we had that had the qualifications to be able to do peer review for fibers . . . and had been doing that aspect of peer review with fibers." Coonrod asserted that Portzer was qualified based on "previous

experience” and the fact that he had been “proficiency tested, qualified to be able to do fibers.”

When Coonrod was asked if he was aware of Portzer’s failed 1992 proficiency test and the accompanying letters indicating that Portzer would be taken off-line unless he received further retraining and retesting, he testified, “Wow. Um — no. I mean, could I have been aware at the time for some reason? Maybe, but I’m not — as you tell me right now I’m sitting here going I’m not aware of it.” Coonrod stated that at that time in 1992, he was supervising another section of the laboratory and Rosansky was Portzer’s immediate supervisor. Zeosky too claimed that he was unaware of Portzer’s failed proficiency test and that Portzer had been taken off-line. Coonrod and Zeosky both admitted that they did not review Portzer’s personnel records or quality assurance records prior to their decision.

The Inspector General interviewed a number of forensic scientists at the State Police forensic laboratory who recalled having failed proficiency tests throughout their career. To most, the failure was a memorable event. One former analyst recalled having once failed a proficiency test approximately 20 years ago, and stated, “It’s significant because it is embarrassing.” The analyst added, “No one is supposed to know but people know.”

Although Coonrod did not believe that he had been apprised of Portzer’s failure at that time, when informed of the failure, he still maintained that Portzer’s 2003 assignment technically met the ASCLD/LAB requirements for a technical reviewer. However, he added, “Obviously, from a point of view of having somebody do peer review that hasn’t passed a proficiency test to me leaves a quality question.” Coonrod questioned why Rosansky, who had been a member of the group discussing the assignment of Portzer, had not alerted the group of Portzer’s failed proficiency test and off-line status. The Inspector General attempted to conduct a voluntary interview of Rosansky, who has since retired from state service, but he declined.

Portzer became the sole fiber technical reviewer of Veeder's casework and proficiency tests after Piscitelli's retirement in 2003. During this period, Veeder issued four fiber reports and completed two proficiency tests containing refractive index values that were readily detectable as inconsistent with State Police protocol. In addition, Veeder authored six fiber reports that did not contain any refractive index values, and in at least two instances it appears the refractive index value should have been determined.³⁴ Nonetheless, Portzer approved these reports indicating that the "work performed is in compliance with applicable technical test methods, procedures and instructions."

The Inspector General consulted ASCLD/LAB about Portzer's qualifications as a fiber technical reviewer. ASCLD/LAB was informed by the Inspector General of Portzer's limited fiber casework more than a decade earlier and his "not acceptable" performance on a 1992 fiber proficiency test, which resulted in his off-line status. ASCLD/LAB defined the purpose of a technical review as a confirmation that the test results are supported by sufficient evidence contained in the case notes: the case notes support the conclusion, that the appropriate tests were conducted, and that the conclusion was not overstated or understated. Regarding the standard for assigning persons qualified to conduct technical reviews, the ASCLD/LAB Standard 5.9.4.1 reads:

Technical reviews shall be conducted by individuals having expertise gained through training and experience in the discipline being reviewed.

ASCLD/LAB assesses whether this standard is being met by looking to a technical reviewer's conformance and effectiveness through his or her Statement of Qualifications regarding training, education, and experience, a review which does not include the results of proficiency tests taken by that scientist.

ASCLD/LAB informed the Inspector General regarding Portzer's qualifications as a fiber technical reviewer, that "although it appeared that [Portzer] met the

³⁴ Veeder cases with Portzer Technical Review: 03HL-3810 (Comparison case, Match, FTIR was performed), 04HL-4658 (Comparison, Match, FTIR was performed)

conformance of the standard by having been trained and had experience, based on the additional information [the failed proficiency test and lack of required retraining] . . . he would not meet the effectiveness [assessment].” The ASCLD/LAB representative further informed the Inspector General, “I would question the lab’s decision to have [Portzer] do technical reviews.” Indeed, while it may be reasonable and sensible to allow a person trained and experienced in a discipline but not actively engaged in analyses to be deemed capable of conducting technical reviews, it is quite different to claim that a person who has been involuntarily removed from the discipline after being formally deemed non-proficient to possess sufficient “expertise” to serve as a technical reviewer.

ASCLD/LAB added that it operates under the assumption that the State Police laboratory management is making appropriate assignments. ADCLD/LAB referred specifically to its Standard 5.2.5 which reads:

The management shall authorize specific personnel to perform particular types of sampling, test and/or calibration, to issue test reports and calibration certificates, to give opinions and interpretations and to operate particular types of equipment. The laboratory shall maintain records of the relevant authorization(s), competence, educational and professional qualifications, training, skills and experience of all technical personnel, including contracted personnel. This information shall be readily available and shall include the date on which authorization and/or competence is confirmed.

Therefore, to the extent that management was unaware of Portzer’s failed proficiency test prior to his appointment as technical reviewer, this lack of diligence is itself problematic.

In addition to ASCLD/LAB standards, the State Police Quality Assurance manuals from at least 1995 have provided that: “With the exception of laboratories that have an administrator with technical experience in a particular discipline, at least 25% of each technical person’s work product will be reviewed by **another analyst of equal or higher competence level within the discipline.**” [Emphasis supplied] It strains credulity to assert that Portzer, who had conducted scant reviews himself in the distant past and

had been deemed officially incompetent to conduct further analyses absent requisite retraining, was of an “equal or higher competence level” within the fiber discipline as Veeder.

Indeed, given the following testimony by Portzer regarding his method of evaluation for his technical reviews, concluding that Portzer was of equal or higher competence to Veeder raises more concerns than it quells:

I’d look at the work lists, I’d look at the — any instrument data which, many times for fiber work they include infrared, and then most of the time it’s worksheets, basically, showing the physical property that the person has looked at, and a comparison of the two, and then does this substantiate the conclusion that a person could make on a report.

Regarding the determination as to whether Veeder actually conducted the refractive index analysis, Portzer stated that the technical reviewer is not attesting that he observed the scientist complete the analysis but rather assumes the analysis was completed if a value is listed on a fiber comparison worksheet. When asked why the refractive index values, due to their specificity, did not raise a red flag, Portzer opined that Veeder may have utilized refractive oils, the only method of which Portzer was aware that determined exact refractive index values. Asked if the use of refractive oils to determine a fiber’s refractive index was in State Police protocol, Portzer responded,

A: I don’t know — I don’t think there’s a set procedure that’s in place about what you should do. I think this is more consistently what . . . I would’ve done, and what I think the average fiber analyst would have done. I can’t — I don’t know why those other values really should be there. I would be surprised if he did that. I would be surprised.

Q: You would be surprised if he did what, the actual — oil?

A: I would’ve been surprised — I mean, he certainly could have [used refractive oils].

Portzer added, while unknowingly and precisely capsulizing the problem: “I certainly have no indication that he didn’t know what he was doing. He certainly had far more experience in fiber work that I did.”

With regard to Portzer's stated lack of familiarity with State Police fiber protocol, that policy has been in effect since at least 1997. The protocol requires that, "After microscopic examination, the refractive index relative to DPX (or Permout) is determined" by the Becke line method. Notably, this policy contains no language regarding any other mounting media or methods. Nevertheless, during Portzer's testimony pertaining to his competency as a technical reviewer, he was uncertain if DPX or Permout were used during refractive index analyses by the laboratory. He responded:

No, never used DPX, no. I think that's carcinogenic . . . I'm not sure when — they used it, if they've given it up. They may still use it, they may still have some.

* * *

Well, no, no, you can use Cargille oils. Cargille oils are a series of oils that have varying refractive indices, and it's like a — it's a series, and what you can do is you would put in contact with whatever material you wanted to know the refractive index of, and whenever it disappeared in that oil, then it's that refractive index. So there is a way to determine the refractive index at our facility. I don't know if they've — I would think a refractometer could do it, too, but I have never used one, and I don't think they have one, but I'm not certain.

The Inspector General questions Portzer's assignment to technically review fiber analyses given, among other things, his apparent lack of knowledge of current protocol.

As previously indicated in this report, State Police procedure requires that the relative refractive index be determined by the only method accepted by the State Police and memorialized in the Trace Technical Manual — the Becke line method. Moreover, regarding the use of refractive oils to determine refractive index, Coonrod noted, "It's pretty well known we haven't done oils in so long." As to the presence of refractive oils at the Forensic Investigation Center for use in fiber analyses, Coonrod stated that during the period he oversaw the trace section he could not remember a time when they were available, a procedure which he deemed laborious and time consuming as compared to the Becke line method.

The State Police had several more viable options for fiber technical reviews upon the retirement of Piscitelli in 2003 which included: (1) searching from existing laboratory staff, including those located in the satellite laboratories, for qualified peers; (2) utilizing the services of an outside laboratory; (3) hiring additional staff; (4) training existing staff in fiber analyses; and (5) removing the fiber sub-discipline from the array of services offered to customers. By assigning Portzer for this function, the State Police chose poorly from among its options.

Indeed, investigation by the State Police would not only have disclosed Portzer's lack of qualification for this role, but also that Ronald Stanbro, a forensic scientist assigned to the State Police Western Regional Crime Laboratory, possessed greater qualifications for this assignment.

Records provided by the State Police show that Stanbro was trained in fiber analyses, became proficient in this sub-discipline in early 1987, and was assigned to the Western Regional Crime Laboratory. There, he conducted 14 fiber casework examinations between 1989 and 1997, and six fiber proficiency tests within this period. Although Stanbro appears to have initially failed a fiber proficiency test in 1996, he subsequently retested several times, passing in May 1997. In and around this time, however, according to Stanbro, fiber analyses were removed from the satellite laboratories and centralized at the forensic center in Albany.

Given the choice between Portzer, who had only conducted three fiber examinations and had been deemed unqualified to perform further fiber analyses after 1992, and Stanbro, who had conducted 14 more recent fiber analyses in his career and was considered by ASCLD/LAB standards to be a previously qualified analyst, the Inspector General questions the assignment of the former.

iii. Portzer Failed to Detect Irregularity in Veeder's 2008 Proficiency Test

Despite being determined “satisfactory” by Portzer during his technical review, Veeder’s 2008 fiber proficiency test triggered the ensuing investigations by the State Police and the Inspector General. As set forth above, it was during the 2008 ASCLD/LAB audit of the State Police’s Forensic Investigation Center in Albany that an assessor raised concerns about Veeder’s proficiency test as the assessor had identified refractive index values that appeared to be inconsistent with State Police fiber analysis protocol. Although the assessor determined that Veeder had reported the correct results, when questioned by the assessor about his methods, Veeder was unable to satisfactorily articulate and demonstrate the techniques he used to analyze fibers. Regarding Veeder’s fiber proficiency test, ASCLD/LAB issued two proposed Level 1 Corrective Action Requests as a result of the assessor’s observations of, and discussions with, Veeder.³⁵ To preclude the possibility that Veeder’s actions might negatively impact accreditation, the State Police instead chose to remove the trace sub-discipline of fiber analysis from the accreditation audit, taking it “off-line.” Hence, the two proposed Corrective Action Requests were rendered null.

Portzer informed the Inspector General that the ASCLD/LAB assessor had questioned him about Veeder’s proficiency test, which documented the value of the refractive index as 1.47, and that he told the assessor that the only way he knew to determine a fiber’s exact refractive index is through the use of refractive oils, a method not found in any current or former State Police fiber protocol obtained by the Inspector General. When questioned if a technical reviewer assigned to review Veeder’s fiber analysis reports should have noticed that Veeder reported refractive index to a degree of specificity indeterminable under State Police protocols, Coonrod opined “Yes,” adding

³⁵ The two Corrective Actions Requests cited ASCLD/LAB standard 5.2.1, which reads, “Personnel performing tasks shall be qualified on the basis of appropriate education, training, experience, and/or demonstrated skills, as required;” and, ASCLD/LAB standard 4.13.2.5, which reads, “Documentation to support conclusions shall be such that in the absence of the analyst, another competent analyst or supervisor could evaluate what was done and interpret the data.”

that Portzer should have questioned Veeder about such results and/or referred the matter to a supervisor for further consideration.

F. Impact of Trace Section Scientists' Violations of State Police Fiber Protocol

Combined, Piscitelli and Veeder completed almost two-thirds of approximately 100 fiber examinations conducted from 1992 until the forensic center took fiber examinations off-line in 2008; and after Levine's departure in 2000, Veeder completed all fiber examinations. The Inspector General found that Veeder and Piscitelli routinely violated State Police protocol as a matter of practice by omitting a required analysis, the determination of the refractive index of a fiber in a fiber analysis.

The Inspector General sought to determine the likely effect of this violation on the results of the fiber examinations. As discussed above, two of the scientists who worked in the State Police forensic laboratory system's trace sections with extensive prior experience and training in fiber analysis – Levine and Walsh – not coincidentally, explained the utility of the refractive index test as a regular component of the inspection of a fiber's optical properties in a fiber analysis. Moreover, the two expressed the ability to readily obtain the refractive index and, coupling this information with other assessments such as color and size, in most instances, form a sound opinion as to the composition of the fiber and whether it matched or did not match another fiber. As per protocol, the scientists then used the FTIR which identified the exact polymer presented to confirm their preliminary findings. In contrast, under the training and direction of Piscitelli, Veeder apparently ignored the required preliminary test and proceeded directly to the confirmatory procedure.

In order to obtain an independent expert opinion of the effects of these violations, the Inspector General consulted Harold Deadman of the Department of Forensic Sciences at George Washington University.³⁶ Deadman is a former forensic scientist with the Federal Bureau of Investigation and a well-known expert in the field of fiber analysis.

³⁶ Deadman holds a Ph.D. in organic chemistry from Southern Illinois University.

Deadman's explanation of the accepted procedure when comparing fiber samples and the purpose of the refractive index determination were consistent with former State Police laboratory forensic scientists Levine and Walsh, proponents of the refractive index analysis as a regular component of the inspection of a fiber's optical properties in a fiber analysis.

Deadman explained there exist "standard procedures necessary to run" when conducting a fiber analysis; however, no nationally recognized standard protocol has been established. Deadman provided his methodology when conducting fiber comparison, referencing the FBI and the Washington, D.C. Metropolitan Police Department protocols for fiber examinations, which are substantially similar to the State Police's written protocol. Deadman reported that he engages in the following steps: (1) microscopic examination; (2) examination of optical properties of like fibers with similar characteristics using a comparison microscope; (3) fluorescence properties examination; (4) (if no meaningful or significant differences have been identified) microspectrophotometer color examination; and (5) FTIR examination to determine the fiber's composition.

Deadman informed the Inspector General that the Becke line method usually allows an analyst to identify the fiber type easily during the initial stages while the fiber is mounted in a medium, thereby eliminating the need for extra manipulation of the fiber. Although procedures exist for determining the precise refractive index of a fiber, the State Police protocol does not speak to them. To estimate relative refractive indices of fibers requires that an appropriate mounting medium be used (i.e. DPX or Permout, as described in State Police protocols). By estimating the refractive indices, according to Deadman, the field of choices is narrowed and one can usually determine the fiber's composition (the polymer used to produce the fiber such as nylon, polyester, etc.).

Deadman stated that he typically estimates the refractive indices and rarely ever determines the precise indices in casework. Other properties that relate to the refractive index, such as birefringence, are important, Deadman said, as "they give you information

about what the fiber is made of, [but] they probably, in the big picture, [are] not the most important thing.”

According to Deadman, the Becke line method allows the analyst to place a fiber into a class of fibers, for example, nylon. Deadman added, however, that the Becke line method only allows the analyst to narrow the fiber type down to a generic class, and unlike the FTIR, the Becke line method is not able to provide the specific fiber composition, the fiber’s sub-class. Deadman provided the following example:

The common nylons used in textiles are called nylon 6 and nylon 6.6. These two types of nylon are made of different polymers. One cannot easily determine which type you have by using refractive indices alone but one can determine the type of nylon using FTIR. There are also some of the uncommon nylons that probably require FTIR for their identification.

Deadman advised that the FTIR provides much more information about the polymer composition than identifying the fiber by using just the refractive indices. An FTIR spectrum is often considered to be like a “fingerprint.” It provides structural information about the chemical bonds that are present in the polymer and, in addition, the FTIR spectrum can be searched against a database of known fiber spectra. The FTIR does not measure or use the fiber’s refractive indices in identifying the fiber type.

Deadman stated that under current FBI procedure, an examiner uses the Becke line method to determine of what the fiber is composed during the initial microscopic examination and may use the Becke line method as a comparison tool. Similar to the State Police protocol, the FBI runs the FTIR as the last step in the fiber analysis in order to confirm the fiber identification by the analyst who has used the Becke line method, and to determine the specific type of polymer.

Deadman informed the Inspector General that some reasons exist for not obtaining an FTIR spectrum. It is not needed if meaningful differences are found during other steps in the fiber comparison process. The FTIR also requires that the fiber be

removed from the mounting medium for analysis while other steps in the comparison process do not. Because the FTIR analysis requires removal of a fiber from the mounting medium, it is usually the last step in a comparison process. Deadman further noted that some laboratories do not use the FTIR because it does not add much additional discrimination to the analysis. For example, the FTIR does not measure any information about the color (unless the fiber is heavily dyed) which Deadman considers the most important variable in a fiber comparison.

Deadman could not conceive an instance in which he would proceed directly to the FTIR, and not perform the full range of microscopic exams including the determination of relative refractive index. He offered that although the FTIR provides information about the polymer, additional information would be needed to draw any specific comparison conclusions. Consequently, if a scientist did not perform microscopic observations of the fibers and only conducted an FTIR, obvious optical dissimilarities might go undetected. Therefore, the FTIR, by itself, is not very discriminating. Deadman explained:

In other words, if I took two fibers that were different shape, that had different cross-sections, or were different in size, and ran FTIR on them but they were made out of the same type of polyester, the FTIR would look the same but the fact that there were size differences or color differences wouldn't be picked up with the FTIR.

Deadman also expressed the use of the Becke line method as a pre-screening tool. Similar to Levine and Walsh, Deadman declared that in the majority of instances, after conducting the first several tests, he has confidence as to the identity of the material and its match with another fiber. Furthermore, there exist many occasions in which a scientist probably need not obtain an FTIR such as if other meaningful differences are noted in the microscopic characteristics, such as the fluorescence or the color of the fibers being compared. In those instances, if a scientist immediately obtains an FTIR, the scientist would “probably be wasting a lot of time.”

Deadman summarized his belief that when conducting a comparison analysis, a greater risk of error exists if a scientist conducts only an FTIR without first conducting a microscopic comparison exam with a comparison microscope. Indeed, as to the scenario of proceeding directly to the FTIR and then dry-labbing a refractive index via a chart, Deadman echoed the other scientists' incredulity, "It's silly to do that because it's [the Becke line method] very simple to do."

The likely effect of the omission of a refractive index determination hinges on the competence and acumen of the scientist in performing the other pre-FTIR analyses. Deadman explained that the refractive index Becke line method and the FTIR examine the same thing – the fiber's composition. Regarding fiber *identification*, according to Deadman, "You wouldn't make many mistakes about the fiber composition if you just did FTIR because that's probably the best technique for looking at the polymer composition, what the fiber is made out of." Deadman added, "He's probably going to be right . . . It actually allows you to put a fiber into a particular polymer type not just a generic class." However, the mere composition of a fiber is insufficient to make a determination in a fiber *comparison*, without having conducted microscopic observations such as color, diameter and cross-section.

As to technical reviews, Deadman advised that a report containing exact refractive index values, like Veeder's fiber reports, would have immediately alerted him to the use of a procedure other than the Becke line method, as it did the ASCLD/LAB assessor. Having been informed that the State Police-authorized method for determining a fiber's relative refractive index value was the Becke line method, Deadman stated that he would have questioned the scientist during the technical review as to how that value was determined.

Deadman discussed internal controls which may benefit the State Police laboratories. He related that the FBI and the Washington, D.C. police require *all* cases to have both an administrative and a technical review, regardless of the results of the examination. In cases where a fiber match was found, an additional technical review is

required by another forensic scientist and includes an examination of both the FTIR results directly from the FTIR instrument and the spectrophotometer results, as well as a re-examination of the fibers under a comparison microscope.

A review of Veeder's fiber casework did not disclose evidence that he had failed to conduct other microscopic examinations of fibers. Conversely, the Inspector General is unable to rule out that all other tests were conducted in accordance with State Police protocol. Assuming all of the other required analyses were competently performed, the sole omission of the Becke line determination should not have affected the ultimate results of a fiber analysis. Nevertheless, the concern as to whether Veeder correctly conducted the other required analyses is exacerbated by his bypassing of the Becke line test which others considered quick and simple for a skilled fiber analyst.

Similarly, the Inspector General is troubled by Piscitelli's willingness to circumvent protocol based on his "lack of belief" in refractive index, a basic concept in the science of fiber analysis. By dispensing with the refractive index determination, Piscitelli and Veeder eliminated internal confirmation of their results and efficient screening of samples.

V. INSPECTOR GENERAL'S EXAMINATION OF AN ADDITIONAL ALLEGATION RELATED TO THE FORENSIC INVESTIGATION CENTER

During the course of the investigation into the issues emanating from Veeder's fiber examinations, the Inspector General learned of an additional allegation relating to undue influence. The allegation pertained to the actions of Richard Nuzzo, a sworn member, upon civilian laboratory personnel while he was a Captain and the Forensic Investigation Center Assistant Director, the second in command of the laboratory. Although not directly related to the Veeder matter or part of the Commission on Forensic Science referral, because this matter concerned the trace evidence section of the forensic center and involved many of the same witnesses, the Inspector General pursued the investigation of this claim simultaneously.

The Inspector General received an allegation from a confidential source that questioned document examiner Deborah Alber had altered the findings on a submitted questioned document report pertaining to the investigation of a then-Trooper after being unduly influenced by Nuzzo, whose brother was the "Investigating Member" assigned to the underlying matter.

According to the American Board of Forensic Document Examiners, the examination of questioned documents consists of the analysis and comparison of questioned handwriting, hand printing, typewriting, commercial printing, photocopies, papers, inks, and other documentary evidence with known material in order to establish the authenticity of the contested material as well as the detection of alterations. Findings are presented as the "opinions" of the examiner.

Alber attained a bachelor's degree in Interdisciplinary Sciences from Rensselaer Polytechnic Institute in Troy and went on to teach chemistry and science at a public school before employment as a sanitary chemist and a quality control chemist. Alber started work at the State Police laboratory in Albany in 1980 as a Forensic Scientist in the drug chemistry section and transferred to questioned documents in 1996. In October

2005, Alber left for employment at the Division of Criminal Justice Services. Alber completed two to three years of on-the-job training in the questioned document section, and attended several courses hosted by the American Board of Forensic Document Examiners and the FBI before successfully passing a competency examination authorizing her to conduct questioned document casework. Once on-line, Alber was required to successfully complete a proficiency test each year in the questioned document section to maintain accreditation.

Alber described for the Inspector General the questioned document process during 2004, the time in question. Alber would receive question document evidence, analyze it and then write and sign a report. The report would be reviewed by her supervisor at the time, Coonrod, and then, if determined to be among those questioned document reports slated for technical review, sent to an external questioned document examiner for inspection and signature. Once these reviews were completed, a member of the laboratory's clerical staff would type the report and Alber would again sign it. Her supervisor would then complete an administrative review and the report would be sent to the customer.

Alber spoke of her general interactions with law enforcement officers who had submitted evidence to her for questioned document analysis during her almost 10-year tenure in the discipline. Alber testified that she would "frequently" contact case investigators to obtain answers to questions or to get additional known standards or originals. In these instances, Alber reported, she never believed that an investigator had attempted to influence the outcome of the analysis or her report of findings.

When inquired by the Inspector General if any individual had ever attempted to influence her analysis of a questioned document examination, prior to any mention of Nuzzo or the instant allegations, Alber testified, "Just one individual once did at the lab." Alber recalled, "I remember it happening, because it was one of those things that was very out of the ordinary, as far as I was concerned" Alber testified that Nuzzo "came down and looked over my shoulder" at the documents in question, and "said, 'Oh,

these and this match, and this and this match.’ And I’m saying, ‘Well, there’s a lot of other things here that don’t match . . .’ And I was like, ‘Let me do the work and I’ll get you the result as soon as I can.’” Alber added that she told Nuzzo, “I’ll make the examination.” However, Alber testified, “If he came down and questioned it, I may have looked back at the case again, just to see maybe there’s something that I’m not seeing.” Alber testified that this type of inquiry by a member had never happened in her 25-year career with the State Police.

Regarding the report in question, Alber’s findings read:

- 1) No definite opinion can be rendered as to whether the subject . . . did or did not execute the handprinting item 1A . . . Although apparent discrepancies exist between the questioned handprinting on Item 1A and the known handprinting of [the subject], apparent similarities also exist which make it impossible to eliminate him from having executed the questioned handprinting.
- 2) For investigative purposes and not to be construed as a definite opinion, it is noted that there are indications that the Signature of the Officer, Rank and Date on Item 1 may have been executed by a different writer.

Nuzzo’s actions irked Alber. She recalled, being “upset or concerned about it when it happened.” Alber added, “I just — I didn’t think it was right for someone to be coming down who had no knowledge in question documents, and that’s how I felt at the point. Like, ‘Why are you here telling me that you see similarities; you don’t know how to do a question documents exam.’”

Alber was uncertain when this encounter with Nuzzo occurred and if she was in the midst of analyzing the evidence or if it happened during or after her writing of the analysis report. However, Alber averred that she “wasn’t influenced by whatever he said to me.” Alber added, “I know that when I made a definite opinion, that I felt strongly about it” and “I wasn’t going to be influenced at all by whatever anybody else had to say.” Alber was uncertain if she had spoken to her supervisor, Coonrod, about Nuzzo’s actions.

When the Inspector General questioned Nuzzo about this incident, he conceded that he was aware that his brother, then a State Police Lieutenant, was involved in the underlying investigation and that he knew the facts of the case prior to any handwriting sample being submitted to the laboratory for examination. Specifically, Nuzzo testified that he was in contact with either his brother or another State Police supervisor assigned to the underlying investigation and, after discussion which included his being informed by the investigators of “what they felt [the subject of the investigation] did,” he advised them that the laboratory could conduct the handwriting analysis. It is also apparent from his testimony that Nuzzo had formed a personal opinion that the handwriting on the questioned document was in fact the target’s handwriting prior to submission to Alber for examination. Nuzzo testified that his knowledge of the facts of the case supported his “logical assumption” that the target of the investigation had executed the document. Nuzzo further testified that the underlying investigation was a “priority” because it potentially involved a Trooper and that “my brother got stuck with that bag of crap, pardon the expression, ‘cause that was, that was no, no walk in the park for him, and [the other State Police supervisor] to do that case.”

When Nuzzo was questioned further about this incident, although he claimed that he did not recall confronting Alber, he testified,

If I commented, it would’ve been just as, as a lay person, which is just like when people submit stuff to us. Here, here, here, this looks consistent with this.

So when the naked eye looked at this, someone who’s not trained, everybody who was part of the investigation was, like, first of all, [the subject] was the only one who had reason to do this. It looks like his writing. Okay. This is like a slam-dunk, and then it comes back, I don’t know what the results are, but it was — I’m remembering sort of like inconclusive or something like that. Some wishy-washy. It’s not con — you know, not enough characteristics. And I’m like, “You gotta be kidding me.”

So was I upset that they couldn’t, they couldn’t show this? Yeah. But that’s where it ends. Because I cannot, and I will not go to that person and say “You need to do it this way, or you need to say this.” I would never ever do that.

Nuzzo was further questioned about the potential impact of a supervisor's statement to a subordinate:

Q: Do you recognize that even though . . . you're telling us you did not try to steer her that here, you are looking over her shoulder . . . you know, her opinions on these? That it could appear that here is my boss looking over my shoulder

A: No. Because, uh, yeah, it — could it appear that way? Yeah. I would, I would hope she didn't see it that way.

A: I would hope that she didn't change her results because of something I said because she's the one that has to testify to her results.

The Inspector General further questioned Nuzzo about the appearance of impropriety created by his intervention in a case assigned to his brother to which Nuzzo responded that he treated his brother "just like any other Trooper in the squad." Nuzzo further averred, "That's not the relationship that matters . . . you take an oath back at the academy . . . it's about justice, and it's about doing the right thing." Nuzzo further elaborated that he could not "control what someone on the outside" would perceive.

The Inspector General interviewed Coonrod, Alber's supervisor at the time of the incident. Coonrod stated that Alber "came back to my office saying that she had just finished talking with then-Captain . . . Richard Nuzzo . . . [and] she was going to change her opinion after talking with him." Coonrod further testified, "I said, 'Do you realize how this looks and what you've just said? So you rendered an opinion based on examination. You then go and talk with the assistant director, who's brother's investigating a case. And now you're going to change your opinion.'" Coonrod added, "And so she changed her report back to what it originally was."

Zeosky recalled Coonrod speaking to him sometime in 2004 about a questioned document analysis conducted by Alber in which Nuzzo met with Alber regarding a particular examination and questioned her conclusions. Zeosky claimed that Alber's report was not changed or modified after that conversation and he justified Nuzzo's approach as simply a supervisor asking questions about a subordinate's report. Zeosky

recalled that Coonrod was very concerned about the effect Nuzzo's meeting could have on Alber. Zeosky stated he followed up on the matter, but he could not recall whether he interviewed Alber or Nuzzo. The Inspector General's request for records relevant to this potential forensic center inquiry into this matter yielded none. Zeosky stated he did not refer this matter to IAB because Alber's report findings were never changed. Zeosky added that it might have been only recently that he learned that Nuzzo's brother was the investigating member for the case in question.

Regarding questioned document reports at the Forensic Investigation Center, according to procedures, after a report has undergone technical (if necessary) and administrative reviews and a change is sought, the assignment must be reopened and the report must again be technically and administratively reviewed following the amendment. In addition, State Police protocol requires that the report be changed by the analyzing scientist at the direction of the Director and a copy of the written change is stored in the case jacket. The Inspector General's review of the relevant file did not reveal any evidence that an amendment had occurred.

Other forensic scientists interviewed by the Inspector General stated they had not experienced, observed or heard rumors of undue influence by sworn members upon civilian scientists working in the State Police forensic laboratory system.

The State Police Crime Laboratory System Quality Management, 4.1.5 (d) Ethics Policy reads:

The management and staff of the New York State Police Crime Laboratory System are committed to uphold the best interests of the Division of State Police to the exclusion of personal preference or advantage. Employees must avoid any situation which involves or may involve a conflict between their personal interests and the interests of the criminal justice community. Customer confidence in the Crime Laboratory System's competence, impartiality, judgment and operational integrity requires strict adherence to this policy.

The New York State Police Crime Laboratories Administrative Manual, Appendix 2, ASCLD/LAB Code of Ethics, Ethics Policy, Conflict of Interest further provides

Laboratory managers and employees of forensic laboratories must avoid any activity, interest or association that interferes or appears to interfere with their independent exercise of professional judgment.

Based upon Alber's testimony and a review of relevant documentation, the Inspector General finds no evidence to conclude that the report in question was modified after the scientist rendered her opinion in the written report. Nonetheless, the Inspector General finds that Nuzzo's actions, which could reasonably be perceived as attempting to influence the expert conclusions of his subordinate, a trained forensic scientist, particularly in a matter in which a sibling was the "investigating member," were imprudent and may have violated the aforementioned ethics provision. The Inspector General recognizes that in most instances, a supervisor may discuss a subordinate's scientific findings with that subordinate to ensure compliance with laboratory policies and procedures and quality work product. Notwithstanding this supervisory responsibility, when a supervisor lacking forensic training in a discipline questions an expert's results in regard to a case in which that supervisor or a member of his immediate family has a personal stake, the potential appearance of impropriety alone should counsel against this action.

VI. FINDINGS OF THE INSPECTOR GENERAL

A. Garry Veeder and the Forensic Investigation Center

1. Garry Veeder, a Chemist and Fiber Analyst at the State Police Forensic Investigation Center, violated laboratory protocol by failing to conduct a mandated microscopic test to determine the relative refractive index in fiber evidence examinations.
2. Veeder falsely created the appearance on proficiency tests and casework that he had actually conducted the required refractive index test. Veeder accomplished this by using the results of the FTIR, a separate test designed to confirm the results of the microscopic examination, in conjunction with a reference chart of known refractive index values to backfill a refractive index value on official documentation without having conducted the required independent analysis.
3. Although Veeder's misconduct and several obviously aberrant entries should have been discovered upon laboratory technical review, these inaccuracies went undetected.
4. The initial internal investigation by forensic center personnel was flawed and inappropriately summarily dismissed Veeder's implication of other scientists and systemic deficiencies in the trace evidence section.
5. Keith Coonrod, Director of the Toxicology and Drug Chemistry and Acting Supervisor of the trace section, delegated to conduct interviews of Veeder in the initial phase of the internal inquiry, provided laboratory management with misleading information concerning Veeder's claims and authored a concluding memorandum containing misleading and unsupported statements minimizing the effect and scope of potential misconduct.

6. Critical documentation which may have alerted Gerald Zeosky, Director of the laboratory, to the skewed nature of Coonrod's conclusions failed to reach Zeosky in a timely manner.
7. Despite Coonrod's misleading information, Zeosky possessed sufficient information which should have caused him to further question Coonrod's conclusions.
8. Zeosky drafted an incomplete referral to the State Police Internal Affairs Bureau and the Commission on Forensic Science,.
9. An independent expert review of Veeder's trace evidence cases evinced that nearly a third either were incorrect, lacked supporting documentation or could not conclusively be demonstrated as valid.
10. Consistent with Veeder's statements, disregarded by Coonrod and Brown, Anthony Piscitelli, Veeder's supervisor in the laboratory until 2003 and the person who trained him in fiber analysis, did not require staff to perform a determination of relative refractive index as required by protocol.
11. Consistent with Veeder's actions, Piscitelli, in the rare instances when he determined refractive index, did so only after performing the FTIR test.
12. Piscitelli approved several proficiency tests by Veeder in which refractive index values were omitted.
13. Unlike Veeder, Piscitelli did not falsify or dry-lab casework and instead left the space for refractive index value blank on case documentation.
14. There existed longstanding concerns in the trace evidence section with the quality of technical review.

15. Trace section personnel testimony indicated they apparently utilized instruments and methods not authorized by State Police policy and failed to maintain appropriate records regarding these unapproved instruments.
16. R. Michael Portzer, the scientist appointed to review Veeder's proficiency tests and casework from 2003 to 2008, was not qualified to serve in this capacity.
17. Portzer had not conducted any fiber examinations in over a decade and had ceased to do so after failing a proficiency test and not completing required retraining and retesting in fiber analysis.
18. Although failure to conduct a determination of relative refractive index alone most likely should not directly affect the results of a fiber analysis, compounded with Veeder's lack of ability to explain or sufficiently demonstrate other techniques, concerns are raised regarding all of Veeder's fiber examination results.

B. Findings Regarding Additional Allegation

19. Richard Nuzzo, then-Captain and Assistant Director of the Forensic Investigation Center, a non-scientific sworn member, approached a trained forensic scientist during the analysis of evidence and provided his opinion on several aspects of that evidence, thereby creating an environment in which it could appear that he was attempting to influence the scientist.
20. Nuzzo's brother was the "investigating member" on the case in question.
21. No evidence has been developed that the report generated by this forensic scientist was modified as a result of Nuzzo's actions.
22. Nuzzo's involvement which could be reasonably perceived as attempting to influence the expert conclusions of his subordinate, a trained forensic scientist, particularly in a

case in which a sibling was the “investigating member,” was imprudent and may have violated State Police ethical provisions.

C. Recommendations Relevant to the Veeder Inquiry

i. Technical / Peer Review

Technical review is an integral aspect of quality control in a forensic laboratory. The State Police should be lauded for striving to technically review every case issued by the forensic center and it would be a perverse effect of this report if the level of technical review was diminished as a result. Notwithstanding this caveat, for technical review to serve its purpose, it must be a meaningful process and conducted by a reviewer with sufficient qualifications and knowledge of procedures to detect possible flaws in analysis and engender fruitful dialogue. The Inspector General recommends that a full audit be conducted of the technical review process to ensure a meaningful review and adequate expertise of reviewers.

ii. Investigations into Allegations of Serious Negligence and Misconduct at the Forensic Center

As incorporated into the Coverdell grant requirements, because serious negligence and fraud in a laboratory can have dire results, it is imperative that investigations of such be conducted in an objective manner by individuals lacking a vested interest in the outcome. While laboratory management has an ongoing obligation to address problems in its laboratory, when an investigation implicates deficient oversight and supervision, it is ill-advised for the laboratory to investigate itself. Particularly, investigations should not be conducted by the very supervisors ultimately responsible for the subject employee. The State Police maintains a robust internal affairs unit. Additionally, the State Police are required to report misconduct to the Commission on Forensic Science and the Inspector General, both as the commission’s Coverdell agent and also pursuant to the New York State Executive law. The Inspector General recommends that if similarly

significant allegations should be raised in the future regarding misconduct in the laboratory that IAB and, where appropriate, the Commission on Forensic Science and the Inspector General be immediately notified. The Inspector General further recommends that the State Police review the conduct of those who conducted the investigation and take appropriate action.

iii. Training

All laboratory personnel should be familiar with and abide by governing protocol. Ad hoc methods should not be substituted for approved methods without the consent of laboratory management. Protocol should be clear and concise and readily available to all employees. Where protocol should be revised to reflect changes in available technology, it should be done so formally and after suitable reflection as to best practices and training.

D. Recommendation Relevant to the Subsequent Allegation

Actions by a non-expert supervisor which can be reasonably perceived as attempting to influence the expert findings of a trained forensic scientist, particularly in cases in which the supervisor has a personal association, are imprudent and create an appearance of impropriety. The Inspector General recognizes that a non-scientist in his supervisory capacity may discuss a subordinate's scientific findings with that subordinate. Yet, especially in instances when the supervisor can be viewed as having an interest in the matter, the non-scientist supervisor should avoid actions appearing to attempt to influence the expert's findings and, when necessary, recuse himself from the matter.

APPENDIX: RESPONSE OF THE NEW YORK STATE POLICE



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HARRY J. CORBITT
SUPERINTENDENT

December 8, 2009

Honorable Joseph Fisch
Inspector General
Office of the Inspector General
Agency Building 2
Empire State Plaza
Albany, New York 12223-1250

Re: 2009 Inspector General Report
New York State Police
Forensic Investigation Center

Dear Inspector General Fisch:

Thank you for sharing a draft of the above-referenced report with the New York State Police and for providing us with an opportunity to respond. The State Police is indebted to you and your staff for the hard work that obviously went into this report.

The report documents violations of internal State Police protocols, failure in supervision, quality control lapses in fiber analysis cases performed in the Trace Evidence Section at the Forensic Investigation Center, and inappropriate communications with scientific personnel. The violations reflect an alarming departure from the high standards we expect from every employee of the State Police Crime Laboratory System.

We will move quickly to address the issues raised in your report and ensure that there are no similar problems with any other units within the State Police Crime Laboratory System. To this end, the State Police is in the process of hiring an outside consultant, an expert in forensic laboratory quality assurance practices and procedures, to assist the State Police in ensuring that the technical review and quality assurance programs in all sections of the Laboratory System meet the highest standards in the field.

We are confident that these steps and others will effectively address all the issues identified in the report. The behavior of a few people in a very small section of overall laboratory operations does not mar the reputation of the outstanding men and women of

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the State Police Crime Laboratory System who consistently perform their demanding duties with competence, fairness, and integrity.

Very truly yours,

A handwritten signature in black ink, appearing to read "Harry J. Corbitt". The signature is written in a cursive style with a large, stylized initial "H".

Harry J. Corbitt
Superintendent