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Office of the Inspector General**



**Investigation of Drug Test Irregularities
at the NYPD Forensic Laboratory
in 2002**

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I. EXECUTIVE SUMMARY

Introduction

In March 2007, the New York State Division of Criminal Justice Services (DCJS) learned of an allegation that a laboratory analyst or analysts in the state had acted improperly by reporting results in forensic tests without actually having performed the tests. DCJS began to investigate the allegation by contacting the largest laboratory in the state, the New York City Police Department's (NYPD) Crime Laboratory.

The NYPD laboratory advised DCJS that in 2002 two analysts in the Controlled Substances Analysis Section were removed from duty after erroneously identifying a test substance as cocaine, and a third analyst reported that a packet of cocaine was not a controlled substance. The NYPD lab also disclosed that it had failed to report the errors, as required, to the Laboratory Accreditation Board of the American Society of Crime Laboratory Directors (ASCLD/LAB) and to the Commission on Forensic Science. In response, DCJS Commissioner Denise O'Donnell, on behalf of the Commission, and with the consent of the NYPD, asked the Office of the Inspector General to investigate.

The Inspector General found that NYPD lab officials committed serious errors in 2002. First, they failed to adequately investigate allegations of lab irregularities in a timely manner. They violated their own rules by allowing analysts who had failed proficiency tests to continue casework. The lab's required report to accrediting bodies omitted mention of the irregularities. Further, the lab failed to notify district attorneys' offices of these concerns in 2002. The Inspector General also found that the lab cannot provide complete assurances that no incorrect test results were issued by the analysts in question. As any falsification of official laboratory documents, whether test results by individual analysts or the lab's report to accrediting bodies, could be the basis for a criminal prosecution, the Inspector General is referring the findings of this investigation to the Queens County District Attorney's Office for review of possible criminal charges.

The lab has made significant improvements since 2002. Changes include reorganization of the lab's management structure and strengthened procedures for controlled substance analysis to enhance the accuracy of test results. The lab also revised procedures so that previously-tested substances can be re-tested as necessary.

The April 17, 2002 Overheard Conversation

The Inspector General's investigation found that on or about April 17, 2002, during a laboratory staff meeting, Delores Soriano, an assistant chemist, allegedly made statements to criminalist Elizabeth Mansour indicating that Soriano did not complete all necessary steps when asked to determine the presence of narcotics in cases involving a large number of packages. Soriano also allegedly suggested that "half the lab" cut corners in testing. Two other criminalists at the meeting immediately reported the allegations to lab superiors.

The laboratory's Quality Assurance Manager Sergeant Aileen Orta and then-Commanding Officer of the NYPD Forensic Investigations Division Inspector Denis McCarthy decided to administer blind proficiency tests to catch the allegedly offending criminalists. No other investigation was conducted at the time of the initial accusation of misconduct. Neither those reporting the conversation, those engaged in the conversation, nor others who may have heard the conversation were interviewed when memories were fresh. Further, the allegation that lab irregularities were widespread was neither adequately examined nor resolved.

"Blind" Tests of Soriano

The proficiency tests administered as a result of the allegations of April 17, 2002, contained multiple packets of white powder, most of which contained cocaine but a few that did not. Soriano was administered a blind proficiency test involving 34 packets of white powder on April 25, 2002, and she correctly reported the contents of the packets. On April 27, 2002, another blind proficiency test was administered to Soriano, this time involving 40 packets of white powder. Soriano reported incorrectly that 35 of the 40 the packets contained cocaine. In fact, 36 packets contained cocaine.

According to its own rules, the laboratory should have investigated the cause of Soriano's error and followed it with corrective action, either removal from casework or re-instruction in laboratory techniques, depending on the cause. Instead, the lab assumed that Soriano's error might be only a transcription mistake, and Soriano was neither removed nor re-instructed. In addition, while Soriano's failed test should have raised doubts as to the accuracy of her casework, the lab did not review any of Soriano's past cases. Soriano continued to process cases at the lab until April 24, 2007, when she was assigned to administrative duty. Between 2002 and 2007, she performed successfully on her subsequent annual proficiency tests.

Tests Failed by Criminalist Elizabeth Mansour

Mansour was administered her first blind proficiency test on August 8, 2002, despite the fact that the test was prepared on April 24, 2002, a week after the overheard conversation. Lab personnel and records did not provide a reasonable explanation for this delay, during which Mansour was allowed to continue testing cases. The test involved 37 bags, 34 of which contained cocaine, and Mansour incorrectly reported that all contained cocaine. Had the test been an actual criminal case, Mansour's incorrect results would have led to a more serious charge than was warranted by the evidence.

According to the lab's own rules, this error should have resulted in Mansour being prohibited from further casework until the cause of her error was identified and a new proficiency test successfully completed. Instead, 11 days after failing the first proficiency test, Mansour was administered a second test. This test involved 40 bags, 36

containing cocaine. Mansour again incorrectly certified that all of the test bags contained cocaine, and again, were it a real criminal case, her findings would have led to the incorrect felony charge. In the interval between the failed tests, when Mansour should have been removed from casework, she continued to work and issued 23 case reports.

While Mansour was suspended on August 21, 2002, to face disciplinary charges relating to her incorrect lab results, Internal Affairs declined to investigate her actions. The only investigative steps apparently taken were several failed efforts to interview Mansour, who was unavailable due to various claimed medical disabilities. After going on unpaid leave, she was granted a disability retirement in December 2003.

Tests Failed by Criminalist Rameshchandra Patel

After Mansour's suspension, Sgt. Orta, acting on what she termed "grave concern . . . about who else is out there," randomly tested other criminalists in the laboratory, including supervisor Rameshchandra Patel. On October 16, 2002, a blind proficiency test with multiple packages was administered to Patel. Like Mansour, he incorrectly reported that all packets in the test contained cocaine. Patel was administered a second blind proficiency test six weeks later, on November 25, 2002, and he again incorrectly reported that all packets in the test contained cocaine.

As a result, on January 7, 2003, Patel was suspended, and on January 8, 2003, the NYPD Department Advocate issued disciplinary charges against him. As with Mansour, the lab violated its own rules when it administered a second test to Patel before he was removed from casework. According to records provided by the laboratory, between October 18, 2002, and his suspension, Patel issued 11 case reports.

Lab Did Not Notify District Attorneys of Failed Tests

In instances where a laboratory confirms serious misconduct that has or may have affected one or more reports, the lab should inform the appropriate prosecutor. Since Mansour and Patel each failed two proficiency tests, the district attorneys should have been properly notified. While some limited information about Mansour's failed tests was communicated to two individual prosecutors, these communications did not constitute sufficient notification to the city's district attorneys who rely on the laboratory's reports.

Lab Failed to Disclose Errors to Accrediting Bodies

The Inspector General's investigation found that in violation of its obligations to its accrediting bodies, ASCLD/LAB and the New York State Commission on Forensic Science, the laboratory failed to disclose the failed proficiency tests of Soriano, Mansour, and Patel. Mark Dale, the laboratory director at the time, knowingly omitted this information from the required report. When questioned by the Inspector General's

Office, Dale stated that he did not report to ASCLD/LAB the failed tests because he believed that an ongoing investigation was being conducted by the NYPD's Internal Affairs Bureau and that he did not have access to all the information associated with the supposed investigation. Yet Dale made no effort to contact Internal Affairs to ascertain whether disclosure of the errors would interfere with an investigation. (In fact, as discussed above, Internal Affairs never conducted an investigation of Mansour, and the matters regarding Patel or Soriano were never even referred to Internal Affairs for investigation.)

Test Errors Raise Questions About Past Cases

The incorrect proficiency test results of Soriano, Mansour, and Patel raise the possibility that erroneous laboratory reports were issued by one or more of these criminalists in actual criminal cases. The cases most at risk for an incorrect report are cases involving multiple packages of suspected controlled substances, since the large amount of work involved in these types of cases is most likely to encourage a criminalist to skip tests if she is so inclined.

Unfortunately, the laboratory faces several challenges in reviewing the prior cases of Soriano, Patel, and Mansour. The primary challenge is that the evidence of many cases processed in 2001-2002 has been destroyed as part of normal inventory procedures. Even where evidence is available, where a case originally involved multiple packages, the lab, in most instances, cannot definitively say whether the reported weight of the controlled substance or the reported number of packages containing controlled substances was correct, as the multiple units are now combined. Further, the laboratory's procedures did not require re-sealing of the original packaging. Any open packages that have been stored together are potentially cross-contaminated and cannot reveal useful information about their original contents.

In May 2007, the lab began a large-scale review of past casework in the Controlled Substance Analysis Section in an attempt to identify any erroneous lab reports. As of September 28, 2007, 214 technical reviews, consisting of an evaluation of case-related paperwork, were completed; and 199 cases were re-analyzed, involving a re-examination of actual evidence. Re-analysis is in progress for 92 additional cases. Regarding the cases reviewed so far, the lab states that "no significant technical discrepancies have been discovered that would compromise the original findings."

Improvements in the Laboratory

Since 2002, a number of changes have taken place in the NYPD's Controlled Substance Analysis Section that have improved the quality of its work. Some of the changes occurred prior to the lab's disclosure of this incident, and others were put in place since the incident came to light. These changes have served to ensure greater accuracy and to preserve the laboratory's capability to re-test evidence.

Changes since 2002 include reorganization of the laboratory's management structure and improvements to procedures for controlled substance analysis that enhance the accuracy of test results. And, following the laboratory's disclosure of the incident, it further revised procedures to ensure that previously-tested substances could be re-tested if necessary.

The current laboratory director and quality assurance manager have fully cooperated in this investigation, and have made good faith efforts to disclose any previously undisclosed information regarding this incident to the laboratory's accrediting bodies. The laboratory has notified the five district attorneys and the Special Narcotics Prosecutor about the proficiency test failures and it is regularly communicating with the prosecutors regarding the results of the laboratory's review of past cases.

II. BACKGROUND AND INTRODUCTION

As the criminal justice system depends more and more on scientific analysis, the role of forensic laboratories has become increasingly important. Forensic laboratories conduct various types of testing for use in police investigations and prosecutions. In New York State, there are fourteen crime laboratories and six post-mortem toxicology laboratories conducting forensic testing. In order to ensure the reliability and credibility of the forensic laboratory accreditation program in New York State and to comply with the federal Paul Coverdell Forensic Science Improvement Grant Program,¹ the Office of the New York State Inspector General (Inspector General) has been designated to investigate allegations of serious negligence or misconduct in public forensic laboratories, when the negligence or misconduct would substantially affect the integrity of forensic results. While the laboratory examined in this report is contained within the New York City Police Department, the scope of the Inspector General's mandate regarding forensic laboratory investigations is limited to the laboratory itself.

The following report discusses the findings of the Inspector General regarding allegations of misconduct in 2002 in the New York City Police Department's Controlled Substance Analysis Section.

A. The New York City Police Department's Forensic Investigations Division

The New York City Police Department (NYPD) has maintained its own forensic laboratory, servicing the five boroughs of New York City, since 1934. The Police Crime Laboratory is part of the Forensic Investigations Division, which also includes the Crime Scene Unit, the Bomb Squad, and the Latent Print Section. The laboratory is composed of the following sections: the Controlled Substance Analysis Section, the Firearms Analysis Section, the Criminalistics Section, the Evidence Control Section and Security, the Quality Assurance Section, and Professional Support. As part of the Detective Bureau, the Forensic Investigations Division is under the supervision of the Chief of Detectives. Within the laboratory, approximately one hundred criminalists,² are assigned to test controlled substances. Annually, the NYPD laboratory analyzes more samples of suspected controlled substances than any other laboratory in the United States. In 2006,

¹ This federal grant provides funds to states to improve forensic testing and to eliminate backlogs of untested evidence. A portion of laboratories in New York receive funding from this grant. In order to qualify for the grant, a state must certify that "a government entity exists and an appropriate process is in place to conduct independent external investigations into allegations of serious negligence or misconduct substantially affecting the integrity of the forensic results committed by employees or contractors of any forensic laboratory system, medical examiner's office, coroner's office, law enforcement storage facility, or medical facility in the State that will receive a portion of the grant amount." 42 USC 3797(k)(4).

² Criminalist is a civil service job title covering an individual who specializes in criminalistics, forensic science, chemistry, biology, physics, or a closely related scientific or engineering field. The Controlled Substance Analysis Section is staffed with criminalists. A criminalist is assigned a level between I and IV. Criminalist IV is a supervisory position.

the laboratory tested suspected controlled substances related to approximately 40,000 arrests.

The commanding officer of the Forensic Investigation Division in 2002 was Inspector Denis McCarthy, who is now a Deputy Chief. In 2002, the laboratory was staffed by both uniformed and civilian personnel. The sections within the laboratory were supervised by commanding officers who were ranking uniformed officers, although the majority of the analysts in the laboratory were civilians. In addition, the laboratory employed civilian supervisors, the most senior of whom was the laboratory director. The Commanding Officer of the Controlled Substance Analysis Unit was Lieutenant Emmanuel Katranakis, who is now a Captain, and serves as Executive Officer of the Forensic Investigations Division.³ In 2002, the position of laboratory director was vacant for most of the year. Inspector McCarthy served as the acting director of the lab, in addition to his duties as the commanding officer of the Forensic Investigations Division, while the position was vacant.

In September 2002, W. Mark Dale began as the laboratory's director. Dale earned a bachelors' degree in biology from Florida State University in 1970. After serving in the United States Army, Dale joined the State Police in 1973. After approximately ten years, Dale was assigned to direct a State Police regional laboratory in Newburgh, eventually moving to the State Police's main laboratory in Albany. Dale was president of American Society of Crime Laboratory Directors, a professional society of crime laboratory directors and forensic science managers, between 1995 and 1996. By the time Dale retired from the State Police in 2002, he had attained the rank of Staff Inspector and was in charge of the entire laboratory system. Immediately after his retirement from the State Police, Dale began as director of the NYPD lab.

Then, as now, the laboratory's director reported to the Forensic Investigations Division's commanding officer. In addition, each section of the laboratory had a commanding officer, and civilians within those sections reported to their respective commanding officers. Today, although the Forensic Investigations Division is still supervised by a ranking member of the department, Inspector Kevin Walsh, the Police Crime Laboratory is managed by Dr. Peter Pizzola with civilian managers supervising the scientific sections.⁴ Thomas Hickey, an experienced forensic scientist, is Manager of the Controlled Substance Analysis Section.

The Police Crime Laboratory employed, in 2002 and today, a quality assurance manager. The quality assurance manager is a position required by the laboratory's accrediting body (discussed further below). The responsibilities of the quality assurance manager include verifying compliance with laboratory policies and procedures, coordinating audits, and administering proficiency tests. The quality assurance manager in 2002 was Sergeant Aileen Orta, now retired. Sgt. Orta reported both to the laboratory director and the commanding officer of the division. Today, the position of quality

³ In this report, the rank attained in 2002 will be used when referring to the actions or decisions of police officers at that time.

⁴ The Ballistics Section of the Forensic Investigations Division is commanded by a police lieutenant.

assurance manager is occupied by Vincent Crispino, a former laboratory director and a civilian.

Within the New York City Police Department, every division has an integrity control officer who is a ranking uniformed officer. The integrity control officer reports to the commanding officer of the division. The integrity control officer acts as a liaison between the division and the Internal Affairs Bureau. The responsibilities of the integrity control officer include inspecting records, investigating allegations of misconduct, and recommending disciplinary action to the commanding officer. Beginning in May 2002, the integrity control officer of the Forensic Investigations Division was Lieutenant Michael Kletzel, who has since been promoted to Captain and now serves as the Executive Officer of the Crime Scene Unit. Today, the integrity control officer is Lieutenant John Henry.

B. Testing of Controlled Substances in New York City

One of the functions of New York State's forensic laboratories is to identify and weigh suspected controlled substances seized by police in arrests. Possession and sale of controlled substances are crimes, and the potential penalties faced by criminal defendants depend on the type and weight of the substances involved. The most serious penalties apply to the crimes of sale of a narcotic drug or the possession of a significant amount of narcotic drug. The most common types of narcotic drugs involved in arrests are cocaine and heroin.⁵

After an arrest of a drug seller or his accomplice, the arrestee is searched. The search may reveal one or more packages of suspected controlled substances. Those packages, which may be glassines, vials, envelopes, or plastic bags, are seized by the arresting officer. The seized evidence is documented and sealed in a plastic evidence bag.

To proceed with the prosecution of the arrested drug seller, the district attorney must have proof that the individual possessed or sold a controlled substance. For certain criminal charges, the district attorney must also have proof of the amount of the controlled substances. Although the arresting officer will make an initial assessment, the suspected drugs must ultimately be analyzed in a laboratory. Every night, each New York City police precinct sends the sealed evidence bags containing suspected controlled substances to the Police Crime Laboratory's Evidence Control Section. The evidence bags are accompanied by police vouchers, which describe the contents of the evidence bags. Criminalists obtain the evidence from the Evidence Control Section, conduct analyses of the suspected drugs, and prepare reports detailing the compositions and weights of the substances.

⁵ New York's controlled substance offenses are found in Article 220 of the Penal Law.

If multiple packages of a substance are recovered from an arrestee, the nature of the substance and the combined weight of the contents will determine the charges that can be brought against him. For certain crimes, such as possession of a narcotic drug weighing one-eighth ounce or more, the laboratory does not have to separate the pure drug from any diluting substances such as baking soda. The total weight of the drugs plus the diluent determines the charge against the arrestee.

The following is an overview of the 2002 standard operating procedures for testing a suspected narcotic drug at the Controlled Substance Analysis Section:

1. Color Test: Small samples of the unknown substance were mixed with reagents, which are chemicals known to react to controlled substances. The color of the resulting chemical mixtures determined whether a controlled substance may have been present. If the evidence consisted of multiple packages, the criminalist was required to perform the color test on a sample from each package. The criminalist described in writing the tests performed and the result on the laboratory report. No other record of the color test was created.
2. Crystal Tests: If the color test indicated the potential presence of a controlled substance, a small sample of the unknown substance was mixed with a heavy metal, such as mercury, and the resulting crystals were analyzed under a microscope. Procedures called for two types of crystal tests. If the evidence consisted of multiple packages, the criminalist was required to perform the crystal tests on each package. The criminalist described in writing the crystals for the laboratory report.
3. Instrumental Analysis: After the color and crystal tests, a small sample of the unknown substance was analyzed in a mass spectrometer, a machine that analyzes the chemical properties of a substance and compares them to the known chemical properties of the suspected narcotic. If the evidence consisted of multiple packages, the contents of the packages were combined and a sample of the mixture was analyzed in the mass spectrometer. The mass spectrometer produced a printed record of its results.
4. Weighing: During the course of analysis there was a detailed weighing procedure that was followed consisting of pre, during, and post analysis. After the identification of the contents through color and crystal tests, the contents were mixed together for instrumental analysis and a final weight was obtained. The criminalist recorded the net weight of the material that was identified as containing a controlled substance. If the pure weight of the drug was required by statute then additional instrumental analysis was employed.

Criminalists at the Controlled Substance Analysis Section recorded the tests performed and the results of those tests on the Police Laboratory Controlled Substance Analysis Report. This report was certified by the criminalist conducting the tests and was provided to the district attorney and the court as evidence in a criminal case. The following statement appeared above the signature line of the report: False statements

made herein are punishable as a Class "A" misdemeanor pursuant to section 210.45 of the Penal Law.⁶ This report is still used at the laboratory for reporting test results.

C. Oversight of Forensic Laboratories in New York State

Enacted in 1994, Executive Law Article 49-B mandates that all public laboratories conducting forensic testing within the state are subject to the oversight of the New York State Commission on Forensic Science. The commission consists of fourteen members and is chaired by the Commissioner of the Division of Criminal Justice Services. The commission determines accreditation standards for forensic laboratories in New York, and, as part of its oversight responsibilities, reviews reported instances of laboratories' non-compliance with the standards. In addition, the commission requires that laboratories are accredited by the American Society of Crime Laboratory Directors/ Laboratory Accreditation Board (ASCLD/LAB).⁷

Under the rules established by the commission, laboratories are inspected by ASCLD/LAB representatives upon initial application for accreditation and approximately every two and one half years thereafter. The inspection process is designed to measure the laboratory's compliance with established standards pertaining to management, operations, personnel, procedures, equipment, physical plant, security, and health and safety. The laboratory's standards are set forth in its Quality Manual, which is created according to guidelines promulgated by ASCLD/LAB.

In between inspections, ASCLD/LAB relies on laboratories to demonstrate continued compliance with established standards and accreditation criteria through annual proficiency testing of laboratory analysts and self-reporting of deviations from the standards and criteria. For the annual proficiency testing requirement, ASCLD/LAB permits use of tests that are administered openly to the analysts, as well as use of "blind" tests, which appear to analysts as evidence from actual criminal cases. ASCLD/LAB also permits the laboratory to employ re-analysis, in which a second analyst performs testing to verify the results obtained by the first analyst, in place of proficiency tests. The annual proficiency test requirement was in effect in 2002 and is still in effect today. Today the NYPD Police Crime Laboratory employs a mix of open testing, blind testing, and re-analysis in the Controlled Substance Analysis Section.

The laboratory must disclose deviations from standards and criteria in the Annual Accreditation Review Report. The excerpt below, from page 12 of the ASCLD/LAB 2001 Manual, which was in effect at the time of the incidents discussed in this report, emphasizes the importance of the Annual Accreditation Review Report and specifies the scope of information to be reported:

⁶ Penal Law Section 210.45 reads, "A person is guilty of making a punishable false written statement when he knowingly makes a false statement, which he does not believe to be true, in a written instrument bearing a legally authorized form notice to the effect that false statements made therein are punishable."

⁷ If the laboratory performs only toxicology analyses it may be accredited by ASCLD/LAB or the American Board of Forensic Toxicology.

To retain accredited status for a full five year term, a laboratory is expected to continue to meet the standards under which it was accredited. The principal means by which ASCLD/LAB monitors compliance are the Annual Accreditation Review Report filed by the laboratory director and proficiency testing reports submitted by the approved test providers. Any information suggesting non-compliance with the standards by an accredited laboratory will be addressed by the [Laboratory Accreditation] Board on a case-by-case basis. *This information may originate from the annual review process, proficiency testing reports, or elsewhere.* (Emphasis supplied.)

In addition, the cover sheet that all laboratories, including the NYPD laboratory, were required to use for its Annual Accreditation Review specifically instructed the laboratory that “Any error (Class I, II) in any proficiency tests and/or laboratory casework must be reported with corrective steps taken.”

The class of an error refers to its seriousness, with Class I being the most serious.⁸ It is useful here to note that ASCLD/LAB defines a third type of error, Class III, which need not be reported. According to the ASCLD/LAB 2001 Manual, a Class III error “is determined to have only minimal effect or significance, be unlikely to recur, is not systemic, and does not significantly affect the fundamental reliability of the laboratory’s work.” The definitions of the various classes of error leave significant discretion to the laboratory in determining the seriousness of the problem. In fact, the ASCLD/LAB 2005 Manual has further emphasized the laboratory’s discretion in determining the class of an error, stating, “An exhaustive list of examples for each class is not provided because the facts of each instance may impact the assignment of an inconsistency to a particular class.”

D. Allegations of “Dry-Labbing” and “Short Cuts”

In March 2007, a member of the Commission on Forensic Science notified the Division of Criminal Justice Services (DCJS) of a rumored allegation that a laboratory analyst or analysts in the state had engaged in “dry-labbing,” the colloquial term for reporting results in forensic tests despite not having actually performed the tests. The director of the DCJS’s Office of Forensic Services⁹ began to investigate the allegations by contacting the largest laboratory in the state, the New York City Police Department’s

⁸ Class I is the most serious type of error, and includes a false positive result (e.g. finding drugs where non exist). Class I and Class II errors are discussed further later in the report.

⁹ The Office of Forensic Services is responsible for administrative oversight of the New York State DNA Databank and for maintaining a forensic laboratory accreditation program for public forensic laboratories in New York State under the authority of the New York State Commission on Forensic Science. Its functions include providing staff support to the New York State Commission on Forensic Science and the DNA Subcommittee; monitoring forensic laboratory compliance with State accreditation standards; administration of the State’s DNA database; and working with forensic laboratories, law enforcement and other criminal justice agencies to improve the quality and delivery of forensic services pursuant to the Executive Law.

Police Crime Laboratory. Dr. Peter Pizzola, the laboratory's director, knew of an incident in 2002 in which two laboratory analysts in the Controlled Substances Analysis Section were suspended, but he did not know the specific circumstances, nor did he know that the suspensions had not been reported to the laboratory's accrediting bodies. Dr. Pizzola was not employed at the NYPD Police Crime Laboratory until June 2004, when he began as Deputy Director. In August 2005, he replaced Mark Dale as Director.

After further inquiry, Dr. Pizzola learned that two criminalists, Elizabeth Mansour and Rameshchandra Patel, were removed from duty after each criminalist incorrectly identified a test substance as cocaine, an error commonly known as a "false positive," on two separate occasions. Around the same time, a third criminalist, Delores Soriano, reported that a packet of cocaine was not a controlled substance, an error commonly known as a "false negative." All of the errors were identified as a result of "blind" proficiency testing, in which the criminalist did not know he or she was the subject of a test.

Dr. Pizzola notified ASCLD/LAB and the Commission on Forensic Science of his discovery by telephone on April 2, 2007. On April 12, 2007, he sent a letter providing additional detail to both ASCLD/LAB and the Commission on Forensic Science. Prior April 2007, neither the commission nor ASCLD/LAB had been notified of the errors. Commissioner of DCJS Denise O'Donnell, on behalf of the Commission on Forensic Science and with the consent of the New York City Police Department, asked the Office of the Inspector General to investigate the incident.

During the course of the investigation, the Inspector General received a second allegation concerning an additional criminalist who, according to an anonymous letter, was "caught making short cuts" in 2001. The Inspector General also investigated this allegation and the results are reported herein.

E. Methodology

The Inspector General's mandate from the Commission on Forensic Science is to investigate allegations of serious neglect or misconduct in public forensic laboratories when the neglect or misconduct would substantially affect the integrity of forensic results. The goals of the present investigation were as follows: to uncover the facts surrounding the allegations of misconduct; to determine whether the laboratory's responses were appropriate; and to ensure that today's laboratory procedures would result in appropriate notification and corrective action.

The Inspector General's investigation included interviews of all senior managers in place at the laboratory between 2000 and 2003, as well as interviews with the two suspended criminalists, the members of the laboratory who initiated the "dry-labbing" complaint in 2002, and the subject of the "short-cuts" allegation. In addition, the current laboratory director and quality assurance manager were interviewed. A total of 20 interviews were conducted. Only Elizabeth Mansour, one of the suspended criminalists,

refused to be interviewed. In addition, the Inspector General reviewed the ASCLD/LAB accreditation manual in effect at the time, the laboratory's Quality Assurance Manual in effect at the time, the NYPD's internal investigative files, personnel and disciplinary files, and the logs of the NYPD's Internal Affairs Bureau. The Internal Affairs Bureau informed the Inspector General that it had not conducted any investigation regarding the incidents discussed in this report. Accordingly, detectives from the Internal Affairs Bureau were not interviewed.

III. INVESTIGATION OF THE INSPECTOR GENERAL

A. The Overheard Conversation

On or about April 17, 2002, during a regular staff meeting of approximately eight criminalists assigned to a particular work group, Delores Soriano, a veteran chemist, allegedly was heard making statements to Elizabeth Mansour indicating that Soriano did not complete all the necessary steps in determining the presence of narcotics in cases involving a large number of packages. Two junior criminalists immediately reported these comments to a police supervisor, Sergeant Geralyn Delaney. Sgt. Delaney advised Lt. Katranakis, the Commanding Officer of the Controlled Substance Analysis Section, and outlined the allegations made by the junior criminalists in a memo to Quality Assurance Manager Sgt. Aileen Orta and Commanding Officer of the Forensic Investigations Division Insp. Denis McCarthy. The undated memo states that the two criminalists were "very upset with a conversation...involving Criminalist E. Mansour and Assistant Chemist D. Soriano during a group meeting with Supervisor S. Naik. Supervisor S. Naik was not present during this conversation." According to the memorandum, Soriano, in substance, made the following statements:

1. She felt pressure from supervisors to complete her work quickly;
2. She did not conduct certain required tests;
3. When faced with a case with a large number of packages, she would only test a small number of them; and
4. "Half the people" at the laboratory also did not conduct all the required tests.

In addition, according to the memo, one of the junior criminalists had previously overheard Mansour saying that she knew "when proficiency tests were coming out and what they contained."

The junior criminalists asked that their names be kept confidential. Upon receipt of the memorandum, Insp. McCarthy designated Sgt. Orta to conduct an investigation. At that time, the position of integrity control officer was vacant. Sgt. Orta chose not to interview the junior criminalists because she did not want to "expose them" to the rest of the lab. Nor did she interview the other participants in the meeting to verify that the comments were made or to see if there was indeed a widespread problem in the Controlled Substance Analysis Section involving dry-labbing, as was alleged in the conversation.

The Inspector General has interviewed, among others, Dolores Soriano and the two junior criminalists, the three individuals whose actions first precipitated the allegations that are now under review. One of the junior criminalists stated that she had no recollection of the conversation or of reporting it to Sgt. Delaney. The second junior criminalist recalls the staff meeting and feeling concerned by the comments made by Soriano. Neither of the junior criminalists is still employed at the lab. At the time of the meeting, the second junior criminalist had just completed her training program, having

joined the lab in the fall of 2001. She reported that there was friction between the “old timers” and the junior criminalists, who did not complete their work as quickly as those with more experience. Although Soriano’s comments raised concerns, she does not recall feeling that the integrity of the lab was at risk or that half the lab was cutting corners. While she remembers reporting the conversation to Sgt. Delaney, she never knew that a memorandum had been created nor was she asked to verify it for accuracy.

Delores Soriano denies making the comments attributed to her in Sgt. Delaney’s memo. By her own admission, Soriano is confrontational with the management at the lab. She felt overlooked at that time, having failed to receive a promotion she felt she deserved. Soriano is excitable and sometimes difficult to understand. Other criminalists interviewed stated that Soriano was known as a “complainer” and prone to making “inflammatory” remarks, and that she should not be and was not taken seriously. Soriano was assigned to administrative duty at the laboratory after the onset of this investigation in 2007.

Elizabeth Mansour refused to speak with investigators from the Inspector General’s Office.

B. The Proficiency Tests

Immediately after learning of the comments in April 2002, Sgt. Orta, Insp. McCarthy, and Lt. Katranakis had a series of meetings, after which they decided to administer blind proficiency tests to Soriano and Mansour, the two criminalists involved in the overheard conversation. With the assistance of Lt. Katranakis, Sgt. Orta designed tests that could identify criminalists who did not perform all required tests when confronted with multiple packages of suspected controlled substances.

Even before receiving the memo from Sgt. Delaney, Sgt. Orta regularly utilized blind proficiency tests in the Controlled Substance Analysis Section when administering the annual testing program as required by ASCLD/LAB. The tests were administered throughout the year. At the beginning of the year, the tests were assigned randomly to the criminalists. As the year progressed, Sgt. Orta directed tests to certain individuals to ensure that each criminalist received at least one test annually. At the time Sgt. Orta prepared the initial tests for Soriano and Mansour, neither had received her proficiency test that year.

As the tests were blind, the criminalists were unable to distinguish between actual casework and tests prepared by Sgt. Orta. The unknown substance appeared to be actual seized contraband, and was accompanied by police paperwork that replicated that associated with an actual arrest. Lt. Kletzel assisted in the administration of the tests by preparing the simulated case paperwork and delivering the tests to police precincts, which would then submit them to the laboratory for analysis. These steps ensured that the proficiency tests appeared as drugs seized in an actual arrest.

Like the tests prepared for Mansour and Soriano, the laboratory's regular proficiency tests required the criminalists to identify an unknown substance in one or more packages. According to the laboratory's proficiency test records for 2002, the tests took a variety of forms. Often the analyst was presented with two different substances and asked to identify both. Sometimes, the paperwork provided to the criminalist with the test substances would understate the number of packages given to the criminalist for testing. This particular test was used, in part, to verify that an analyst would report, rather than abscond with, the undocumented drugs.

The tests prepared in response to the allegations against Soriano and Mansour consisted of multiple packages, most of which contained cocaine, but a few of which contained a mixture of lidocaine and benzocaine. As discussed above, the laboratory's standard operating procedures at the time called for a series of "color tests" in which the unknown substance was mixed with certain reagents. The color tests could indicate the possible, but not certain, presence of a controlled substance. In the proficiency tests designed by Sgt. Orta, both cocaine and the lidocaine-benzocaine mixture would give the same result in a color test. Upon indication of a possible controlled substance, procedures called for two "crystal tests," in which the substance was analyzed under a microscope. The crystal tests would confirm the presence of a controlled substance. Both types of tests were to be conducted on each package. The proficiency tests prepared by Sgt. Orta would detect a criminalist who performed the required tests on only a few of the packages, as well as one who performed only the preliminary color tests on all of the packages.

At the time, and in interviews during the course of this investigation, some distinction was made between tests administered as part of the "normal" proficiency testing program, and the tests administered as a result of Sgt. Delaney's memo, which were sometimes termed "system checks" or "integrity" tests. However, it is difficult to draw a firm line between the two types of tests, since, as Sgt. Orta stated in her interview, "They're basically the same type of a test. They're prepared in the same manner." The fact that the laboratory was utilizing blind testing for all required proficiency tests implies that they were using all of the proficiency tests to monitor the "integrity" of the criminalists. For the purposes of discussion, all of the tests referred to in this section are called proficiency tests. The laboratory's stated distinction between the two types of tests is discussed later in the report.

Typically, an analyst at a laboratory is expected to perform successfully on a proficiency test. At the October 2, 2007, meeting of the Commission on Forensic Science, the Office of Forensic Services presented findings of a statewide survey of public forensic laboratories showing that of 961 proficiency tests administered throughout the state in 2006, laboratories reported only 15 inconsistencies with expected results:

According to records provided by the NYPD laboratory, aside from the incidents discussed in this report, no other serious errors in proficiency testing or casework occurred in 2002. Six criminalists committed minor errors related to administrative

duties, such as incorrectly paginating the report, on proficiency tests. Additionally, one criminalist failed to document that the police voucher indicated the incorrect number of bags of marijuana on a proficiency test. This individual was disciplined. Two criminalists committed sampling errors in the course of casework that were discovered by the laboratory in the course of its ordinary procedures and prior to a report being issued. At the time, Sgt. Orta determined that these minor incidents did not need to be reported to ASCLD/LAB. Current Quality Assurance Manager Crispino agrees with this determination.

1. Criminalist III Delores Soriano

On April 24, 2002, Sgt. Orta created a blind proficiency test for Delores Soriano. Soriano was administered the test on April 25, 2002. The test contained 34 packets of white powder. Thirty-one packets contained cocaine and three contained the lidocaine-benzocaine mixture. The following day, Soriano correctly reported the contents of the packets.

On April 27, 2002, another blind proficiency test was administered to Soriano, this time involving 40 packets of white powder. Thirty-six packets contained cocaine and four contained the lidocaine-benzocaine mixture. The following day, April 28, 2002, Soriano incorrectly reported that only 35 packets contained cocaine and that five did not. This type of incorrect result is known as a "false negative," meaning a controlled substance was present, but it was not identified by the criminalist.

At that time, no corrective actions were taken against Soriano. Sgt. Orta believed that Soriano's error was a "lapse," perhaps the result of an error in transcribing her results, rather than a deliberate falsification. Insp. McCarthy and Sgt. Orta decided not to speak with Soriano to preserve the confidentiality of the proficiency testing program. According to Soriano, until she was interviewed by Quality Assurance Manager Vincent Crispino and Deputy Director of the Police Crime Laboratory Dr. Scott O'Neill in April 2007, she was never notified of the false negative nor was she interviewed about the test or the comments made on April 17, 2002, that precipitated the tests. Sgt. Orta recalled that she did speak to Soriano about her error, but without revealing that she had been the subject of a blind test. Although Soriano's incorrect result should have raised doubts as to the accuracy of her casework, Sgt. Orta did not review any of Soriano's past cases.

On August 9, 2002, a third blind proficiency test was administered to Soriano, and she correctly followed standard operating procedures. Although this test also contained multiple packages, the combined weight of the packages was below one-eighth ounce. Once the testing met the standard for charging the class D felony of possession of 500 mg of cocaine, there was no reason to test the remainder of the packages, since their total combined weights did not exceed one-eighth ounce and could not have qualified for a higher felony charge. Therefore, standard operating procedures did not require her to test all of the packages. As a result, this test was unable to confirm or deny whether Soriano was conducting all of the required tests when presented with multiple packages.

Until her reassignment to administrative duty in 2007, Soriano continued to work as a criminalist at the laboratory. After 2002, she performed successfully on her subsequent annual proficiency tests.

2. Criminalist III Elizabeth Mansour

Elizabeth Mansour was administered her first blind proficiency test on August 8, 2002, despite the fact that the test was prepared on April 24, 2002, along with Soriano's test. The files do not explain the delay in administering the test. Although it was suggested in interviews that Mansour may have been on sick leave during the intervening months, records provided by the laboratory indicate that Mansour produced 188 laboratory reports between April 17, 2002, and August 8, 2002. Sgt. Orta was unable to give a reasonable explanation for the delay other than to say that she wanted to put a little time between the allegations and the blind proficiency test so that it was not clear who had reported the comments. Despite Sgt. Orta's suspicions regarding Mansour, Mansour was allowed to continue testing cases for over three months without a proficiency test.

On August 8, 2002, Mansour was administered the proficiency test, which contained 37 bags. Thirty-four of the bags contained cocaine and three contained the lidocaine-benzocaine mixture. The combined weight of the 37 bags was just over one-eighth ounce, but the combined weight of the 34 bags containing cocaine was less than one-eighth ounce. The next day, August 9, 2002, Mansour incorrectly reported that cocaine was present in all 37 bags and the cocaine weighed over one-eighth ounce.

In an actual criminal case, this error would have resulted in the defendant being charged with the incorrect section of criminal law. Mansour's results would have led to a charge of Criminal Possession of a Controlled Substance in the Fourth Degree (possession of more than one-eighth of an ounce of a narcotic compound), a class C felony. However, had the drugs been tested properly, the results only would have supported the lower charge of Criminal Possession of a Controlled Substance in the Fifth Degree (possession of 500 milligrams of cocaine), a class D felony.

Integrity Control Officer Lt. Kletzel was notified by Sgt. Orta of Mansour's failure on August 16, 2002. Lt. Kletzel notified the Internal Affairs Bureau. Initially, Internal Affairs did not recognize the significance of the testing failure, determining that it was a low-level administrative error and declining to investigate.

The next day, August 17, 2002, following its usual practice of notifying local authorities regarding recent accusations, Internal Affairs forwarded information regarding Mansour to the Chief of the Public Integrity Unit of the Queens County District Attorney's Office.¹⁰ The written communication stated that Elizabeth Mansour had been administered an "integrity test" and that she had failed the test. The Chief of the Public Integrity Unit did not forward the information to the Narcotics Unit of the Queens District Attorney's Office or any other prosecutor in the five boroughs of New York. In

¹⁰ Had a criminal case been initiated against Mansour, it would have been prosecuted by the Queens County District Attorney because the laboratory is located in Queens County.

an interview with the Inspector General, he stated that he regularly received notifications from Internal Affairs. He viewed such notifications as a potential future case that needed verification. He said that he would typically wait for a call from Internal Affairs notifying him of an arrest before acting on the information.

On August 20, 2002, 11 days after failing the first blind proficiency test, Mansour was administered a second test. During the intervening days, laboratory records indicate that Mansour produced 23 case reports. Mansour's second proficiency test contained 36 bags of cocaine and four bags of the lidocaine-benzocaine mixture. Like the previous test, the combined weight of the 40 bags was just over one-eighth ounce, but the combined weight of the 36 bags of cocaine was below one-eighth ounce. Mansour again incorrectly certified that all 40 bags contained cocaine, and again, were it a real criminal case, her findings would have led to the incorrect felony charge.

Internal Affairs was notified of Mansour's failure on her second proficiency test on August 21, 2002. At this point, Internal Affairs upgraded its designation of her case to "misconduct." The NYPD Department Advocate's Office¹¹ was instructed to prepare disciplinary charges against Mansour and effective that day, August 21, 2002, she was suspended. The disciplinary charges against Mansour assert that, on two separate occasions, she "failed to accurately analyze" substances presented to her as cocaine.

Internal Affairs chose not to open an investigation into Elizabeth Mansour. Furthermore, it does not appear from the files of the Department Advocate that legal counsel to the Police Department recommended an investigation or saw the impact these testing failures would have upon past and pending cases analyzed by Mansour. Indeed, the Suspension Memorandum dated August 26, 2002, by the managing attorney of NYPD Department Advocate's Office simply recommended that Mansour be suspended for 30 days and restored to duty. On August 27, 2002, both the Commanding Officer and Assistant Commissioner of the Department Advocate concurred with the recommendation.

When interviewed during this investigation, now-Captain Kletzel recalled making a specific recommendation to Insp. McCarthy that Mansour should be arrested, with which Insp. McCarthy agreed. Now-Deputy Chief McCarthy confirmed that he discussed Lt. Kletzel's recommendation with a captain in the Internal Affairs Bureau and was told not to have her arrested. Instead, on August 26, 2002, Internal Affairs referred the case to the Chief of Detectives¹² for investigation. Coming full circle, on September 12, 2002, Chief of Detectives William Allee, referred the case back to Lt. Kletzel for "appropriate investigation and report by November 12, 2002." The Inspector General could not find any evidence that Lt. Kletzel wrote this report. It appears that his only investigation consisted of numerous failed attempts to interview Mansour.

On October 4, 2002, Mansour was compelled to report to the NYPD lab to be presented with formal charges by Lt. Kletzel, but she apparently fell ill and was taken to

¹¹ The Department Advocate is responsible for disciplinary actions against NYPD employees.

¹² The Forensic Investigations Division is under the Police Department's Detective Bureau.

the hospital before the interview could begin. She never returned to work and was put on unpaid leave. Lt. Kletzel made numerous attempts to interview Mansour. Each time, Mansour submitted a doctor's note indicating that she was medically unable to attend. On or about January 8, 2004, Lt. Kletzel was notified that Mansour had been granted a disability retirement on December 18, 2003 by the Employee Management Division, which did not consult the Department Advocate. The case was closed on January 12, 2004, with the determination that the charges against Mansour had been substantiated. However, the case was not referred to the district attorney for prosecution.

The Chief of the Public Integrity Unit in the Queens District Attorney's Office received no further notification from Internal Affairs regarding Mansour. In addition, none of the five district attorneys offices in New York City or the Special Narcotics Prosecutor was notified of potential problems relating to cases involving lab reports issued by Mansour. According to now-Captain Katranakis, only when an assistant district attorney requested a report prepared by Mansour would that person be notified that there could be a problem with the report. According to Dr. Pizzola, an assistant district attorney of the Office of the Special Narcotics Prosecutor was informed of Mansour's suspension and requested and received a re-analysis of her case.¹³ According to the assistant district attorney, she was not told the reasons for the suspension. Assistant district attorneys who had previously requested reports prepared by Mansour were not notified. Immediately after Mansour's second proficiency test failure, Sgt. Orta reviewed approximately 600 cases analyzed by Mansour in the year prior to her failed proficiency test and recalled for re-analysis 19 felony cases that she felt were at risk. Sgt. Orta determined that each of these cases would at least qualify for a felony charge but could not state for certain whether Mansour committed errors that could have led to a more serious felony charge than warranted. Although new lab reports were issued in these nineteen cases, Sgt. Orta could not say what became of them, except that she believed they were sent to the courts. The assistant district attorneys who prosecuted these nineteen cases were not notified directly.

In September 2002, W. Mark Dale was appointed director of the laboratory. Although Dale began as director after Mansour's suspension, he was aware of it, and was told that the case was under investigation by Lt. Kletzel. Dale stated that he believed that the investigation was an Internal Affairs matter, and he did not inquire about its progress. Dale stated that he was never informed that the case had been closed and therefore assumed that it was pending throughout and beyond his tenure at the lab, which ended December 2004.

¹³ If a criminalist is unavailable for testimony at trial for any reason, an assistant district attorney may request a re-analysis by a criminalist who is available to appear in court.

3. Additional Random Testing and Criminalist IV Rameshchandra J. Patel

Sgt. Orta told the Inspector General's Office that, after Mansour's suspension, she "had grave concern . . . about who else is out there." After consulting with Insp. McCarthy, she prepared additional tests and distributed them randomly to other criminalists in the Controlled Substances Analysis Section.¹⁴ One of the criminalists receiving such a test was Rameshchandra Patel, a supervisor in the Controlled Substance Analysis Section. He was not involved in the conversation between Soriano and Mansour that prompted the investigation, nor was he suspected of any misconduct. As a supervisor, Patel conducted only one or two chemical analyses per month. Nonetheless, like all criminalists in the lab, Patel received a proficiency test as directed by ASCLD/LAB guidelines.

On October 16, 2002, a blind proficiency test was administered to Patel containing five packets of cocaine and one packet of a lidocaine-benzocaine mixture. On October 18, 2002, Patel incorrectly reported that all six packets contained cocaine.

Following the incorrect result, Sgt. Orta prepared a second blind proficiency test for Patel. The test was administered six weeks later, on November 25, 2002. The test contained four packets of cocaine and one packet of a lidocaine-benzocaine mixture. Two days later, Patel again incorrectly reported that all five packets contained cocaine.

Nearly a month later, on December 23, 2002, Sgt. Orta recommended to recently-appointed Director Mark Dale that Patel be removed from casework. On January 7, 2003, Patel was suspended for 30 days and was later reassigned to administrative duty at the Latent Print Unit. According to records provided by the laboratory, between October 18 and his suspension, Patel issued eleven case reports. On January 8, 2003, the Department Advocate issued disciplinary charges against Patel. The charges assert that Patel failed to accurately analyze a substance on two occasions, and that he certified the lab reports attesting to those incorrect results. When Integrity Control Officer Lt. Kletzel presented the charges to Patel at a hearing in April 2003, Patel admitted to sloppiness (failing to clean equipment¹⁵ or verify reagents¹⁶), but not to misrepresenting his work on the laboratory reports. Patel continues to assert that he performed all the tests that he certified in his reports, and that his sloppiness led to the incorrect results.

Although Patel committed the same type of error as Mansour on the same type of test, there appears to be no notification to Internal Affairs of Patel's proficiency test failures, and no request for an investigation by Lt. Kletzel. Internal Affairs and the Chief of Detectives were notified only of Patel's suspension.

¹⁴ The laboratory has identified ten proficiency tests, designated "system checks" that were administered in the latter part of 2002 or the beginning of 2003. None of these tests were reported to ASCLD/LAB.

¹⁵ Laboratory equipment must be thoroughly cleaned, as residue from a previous case could contaminate subsequent tests.

¹⁶ Prior to utilizing a reagent to test for a controlled substance, the criminalist verifies the reagent by mixing it with a known controlled substance to ensure that the reagent will give the proper result.

Beginning in December 2002, Sgt. Orta reviewed paperwork related to all 30 cases analyzed by Patel over the past year and did not identify any errors based on the paperwork. She did not recall any cases for re-analysis. Neither the district attorney's offices nor the Special Narcotics Prosecutor was notified of potential problems with Patel's laboratory reports.

C. Non-Disclosure of Proficiency Test Results

1. Disclosure to ASCLD/LAB

In its 2002 Annual Accreditation Review Report, the NYPD laboratory did not disclose proficiency test errors of Mansour, Patel, or Soriano. The report contains a section for listing proficiency tests, including the name of the analyst, the test type, the date of the test, whether the test was internal or external, an identifying number for the test, and a column to indicate whether the test result was acceptable. The tests administered to Elizabeth Mansour and Rameshchandra Patel do not appear on the report at all. Delores Soriano is listed three times in the report, and each time her result is recorded as "acceptable." Soriano's August 9, 2002 test is listed, and her April 25, 2002 test is listed twice. The April 28, 2002 test, in which Soriano reported a false negative, is not listed in the report. The additional randomly-assigned tests prepared by Orta also were not reported.

The Annual Accreditation Review was prepared by Sgt. Orta, under the direction of laboratory director Mark Dale. Dale signed each of the pages listing the proficiency test results of the laboratory criminalists. In her interview during the Inspector General's investigation, Sgt. Orta stated that Insp. McCarthy referred to the tests designed to uncover noncompliance as "system checks," as distinguished from the regular proficiency tests administered to each analyst each year. On August 20, 2002, Sgt. Orta prepared a memo for Insp. McCarthy regarding Elizabeth Mansour, in which she wrote, "These tests were given to investigate the allegations put forth by a written communication, therefore are not being considered part of the proficiency test program." On December 23, 2002, Sgt. Orta prepared a memo for Mark Dale regarding Rameshchandra Patel, in which she wrote that, because she had "concerns about the possible systematic problem in the laboratory," she created "a series of blind tests...which would be distributed in the same manner as the blind proficiency testing program but would be called a system check test."

According to Sgt. Orta, when she was preparing the Annual Accreditation Review Report, Dale instructed her not to include the failed "system checks" in the report because the matter was the subject of an investigation by the Internal Affairs Bureau.

In his interview with the Inspector General, Dale repeatedly made the point that the tests given to Soriano, Mansour, and Patel were designed to test integrity, not scientific proficiency, although he acknowledged that ASCLD/LAB does not distinguish between these types of tests. In addition Dale emphasized that the tests were the result of

an internal investigation, rather than the discovery that an erroneous report had been issued. Now-Deputy Chief McCarthy stated in his interview with the Inspector General's Office that he relied on the judgment of Dale, who told him that the tests did not have to be reported to ASCLD/LAB because they were "integrity" tests.

Dale further stated to the Inspector General that he did not report the failed proficiency tests because he believed that an ongoing investigation was being conducted by the NYPD's Internal Affairs Bureau and that he did not have access to all the information associated with the supposed investigation. Dale said the following when asked whether he remembers deciding not to report the proficiency test failures to ASCLD:

I mean, I feel that this was an Internal Affairs, ICO, if you will, investigation. It was not closed. I'm no stranger to these processes. I've been on the other side of the table, if you will, as an investigator in a lot of these cases. I did not feel it was proper to disclose this in any way. Particularly when it was outside of my control, completely, without having any primary knowledge or, even if I had the primary knowledge, I would ask the PD for approval to disclose anything like that. And it might even probably go to the counsel's office to determine that. But I did not notify ASCLD and that's why.

Dale explained that he had never been notified of the investigation's closure, and so assumed it was ongoing. As a result, he did not report the incident to ASCLD/LAB in future annual reports. Dale cited the criticism of the NYPD lab by ASCLD/LAB in a previous accreditation report, which highlighted that the laboratory director did not have complete authority over the laboratory.

2. Disclosure to the Commission on Forensic Science

Laboratories seeking accreditation from the state must provide evidence of accreditation from ASCLD/LAB to the Commission on Forensic Science. The commission ensures that laboratories maintain quality standards by reviewing copies of any communication between the laboratory and ASCLD/LAB. In early 2003, the commission received a copy of the laboratory's deficient Annual Accreditation Review Report. Relying on this report, and failing to receive any other communication from the laboratory regarding the proficiency test failures or the suspensions, the Commission on Forensic Science did not learn of the test failures at the time.

3. Disclosure to the District Attorneys

The laboratory's policy regarding notification of district attorneys, as told to the Inspector General by now-Captain Katranakis, was to notify an assistant district attorney who requested a report by one of the suspended analysts of the suspension when the request was made, but not to notify any assistant district attorneys who had previously requested reports by the same analysts. The Inspector General was informed of one

instance in which an assistant district attorney assigned to the Special Narcotics Prosecutor was notified of the suspension of Mansour after requesting a laboratory report, but was given no details about the suspension. The only other notification received by a district attorney, as discussed earlier, was Elizabeth Mansour's initial proficiency test failure, which was conveyed by the Internal Affairs Bureau to the Queens County District Attorney as a potential public corruption case. Since the notified assistant district attorney assumed this was only a preliminary communication, he did not forward the information to others. As a consequence, the city's district attorneys unknowingly relied on case reports that may have been deficient.

Sgt. Orta stated that Dale told her that he would "take care of" the notifications to prosecutors, but Dale stated that he personally did not notify any prosecutors and does not know if the Internal Control Officer did so. When questioned about it, Dale stated the following:

I've been in this business a long time and I've never seen a negative drug case submitted to a laboratory. I mean, if there's a dealer out there and its all negative cases, they're not gonna be a dealer too long. I, and this is just I guess the practical side of this, I've never seen a negative drug case come into the laboratory. So, I think there was a low risk of there being concern as far as a lot of these cases being out there. So, I mean, that's just, that's me from all of my experience. I don't, I'm not trying to downplay it like this wasn't a serious situation. It was. It's an integrity issue. But we had no indication of any issue outside.

The laboratory provided the Inspector General with the following statistics regarding the number of cases analyzed at the laboratory in 2007 in which the unknown substance was found not to be a controlled substance: From January through August 2007, there were 1,100 "no-controlled substance" cases out of the total 28,348 analyzed to date, approximately 3.9 percent.

D. Allegation of "Short Cuts"

On December 22, 2001, approximately four months before the overheard conversation between Delores Soriano and Elizabeth Mansour described above, Criminalist John Smith¹⁷ received a vial of white powder for analysis. This vial was seized from an arrestee, and was not part of the laboratory's proficiency testing program or related to any internal police investigation.

After performing color and crystal tests on a sample from the vial, Smith identified the substance as weak cocaine. As per laboratory procedures at the time, a second criminalist prepared a sample of the substance for analysis by the mass spectrometer. The sample taken by Smith was consumed during his analysis. According

¹⁷ Since this allegation is unsubstantiated, the criminalist's name has been changed.

to the mass spectrometer, the unknown substance was ketamine, not cocaine. Smith was immediately removed from the case, and Sgt. Orta asked a third criminalist to re-perform the color and crystal tests on yet another sample from the vial. This criminalist did not find cocaine. Sgt. Orta then requested that the vial be "washed" with methanol to remove any residue. According to a memo written by Sgt. Orta dated December 28, 2001, a mass spectrometer analysis of the residue indicated a "trace" amount of cocaine. Smith admitted that, in violation of the standard operating procedure, he took his sample from the side of the vial, rather than ensuring that his sample was representative of the vial's entire contents. However, Sgt. Orta did not believe that the small amount of cocaine identified in the residue could have produced color and crystal results that were positive for cocaine as asserted by Smith. Sgt. Orta believed that Smith did not perform the tests that he stated he performed. He was removed from casework for several months and he was disciplined with the loss of ten days vacation. Sgt. Orta reviewed Smith's cases for the previous twelve months but did not find any errors.

In her December 28, 2001 memo, Sgt. Orta stated that ASCLD/LAB guidelines did not require that this incident be reported because the error was identified prior to a report being issued to the client. The memo states, "the misidentification by Criminalist II Smith will be handled as an internal investigation." In her interview with the Inspector General, Sgt. Orta said that she did not report the incident because there was some trace evidence of cocaine, so she could not prove that he did not perform the tests he claimed to have performed.

Dr. Pizzola and others at the laboratory today, including current supervisors who were present and aware of the situation in 2001, disagree with Sgt. Orta's assessment of the situation. After being informed of the anonymous allegation against Smith, Dr. Pizzola prepared a memo detailing the incident, dated June 27, 2007. The memo states, "there was ample scientific data to support the presence of cocaine in the original container" and concludes that Smith's error was a result of his "sampling technique." It was not a "misidentification," as Sgt. Orta found at the time.

As per Sgt. Orta's determination, the incident was not reported to ASCLD/LAB. Dr. Pizzola, in his June 27, 2007 memo, agrees that the incident did not have to be reported, but not for the reasons stated by Sgt. Orta. Rather, as Dr. Pizzola determined that the error was a result of sampling technique, it is of lesser significance than a true misidentification. When questioned as to whether Smith's error might be considered a false negative, Quality Assurance Manager Crispino opined that, to be cautious, the lab today might report an error like Smith's. However, he noted that Criminalist Smith was not permitted to complete his analysis, having been removed from the case before he was able to review the results from the mass spectrometer, which could have helped him to determine correctly the contents of the vial.

IV. FINDINGS OF THE INSPECTOR GENERAL

In 2002, an internal investigation at the NYPD laboratory began as a result of overheard remarks between veteran criminalists Delores Soriano and Elizabeth Mansour, which are outlined in Section III of this report. The specific allegations regarding Soriano's failing to conduct all required tests or only testing certain packages could not be substantiated. Her alleged statement that "half the lab" was cutting corners also is not substantiated. Of the approximately one hundred criminalists in the lab, only two wrongdoers were identified conclusively through Sgt. Orta's blind proficiency tests. In addition, none of the criminalists or supervisors interviewed in this investigation felt that there was a widespread problem of cutting corners at the laboratory. Finally, the allegation that Mansour was somehow warned in advance about blind proficiency tests is also highly questionable, since she failed both tests that were administered to her.

The Inspector General's conclusions regarding the laboratory's response to the two incidents discussed in this report are set forth below.

A. The Laboratory Failed to Adequately Investigate Suspicions of Misconduct

As detailed above, the laboratory overlooked numerous opportunities to investigate the alleged conversation between Soriano and Mansour, the specific causes of the proficiency test failures, and the suspicion that others in the laboratory might also be cutting corners. Although it is clear that others in the police department, including Internal Affairs, the Department Advocate, and the Chief of Detectives, failed to grasp the magnitude of the potential problem, the NYPD Forensic Investigations Division nonetheless retained its primary responsibility to ensure the accuracy of the reports issued by the Police Crime Laboratory. At a minimum, Soriano's alleged comment asserting that "half the lab" was cutting corners merited investigation. Although the proficiency test results provided to the Inspector General indicate that most analysts conducted the required tests consistently and completely, laboratory officials at the time were in a much better position to identify any laboratory-wide problems with a thorough investigation.

After the comments were first reported, Sgt. Orta and Insp. McCarthy chose to conduct a "sting" operation to catch the offending criminalists in any potential misconduct using blind proficiency tests. In order to preserve the confidentiality of the blind testing program, no other investigation was conducted at the time of the initial accusation of misconduct. As a result, neither those reporting the conversation, those engaged in the conversation, nor others who may have heard the conversation were interviewed when memories were fresh. The first time any attempt was made to speak to the junior criminalists who first reported the conversation to Sgt. Delaney was during the Inspector General's investigation in May 2007, five years after the event.

Also of concern is the failure to investigate Mansour's alleged comment that she had prior knowledge of supposedly secret proficiency tests. Although the Inspector

General did not substantiate this accusation, the potential that one or more criminalists may have known about the tests might well have compromised Sgt. Orta and Insp. McCarthy's efforts to identify misconduct through the tests.

ASCLD/LAB guidelines regarding proficiency testing are predicated upon a laboratory in which the analysts are acting in good faith. Any problem that casts doubt on the laboratory's work is to be immediately and openly addressed. If the problem is identified through proficiency testing, ASCLD/Lab guidelines dictate that the analyst is to be informed of the mistake, and re-trained if necessary. Whereas ASCLD/LAB recommends an open process, where "inconsistencies" are quickly addressed and corrected, the NYPD laboratory opted for a secret process, where criminalists were not notified of their failed proficiency tests, and the causes of the problem were never uncovered.

Those in authority at the NYPD laboratory in 2002 did not think that an open process was appropriate under the circumstances. They believed that if Sgt. Orta or other lab supervisors had begun to ask questions of criminalists about whether they or their colleagues were following procedures, the criminalists might have expected to receive blind proficiency tests in the near future, and they would have discontinued their misconduct. Through the blind testing program, Sgt. Orta was able to document the incorrect results of a few criminalists, at the expense of immediately removing the offending criminalists and interviewing the parties involved.

In fact, there were problems at the lab that may have affected the criminalists' work. Although it does not excuse blatant disregard of laboratory procedures, many criminalists were dissatisfied that they were forced to work overtime, that they were supervised by uniformed officers with little experience in forensic testing, and that they were required to follow procedures that were written by those officers, with what they believed was insufficient input from the criminalists. Mark Dale identified these problems when he assumed his role as director, and worked to remedy them during his tenure.

Ironically, despite the focus on catching errant analysts, none of the offending criminalists ever faced criminal charges. One of the suspected criminalists, Delores Soriano, was not even aware until 2007 that her overheard comments were reported to her superiors, nor that she had committed an error on a proficiency test. The laboratory never even determined whether Soriano was in fact following all procedures, since her final blind proficiency test that year did not require her to demonstrate that she would correctly and fully conduct all required tests in a case with a large number of packages.¹⁸ At this point, Soriano has been reassigned to administrative duty, although she does not recall the proficiency test on which she reportedly erred. She emphatically denies making the comments attributed to her in Sgt. Delaney's memo.

¹⁸ As noted above, in Soriano's third and final proficiency test of 2002, the combined weight of all the packages was less than one-eighth ounce. Therefore, standard operating procedures did not require her to identify the contents of each package, only to determine that a minimum amount of cocaine was present.

Even after Mansour and Patel were suspended, no further investigation, other than additional blind proficiency tests, was conducted into the comments attributed to Soriano, the behavior of the suspended criminalists, or the alleged problems with the laboratory as a whole. At this point, the members of the Controlled Substance Analysis Section knew that the criminalists had been suspended for failing their blind proficiency tests. In fact, after Mansour's suspension, Insp. McCarthy had warned the criminalists in the lab that they should be following all procedures. Therefore, an investigation could have been conducted at this point without the fear of exposing a secret testing program. At a minimum, Soriano should have been interviewed about her proficiency test error and the comments attributed to her. In addition, the two junior criminalists reporting Soriano's overheard comments also should have been interviewed to verify the accuracy of Sgt. Delany's memo. Finally, Soriano's alleged comments regarding "half the lab" cutting corners, and Mansour's alleged response indicating that she was aware in advance of blind proficiency tests should have been pursued, including, perhaps, an interview with each of the criminalists in the section.

One result of the failure to investigate is that the specific errors that caused the incorrect proficiency test results were never determined. Because of the several steps involved in the analysis, there are a number of potential errors or omissions that could have led to the incorrect results. For instance, the false positives of Mansour and Patel could have been the result of any of the following missteps: using only the color test on all packages; using both the color and crystal tests on only some of the packages; or failing to clean equipment and verify reagents, as Patel has asserted. Interviews with the laboratory's criminalists or observation of those taking proficiency tests could have revealed which steps were skipped. Knowing exactly what led to the incorrect results might have guided the laboratory's current attempts at re-analysis.

B. The Laboratory Failed to Take Immediate or Sufficient Corrective Action after the Proficiency Test Failures

The laboratory failed to follow its own quality procedures in response to the proficiency test failures of Mansour, Patel, and Soriano.

1. Elizabeth Mansour and Rameshchandra Patel

On August 9, 2002, Elizabeth Mansour reported a false positive (a substance incorrectly identified as cocaine) on a blind proficiency test. On November 25, 2002, Rameshchandra Patel reported a false positive on a blind proficiency test. According to ASCLD guidelines, a false positive is the most serious type of error and must be reported. It is considered a Class I inconsistency, which "raises immediate concern regarding the quality of the laboratory's and/or analyst's work product." According to the laboratory's own quality assurance manual, the following is the corrective action required for a Class I inconsistency:

If investigation determines that the deficiency was the result of an analyst's analytical or interpretive error, or that there is a deficiency in a method or protocol, the analyst will be prohibited from further processing related casework until the cause of the problem is identified and corrected, and a new proficiency test has been successfully completed. (2002 Police Laboratory Quality Assurance Manual, Section 13.7.2.1)

In violation of the laboratory's Quality Assurance Manual, both Mansour and Patel were given second tests before they were removed from casework.

2. Delores Soriano

On April 28, 2002, Soriano reported a false negative (identifying a package of cocaine as not being a controlled substance) on a directed proficiency test after allegedly stating that she did not follow laboratory procedures. Typically, a false negative is considered a Class II inconsistency: "The discrepancy is due to a problem, which may affect the quality of the work, but is not persistent or serious enough to cause immediate concern for the overall quality of the laboratory's and/or analyst's work product."

The laboratory's quality manual instructs the following for a Class II inconsistency:

If investigation determines that the deficiency was the result of an analytical or interpretive error due to a lapse rather than a lack of understanding, the analyst will be prohibited from further processing related casework until a new proficiency test has been successfully completed. (2002 Police Laboratory Quality Assurance Manual, Section 13.7.2.2)

Although the paragraph above, taken from the laboratory's quality assurance manual, instructs that an investigation be undertaken to determine the cause of the deficiency, Sgt. Orta did not investigate the cause of Soriano's incorrect proficiency test result. Instead, Sgt. Orta relied on her conjecture alone to determine that Soriano's error was caused by a mistake in the transcription of her results, rather than an "analytical or interpretive error." In the case of such a lesser error (Class III) on a proficiency test, the quality assurance manual instructs, "the analyst shall be notified and re-instructed regarding proper laboratory procedures by the Quality Manager or designee."

Sgt. Orta did not follow the quality manual's directions for either a Class II or a Class III error. In her interview during this investigation, Sgt. Orta said that she might have had a discussion with Soriano, but she would have done so without revealing that Soriano had been the subject of a test. However, Soriano stated that she was neither notified of her proficiency tests results at the time, nor was she aware that she had been the subject of a blind proficiency test in 2002.

Instead of removal, as required for a Class II inconsistency, or notification and re-instruction, as required for a Class III inconsistency, a third test was administered to Soriano in August 2002. Unfortunately, this test was not designed to ensure that she performed all the required tests on multiple packages. As a result, the question of whether Soriano was omitting required tests, as she allegedly stated in 2002, remains unresolved. Soriano continued to process cases at the lab until April 24, 2007, when she was assigned to administrative duty.

3. Discussion

The analysts were not removed from duty after the initial suspicions were raised or after the first failed tests. In the case of Mansour, four months passed between the time of the initial suspicion and the time of her first blind proficiency test. Sgt. Orta's explanation for the laboratory's failure to follow the Police Laboratory Quality Assurance Manual in this situation is that the incident was being treated as an investigation rather than as standard proficiency testing. According to former laboratory director Mark Dale, he felt that, because the integrity of the analysts was suspect, they deserved a second test rather than immediate removal as specified by procedures. In his interview during the Inspector General's investigation, Dale stated, "You need to be doubly sure on your information before you make an allegation against someone on an integrity issue."

In theory, the goal of identifying and removing the analysts in question was consistent with maintaining laboratory quality. However, the investigatory process that was followed interfered with the quality of the laboratory's work. The laboratory allowed Mansour to process cases for several months after suspecting her of misconduct. All three criminalists were allowed to continue to process cases after reporting incorrect results on proficiency tests until subsequent tests could be administered. In the case of Mansour and Patel, this was in direct violation of the laboratory's own policies, and also exposed actual criminal evidence to potentially incorrect analyses. When asked why the analysts were not immediately removed as specified by the laboratory's procedures, Dale said, "There could be reasons that they did fail it that are not integrity related.... There could be, I mean it's a slim chance, but there could be a reason for it. So you want to do two [tests]. I think that is the prudent thing to do. Yes, is there a risk that something could happen between the first and second one? Yeah there is. But I think, what I want to say is, the concept of being thorough takes priority over that." He continued, "I remember that we had two tests, maybe they were separated by, I don't know, four to six weeks. I was aware of that... And that's acceptable to me obviously."

Oddly, unlike Mansour and Patel, who should have been immediately removed after their proficiency test failures, John Smith was removed from casework in the middle of his analysis of the vial of ketamine with cocaine residue. In her interview with the Inspector General's office, Sgt. Orta said that Smith's error was the first she had dealt with as Quality Assurance Manager. She said that had she had more experience, she might have handled it differently, but she did not elaborate. Even though a thorough examination of the vial in question did reveal the presence of cocaine, Smith was disciplined nonetheless. One member of the current managerial staff has attributed the

harsh treatment of Smith to the inexperience of the laboratory's uniformed supervisors in interpreting the results of chemical analyses.

C. The Laboratory Erred in Not Disclosing the Proficiency Test Failures

As discussed above, the laboratory neither reported the proficiency test failures of Mansour, Patel, and Soriano, nor did it report the casework error of John Smith. The Inspector General finds that the proficiency test errors of Mansour and Patel should have been reported to the laboratory's accrediting bodies and to the affected district attorney's offices. The proficiency test error of Soriano, taken on its own, is perhaps of lesser significance. However, taken together with her alleged comments, the concerns about Soriano also should have been disclosed.

Based on Dr. Pizzola's analysis, the Inspector General finds that the casework error of John Smith may not have risen to the level of an inconsistency requiring a report to ASCLD/LAB. As noted in this report, the laboratory retains some discretion in determining whether an incident needs to be disclosed to its accrediting bodies. As the evidence does not indicate misconduct on the part of John Smith, and the integrity of Smith's other forensic results is not in question, the Inspector General does not criticize the laboratory's determination in this instance.

1. Disclosure to ASCLD/LAB

Although the laboratory assigned different names to a series of tests created in response to the overheard conversation between Delores Soriano and Elizabeth Mansour, the Inspector General's investigation did not reveal any true distinction between internal "system check" tests or "integrity" tests, and the laboratory's standard proficiency tests. Sgt. Orta's regular proficiency tests were of similar design to the "system check" tests created for Mansour and Soriano. In addition, some of the regular proficiency tests were actually designed to test the "integrity" of the criminalists. Specifically, those tests in which the case paperwork understated actual number of packets presented to the criminalist for analysis gave the criminalists opportunities to steal drugs if they were so inclined, thereby testing their integrity. Furthermore, the idea of administering two separate sets of tests, one which will be disclosed and one which will not be disclosed, is not authorized or condoned by ASCLD/LAB's rules. As noted above, the ASCLD/LAB 2001 Manual specifically says that the Accreditation Board will address *any* information suggesting non-compliance, regardless of its origin.

Mark Dale knowingly omitted information from the 2002 Annual Accreditation Report to ASCLD/LAB. Although Dale claims he was prohibited by his position within the NYPD of disclosing the information, he made no effort to contact Internal Affairs to ascertain whether disclosure of the errors would interfere with an investigation. (In fact, as discussed above, Internal Affairs never conducted an investigation of Mansour, and the

matters regarding Patel or Soriano were never even referred to Internal Affairs for investigation.)

Neither the proficiency test/integrity test distinction, nor the supposed Internal Affairs investigation¹⁹ is recognized by ASCLD/LAB as an appropriate excuse for the laboratory's failure to report the incident. Although, as discussed above, ASCLD/LAB did not specifically address investigations of deliberate misconduct in its guidelines, it is clear that these incidents should have been disclosed in the laboratory's annual report. The fact that criminalists were not following procedures, which caused incorrect results on proficiency tests, and potentially in actual cases, was a serious issue affecting the quality of the laboratory's work. ASCLD/LAB, whose accreditation was the basis for the laboratory's ability to operate in this state, certainly should have been notified about the misconduct and should have had the opportunity to evaluate the corrective actions the laboratory took in response.

2. Disclosure to the Commission on Forensic Science

The Commission on Forensic Science ultimately has responsibility for accrediting forensic laboratories in New York. Laboratories seeking accreditation from the state must provide evidence of accreditation from ASCLD/LAB, and must provide copies of any communication between the laboratory and ASCLD/LAB. Ordinarily, this correspondence is sufficient for the Commission on Forensic Science to conduct and satisfy its oversight responsibilities. However, where a laboratory withholds information from ASCLD/LAB, it also deprives the commission of its ability to fulfill its statutory role. In 2002, the Commission on Forensic Science did not know about the proficiency test failures at the NYPD lab because they were not reported to ASCLD/LAB.

3. Disclosure to the District Attorneys

Not every issue that is of concern to ASCLD/LAB or the Forensic Science Commission is necessarily of concern to a district attorney. However, in this case, where Mansour and Patel each failed two proficiency tests, the lab should have informed the district attorneys.²⁰

Some information about Mansour's failed tests was communicated to two individual prosecutors. As part of its regular communication with prosecutors concerning NYPD employee misconduct, the NYPD Internal Affairs Bureau notified the Chief of the Public Integrity Unit in the Queens District Attorney's Office that Mansour had failed a proficiency test. In addition, an assistant district attorney in the Office of the Special Narcotics Prosecutor was notified by the lab that Mansour was unavailable to testify in a single case because of her suspension. No details were provided about the suspension.

¹⁹ Notably, current Laboratory Director Dr. Pizzola notified ASCLD/LAB, the Commission on Forensic Science via DCJS, and the district attorneys of the recent loss of a delivery of narcotic evidence despite an ongoing investigation by the Internal Affairs Bureau.

²⁰ A positive working arrangement, including regular meetings between laboratory officials and prosecutors to discuss laboratory quality can insure that the relevant information is available to prosecutors.

Neither of these communications constitutes sufficient notification to the city's district attorneys who rely on the laboratory's reports.

D. The Laboratory Cannot Retroactively Verify Every Report Issued by Soriano, Mansour, or Patel

The incorrect proficiency test results of Soriano, Mansour, and Patel raise the possibility that erroneous lab reports were issued by one or more of these criminalists in actual criminal cases. The cases most at risk for an incorrect report are cases with multiple packages of suspected controlled substances, since the large amount of work involved in these types of cases is most likely to encourage a criminalist to skip tests if she is inclined to do so. If any of the criminalists discussed in this report were omitting tests, it is possible that the number of packages containing a controlled substance, or the weight of the controlled substance, was overstated. In some narcotics convictions, the number of packages or the weight of the substance is not significant. For example, the most common criminal drug charge involves sale of any amount of narcotic. However, other charges do depend on the substance's weight or the number of packages possessed by the defendant.

In 2002, as today, every case concluded with an analysis by the mass spectrometer. The mass spectrometer produces a printed record of the analysis. In multiple bag cases, the contents of all the bags would be combined and a sample of the mixture would be analyzed in the mass spectrometer. If no controlled substances were present in the combined sample, the mass spectrometer would have identified the error at this point.²¹ However, in cases similar to the proficiency tests, where some packages contained controlled substances and others did not, one of the analysts may have miscalculated the number of bags containing a controlled substance, or the weight of the controlled substance. Use of the mass spectrometer would ensure that at least some of the packages did contain controlled substance as well as any potential contaminants. However, the machine cannot determine whether those contaminants were introduced by the criminalist, as would happen if a criminalist combined a package without narcotics with several packages that did contain narcotics.²²

While it is common for a defendant to possess narcotics that have been diluted, it is less common for a defendant to be arrested with some packages containing a narcotic, and some packages containing a different, but identical-looking, non-narcotic substance. The lab does not keep statistics on this type of case, but current lab staff indicated that it was relatively uncommon.

²¹ In fact, the mass spectrometer was shown to serve its function in December 2001 when John Smith submitted a sample for analysis that was identified by the mass spectrometer as ketamine.

²² As mentioned above, the weight of a narcotic used to determine a criminal charge includes the pure weight of the drug, plus any diluents, as long as the mixture meets a certain minimum concentration of narcotic.

Unfortunately, the laboratory faces several challenges when conducting its review of the prior cases of Soriano, Patel, and Mansour. The primary challenge is that the evidence of many cases processed during the 2001-2002 period of concern has been destroyed as part of the property clerk's normal inventory procedures.²³ In these cases, the laboratory is limited to reviewing case files and is not able to re-test the alleged drugs. Thus, for example, the analysts' notes and the mass spectrometer's report can be reviewed, but the substance itself cannot be re-analyzed.

Even where evidence is available for re-testing, the laboratory is limited in its ability to identify cases where controlled substances were incorrectly combined with other substances. Re-testing of evidence can confirm the presence or absence of a controlled substance, ensuring that no defendant was charged with possession of such a substance where there was none. However, where a case originally involved multiple packages, the laboratory, in most instances, cannot definitively say whether the reported weight of the controlled substance was correct, since the multiple units are now combined. Where the original packages have been preserved and sealed, the laboratory may re-test the residue in each package to verify that each originally contained a narcotic. However, the laboratory's procedures did not require re-sealing of the original packaging. Any open packages that have been stored together are potentially cross-contaminated and cannot reveal useful information about their original contents. Additionally, some packages have no residue remaining and therefore cannot be re-analyzed.

E. Conclusions Regarding Allegation of "Short Cuts" by John Smith

ASCLD/LAB allows forensic laboratories some discretion in determining the seriousness of an error, and consequently whether it must be reported. This discretion allows the laboratory to consider the circumstances and the cause of the error, not just the end result. Although John Smith reported color and crystal test results that differed from those obtained through analysis of the mass spectrometer, current laboratory management has determined that Smith's error was related to his sampling technique. This type of error is somewhat more common and certainly is less serious than a lack of scientific knowledge, or a failure to perform certain tests. As noted above, Dr. Pizzola believes that Smith's error did not require a notification to ASCLD/LAB. In addition, the laboratory's own procedures identified the inconsistency between the color and crystal tests and the mass spectrometer results, enabling it to properly identify the substance prior to the laboratory report being issued. There was no danger that a defendant would be charged with the incorrect section of criminal law based on the tests performed by John Smith in this case. Unlike the cases of Mansour, Soriano, and Patel, there is no indication that the accuracy of any of the other laboratory reports issued by Smith is in doubt. Accordingly, the Inspector General determined that the laboratory was acting within its discretion in not reporting this incident to ASCLD/LAB and the Commission on Forensic Science.

²³ As the Inspector General's mandate is limited to the laboratory itself, this report will not evaluate the property clerk's policies regarding evidence retention.

At the time of the incident, the lab reacted very strongly against Smith based on Sgt. Orta's determination that he failed to perform the required color and crystal tests. This determination was based on Sgt. Orta's interpretation of the mass spectrometer's results, an interpretation that is disputed by the senior scientists at the laboratory today.

V. CHANGES IN THE LABORATORY SINCE 2002

Since 2002, a number of changes have taken place in the NYPD's Controlled Substance Analysis Section that have improved the quality of its work. Some of the changes occurred prior Dr. Pizzola's disclosure of this incident, and others were put in place since the Inspector General began its investigation. These changes have served to ensure greater accuracy and to preserve the laboratory's capability to re-test evidence.

A. The Laboratory in 2002

In April 2002, when NYPD laboratory managers first suspected some analysts of non-compliance with required procedures, the laboratory was experiencing a number of problems. Despite the laboratory's accreditation by ASCLD/LAB, the uniformed officers who supervised the criminalists had minimal casework experience, and the criminalists were overworked and had low morale.

The laboratory had been without a director for nearly two years, since June 2000. In January 2001, Inspector Denis McCarthy was appointed Commanding Officer of the Forensic Investigations Division. At the time of assignment, Inspector McCarthy, while possessing an M.B.A. and having served NYPD in many commands, did not have the scientific background or experience necessary to be the laboratory's director - a role he assumed until a director was hired in September 2002.

Sgt. Orta, a ranking uniformed officer with a bachelor's degree in forensic science but limited casework experience, was assigned as the Quality Assurance Manager in 2001, a position for which she admits she felt unqualified. In the first five months of 2002, there was also a vacancy in the position of Integrity Control Officer. When an Integrity Control Officer was appointed in May of 2002, he did not overlap with the previous individual in the position, nor did he receive any training in the requirements of ASCLD/LAB. It was not until Mark Dale was hired that the laboratory had leadership with the necessary scientific and procedural knowledge to run a laboratory.

However, even when Mark Dale was finally hired, he did not have complete authority over the laboratory or the uniformed officers working there in supervisory positions. This was because the laboratory employed a management structure that gave authority to uniformed officers, even though all of the scientific expertise at the lab was held by its civilian employees. Ranking uniformed officers held positions of supervision over civilian analysts conducting testing. In fact, the uniformed/civilian management structure was the source of some tension at the lab, and some of the uniformed officers working within the division resisted Dale's supervision.

Finally, many of the analysts felt disgruntled or overworked. As it is now, the Controlled Substance Analysis Section was extremely busy. At the time, criminalists were regularly forced to work overtime to complete their caseload. Again, while the laboratory was accredited by ASCLD/LAB, its standard operating procedures were

written primarily by police personnel and did not include the most efficient or most up-to-date procedures.

B. Improvements in the Laboratory

1. Management Structure

Since 2002, the laboratory has improved its management structure. Experienced civilians now act as direct supervisors in the laboratory, the director has fuller responsibility for the laboratory, and the quality assurance manager is a former laboratory director committed to meeting and exceeding accreditation requirements. The former director, Mark Dale, was responsible for initiating many of these changes during his tenure.

2. Quality Assurance

In addition, the laboratory has made improvements to its operating procedures regarding controlled substance analysis to enhance the accuracy of test results. Since 2002, procedural changes have been implemented to better reflect modern analytic techniques. In particular, the laboratory has chosen to rely more on instrumental analysis, or the use of the mass spectrometer, and eliminating reliance on crystal tests. In 2003, procedures were changed to require that, in multiple-package cases, criminalists must test a sample from each package in the mass spectrometer. As discussed above, previous procedures required only one analysis of a composite of the packages. Unlike the crystal test, which utilized dangerous heavy metals and produced no record of the test other than that recorded by the criminalist, the mass spectrometer produces a printed record of the properties of every sample it analyzes. This record acts as evidence that the test was conducted, and it allows others to review the conclusions of the criminalist based on the chemical properties identified by the mass spectrometer. These improvements also were made during the tenure of Mark Dale.

The laboratory further revised procedures to ensure that previously-tested substances could be re-tested if necessary. Until recently, the laboratory continued to combine contents of multiple packages for weighing, even though the contents of each package were individually analyzed by the mass spectrometer. As of June 2007, the laboratory will no longer combine the contents of individual packages at any point. The contents of each package will be weighed separately and stored separately, and the original packages will be re-sealed for storage so that their contents cannot cross-contaminate.

C. Re-examination of Past Cases

In May 2007, after Dr. Pizzola, the current director of the laboratory, uncovered the initial facts surrounding the failed proficiency test, he initiated a large-scale review of past casework in the Controlled Substance Analysis Section in an attempt to identify any

erroneous laboratory reports. The review includes all felony casework of Mansour, Soriano, and Patel for the year prior to failed proficiency tests, plus ten percent of their misdemeanor cases from that same period. Since Soriano continued to analyze cases until 2007, a sample of her work, consisting of 25 percent of her felony casework and ten percent of her misdemeanor casework from 2002 through 2007 will be reviewed. In addition, a random sample of five cases from every analyst working in the Controlled Substance Analysis Section in August 2002 will be reviewed. In total, Dr. Pizzola has directed the recall of over 3,000 cases for review. Currently, one supervisor and five analysts have been removed from case analysis to work on the review.

At a minimum, the Controlled Substance Analysis Section will conduct a technical review in each of the recalled cases. Where possible, the actual evidence will be re-analyzed. A technical review entails evaluation of the paperwork related to the case. A second criminalist ensures that the data recorded in the case paperwork reflect the conclusions stated in the laboratory report. Unfortunately, the technical review cannot necessarily determine whether a report was falsified by an experienced criminalist.

For many of the 3,000 cases, only a technical review will be possible. At the time that the laboratory requested the recall from the property clerk, the property clerk had already begun destruction of evidence from 2001-2002 as part of its normal inventory procedures. As of September 28, 2007, the property clerk had confirmed the destruction of evidence related to 709 of the 3,000 cases designated for review.

Even where evidence is preserved, it may not be possible to conduct a re-analysis. In a re-analysis, the criminalist would take a sample from the original package or packages and conduct new testing to ensure that each package contained a controlled substance. Until June 2007, in every case involving multiple packages, the original packages were emptied and the contents combined. In some cases, the original package may no longer contain any residue. In other cases, the packages were stored in an open condition, and the contents appear to have cross-contaminated. Where cross-contamination has occurred, it is impossible to identify the substance originally contained in each package.

The laboratory reported that, as of September 28, 2007, 214 technical reviews were completed and 199 cases were re-analyzed. Re-analysis is in progress for an additional 92 cases. In the cases analyzed so far, the laboratory states that "no significant technical discrepancies have been discovered that would compromise the original findings."

VI. CONCLUSION

The Inspector General finds that officials at the New York Police Department's Forensic Investigations Division committed serious errors in 2002 in their responses to both suspected and confirmed misconduct committed by analysts in the Controlled Substance Analysis Section. Any falsifications of laboratory reports, whether related to proficiency tests or actual casework, as well as the omissions in the 2002 Annual Accreditation Review Report, could be the basis for a criminal prosecution. Accordingly, this matter will be referred to the Queens County District Attorney's Office for review of possible criminal charges.

The current laboratory director and quality assurance manager have fully cooperated in this investigation, and have made good faith efforts to disclose any previously undisclosed information regarding these incidents to the laboratory's accrediting bodies. In addition, the laboratory has notified the five district attorneys and the Special Narcotics Prosecutor about the proficiency test failures. Representatives from the laboratory and the NYPD have conducted regular meetings with prosecutors to keep them apprised of the laboratory's re-analysis of at-risk cases and to help prosecutors identify defendants associated with the laboratory reports in question. The laboratory is currently compiling lists of cases that have been re-analyzed or technically reviewed for each of the prosecutor's offices.

Finally, the laboratory has revised its procedures since 2002, in some instances as a result of this investigation, to provide more accurate results, to maintain a better record of the analyses conducted, and to preserve evidence in such a way that it can be re-analyzed where necessary. It is encouraging that, prior to this investigation, the Commission on Forensic Science adopted guidelines for laboratories regarding notification of district attorneys in cases of laboratory errors. These guidelines will instruct laboratories regarding communication of laboratory problems to prosecutors. In another step to avoid future problems, Dr. Pizzola meets regularly with representatives from the city's district attorneys offices to discuss the functioning of the laboratory.

Any recommendations the Inspector General would have made regarding future notifications to prosecutors, ASCLD/LAB, or the forensic science commission; laboratory testing procedures; or preservation of evidence for re-testing have already been addressed by the laboratory. Therefore, the Inspector General makes no recommendations at this time regarding the laboratory's procedures or the corrective action the laboratory is undertaking in response to these incidents.