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March 2, 2012

OFS-OIG Comments  
c/o OFS, 4<sup>th</sup> floor  
NYS Division of Criminal Justice Services  
4 Tower Place  
Albany NY 12203

By email: [ForensicLabs@dcjs.ny.gov](mailto:ForensicLabs@dcjs.ny.gov)

Re: New York State Office of the Inspector General (OIG) Report – *Investigation into the Nassau County Police Department Forensic Evidence Bureau*

Dear Members of the Commission of Forensic Science:

The District Attorneys Association of the State of New York (DAASNY) welcomes this opportunity to provide our position to the Commission of Forensic Science (CFS) as to the five recommendations set forth in the OIG report on pages 163-166, dealing with better monitoring, enhanced reporting requirements and educational training in connection with the CFS and the public forensic laboratories in the state.

Recommendation No. 5 states that the CFS is the entity best equipped to promote and monitor notification of accreditation issues at forensic laboratories and should implement a formal process to report such issues to the relevant agencies. DAASNY supports this recommendation as an official notification procedure by the chair of the CFS in conjunction with the support staff of the Office of Forensic Services (OFS) is consistent with traditional notions of due process. We do note that the webcast of the CFS meetings and the web posting of documents (including lab audits) discussed outside executive session are examples of the transparency now presently in place in the accreditation process, enhancing the ability of prosecutorial agencies to monitor the process. District Attorneys in this state are also greatly assisted in this process by the dedicated representation by CFS members District Attorneys William Fitzpatrick and James Murphy.

Recommendation No. 6 states that while the OIG investigation did not find any evidence that our state laboratories were not meeting their obligations to directly report to the Commission, it is a better practice for private accrediting agencies to communicate directly with Commission. DAASNY supports requiring forensic laboratories in the state to copy the CFS on all communications between the laboratory and ASCLD/LAB pertaining to the accreditation process.

Recommendation No. 7 addresses the services provided by the Office of Forensic Services (OFS) of DCJS which is responsible for the administrative oversight of

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CODIS, for maintaining the forensic laboratory accreditation program for public forensic laboratories under the authority of the CFS, and for working with law enforcement to improve the quality and delivery of forensic services in the state. The OIG report found that currently the OFS has minimal personnel and resources dedicated to the oversight of forensic laboratories. The OFS is an invaluable state resource and accordingly DAASNY supports the appropriate funding of the OFS so it may fully perform its mission, including its ability to carry out Recommendation 5.

Recommendation No. 8 deals with the establishment of a liaison by each District Attorney's Office with the forensic laboratory doing work on their respective cases. Prosecutorial agencies throughout this state are better equipped to perform their legal obligations if they are expeditiously alerted to information which may impact the quality of the laboratory work performed in any particular matter. As noted in the OIG report, prosecutors do use liaisons with the laboratories. Going forward, DAASNY supports the recommendation of the use of lab liaisons in order for prosecutors to be proactive in monitoring the quality assurance of their labs. Further, we recommend that significant lab deficiencies be immediately shared with the relevant prosecutorial agency consistent with DAASNY's 2006 *GUIDELINES FOR NOTIFICATION OF DISTRICT ATTORNEYS IN CASES OF LABORATORY ERROR OR MISCONDUCT BY LABORATORY PERSONNEL*.

Recommendation No. 9 states that to the extent they have not already implemented training through CLE courses in connection with the broad spectrum of issues arising in connection with the forensic sciences, district attorneys should do so. DAASNY supports this recommendation and believes educational training on forensic science issues for all parties in the criminal justice system promotes justice.

In closing, it is imperative to note that the actions of the Nassau County Police Department Forensic Evidence Bureau as set forth in the OIG report are not remotely representative of the excellent public forensic laboratories that operate throughout this state. The OIG report cannot and should not be used to taint the integrity of these fine and outstanding forensic public laboratories. Indeed any attempt to expand the findings of the report for this purpose would be entirely inconsistent with the core scientific principles of objectivity and factual evidence.

Very truly yours,

JANET DiFIORE  
DISTRICT ATTORNEY