

THE NO SUSPECT CASEWORK DNA BACKLOG REDUCTION PROGRAM

EXECUTIVE SUMMARY

Forensic DNA evidence has tremendous potential to improve the criminal justice system. Use of DNA evidence has solved numerous criminal cases that could not have been solved with traditional law enforcement techniques, and in a number of cases has exonerated persons charged with or convicted of crimes they did not commit. However, DNA currently is not being used to its full potential due to several factors, including a significant backlog of cases awaiting analysis in state and local laboratories and at law enforcement agencies across the country. A report submitted to Congress by the Attorney General in April 2004 estimated that over 540,000 criminal cases with biological evidence were awaiting DNA testing in state and local laboratories and at law enforcement agencies.¹ Those cases include 52,000 homicides and 169,000 sexual assaults.

To aid in reducing this casework backlog, the Department of Justice, Office of Justice Programs (OJP), National Institute of Justice (NIJ), developed and is administering the No Suspect Casework DNA Backlog Reduction Program (Program), which provides funding to state laboratories. The purpose of this funding is to help the state laboratories identify, collect, and analyze DNA samples from evidence collected in cases where no suspect has been identified or in which the original suspect has been eliminated. Our audit examined OJP's Program oversight and administration, Program participant's compliance with requirements, and the allowability of costs charged to the Program.

Background

The Program's mission is "to increase the capacity of state laboratories to process and analyze crime-scene DNA in cases in which there are no known suspects, either through in-house capacity building or by outsourcing to accredited private [contractor] laboratories." The Program was

¹ The report, *National Forensic DNA Study Report*, was the result of a study conducted by Washington State University and Smith Alling Lane, a Tacoma, Washington, law firm.

authorized under the DNA Analysis Backlog Elimination Act of 2000, and was initiated with a Solicitation for applications to be submitted by September 2001. Due primarily to the events surrounding September 11, 2001, the Solicitation deadline was extended into FY 2002. Therefore, while the first year of the Program technically was FY 2001, the first grant applications were received and reviewed in FY 2002, and the first awards were issued toward the end of that fiscal year.² OJP awarded approximately \$28.5 million in this first year of the Program.

A total of 25 states received awards in the Program's first year (see page 5 for the complete listing of the grantees and award amounts). In many cases, these grantees teamed with co-grantees in their state (such as local laboratories or law enforcement agencies that received funding from the award to the Program grantee).

Program grantees received funding for the analysis of over 24,700 no-suspect DNA cases in the Program's first year. Each award was to be used for the processing and DNA analysis of no-suspect cases, defined by OJP as cases in which there is biological evidence from a crime but for which no suspect has been identified. Analysis could be conducted either "in-house" by the DNA laboratories within the grantee's state, by outsourcing to state or local laboratories outside of the grantee's state, by outsourcing to contractor laboratories, or some combination of these methods. In addition, Program funding could be used to purchase supplies and equipment and to pay overtime for the processing of no-suspect casework.

DNA profiles that result from Program-funded analysis are to be entered into the Combined DNA Index System (CODIS) so that those profiles can assist in solving crimes. CODIS is a national DNA information repository, maintained by the Federal Bureau of Investigation, that allows local, state, and federal crime laboratories to store and compare DNA profiles from crime-scene evidence and from convicted offenders. As of April 2004, the national CODIS database contained 1,762,005 DNA profiles. CODIS is used by participating forensic laboratories to compare DNA profiles, with the goal of matching case evidence to other previously unrelated cases or to persons already convicted of specific crimes.

² Throughout this report, we use "FY 2001" to refer to the first year of the Program, since it was in that fiscal year that the Program was initiated. We acknowledge that the first year of the Program was primarily implemented during FY 2002.

Audit Approach

We audited the Program to evaluate the: 1) progress made toward the achievement of Program goals; 2) administration and oversight of the Program by OJP; 3) oversight of outsourcing laboratories by states receiving Program funds; and 4) allowability of costs charged to Program awards. While the Program will span multiple years, our audit focused on grants awarded during the first year of the Program. Grantee use of these funds, in many instances, is still on-going.

We reviewed documentation at OJP, conducted audits of four grantees and various co-grantees within those grantee states,³ and examined procedures of three contractor laboratories.⁴ The four grantees that we audited had received approximately 47 percent of the FY 2001 Program funding to pay for analysis of approximately 10,900 additional cases. In addition, the three contractor laboratories selected for review received contracts to provide DNA analysis services for 13 of the 19 grantees that outsourced analysis of their no-suspect cases.⁵

At each of the four grantees that we audited, we reviewed policies and procedures, documentation of DNA profiles contained in CODIS, reports describing the required onsite visits that grantees made to their contractor laboratories, and other compliance documentation. We reviewed this information to determine whether each grantee and co-grantee: 1) had adequate policies for chain-of-custody, evidence handling, quality control, and data review; 2) was uploading completed DNA profiles to CODIS in a timely manner; 3) was adequately monitoring their contractor laboratories; 4) was in compliance with relevant sections of the *Quality Assurance*

³ We audited state and local laboratories in Ohio, Texas, New York, and Florida.

⁴ We examined procedures at The Bode Technology Group in Springfield, Virginia; Orchid Cellmark in Germantown, Maryland, and in Dallas, Texas; and LabCorp in Durham, North Carolina.

⁵ Six of the 25 grantees (Kansas, Missouri, Maine, New Hampshire, Connecticut, Delaware) did not outsource the analysis of their no-suspect cases to contractor laboratories.

*Standards for Forensic DNA Testing Laboratories (QAS)*⁶ effective October 1, 1998; and 5) was accredited or certified and had a technical leader on staff.

We also audited each of these grantees' Program awards to determine whether costs charged to each award were allowable and properly supported, and whether each grantee was in compliance with selected award conditions. Those conditions included accurate and timely reporting, utilization of drawdowns, budget management and control, and contractor laboratory monitoring. We issued four separate audit reports that detailed the results of these individual audits.⁷

At each of the three selected contractor laboratories, we reviewed chain-of-custody and evidence handling policies and procedures, conducted laboratory tours, and reviewed other documentation to determine if the laboratory was in compliance with key Program requirements. Those requirements include maintaining current accreditation, adhering to relevant sections of the QAS, having an onsite technical leader, and maintaining controls over billing.

We also reviewed OJP's oversight of the Program to determine if awards were made in accordance with applicable legislation, and whether OJP adequately monitored grantee activities and compliance with Program requirements. In addition, we assessed OJP's efforts to monitor progress made toward achievement of the Program's stated mission.

The results of the various aspects of our auditing work are described in the following section.

⁶ The *Quality Assurance Standards for Forensic DNA Testing Laboratories (QAS)* provide DNA casework (forensic) laboratories with minimum standards they should follow to ensure the quality and integrity of the data and competency of the laboratory. Recipients of Program funding must also certify that DNA analysis performed with that funding will comply with the QAS. Additional details on the QAS are found in Appendix III of this report.

⁷ See Appendix I for additional audit report information.

Summary of Findings and Recommendations

Assessment of Program Achievements

In evaluating OJP's progress, we concluded that while Program grantees were funded for analyses of over 24,700 backlogged no-suspect cases, current data does not reveal whether increased laboratory capacity to process and analyze no-suspect cases is being met, particularly for those states that are strictly outsourcing DNA analyses.

Our analysis of data we collected from four grantee states indicated an increase in their forensic profiles uploaded to the national CODIS database during the period of their Program awards. However, this data did not distinguish between profiles from Program-funded no-suspect cases and other DNA uploads. For example, it is unclear from the data whether the increase in uploads is due to the Program funding, or whether it is because the laboratory hired, with its own funding, additional staff who helped increase productivity. Therefore, the data is inconclusive with regard to the achievement of the Program's mission.

In addition, we noted two issues that appear to affect the Program's success and impact:

- 1) Only 41 percent or approximately \$11.6 million of the \$28.5 million of FY 2001 Program funds awarded were drawn down as of May 31, 2004, nearly two years after awards were made.

In our judgment, significant delays in drawing down funding serve as indicators that state grantees are not using Program funds to increase their analytic capacity and reduce the backlog. Untimely implementation of each grantee's planned activities hinders the entire Program from achieving its objectives. Further, funds obligated and not drawn down by Program grantees in a timely manner prevent other viable DNA programs or Program grantees with more immediate needs from utilizing the funds.

- 2) Several profiles that resulted from Program-funded analysis had not been uploaded to CODIS as of our review. This was caused

primarily by delays in conducting required quality control reviews of the data. In some cases, nearly a year had passed since completed DNA profiles were returned by the contractor laboratories, yet they still had not been uploaded to CODIS.

The crime-solving potential of these profiles cannot be realized until they are uploaded into CODIS, where they can be matched to convicted offenders or other crime-scene evidence.

We also identified some weaknesses in OJP's development of Program goals and in its monitoring of progress toward the achievement of the Program's mission. First, at the time our audit began, OJP had not developed formal goals or objectives for the Program. Subsequent to our inquiries, Program officials provided us with a list of newly established goals and objectives for the Program. Neither the performance measurements nor the new Program goals monitored uploaded profiles, statistics which we believe would be helpful to Program management in monitoring the Program's progress. In addition, neither addressed the Program's mission of increased laboratory capacity. While Program management did make an attempt to revise the measurements to better reflect the Program's progress, we concluded that the proposed new measurements still would not have generated the type of data that would allow Program management to track the Program's progress toward achieving its mission.

We recommend that OJP: 1) ensure Program-funded DNA profiles are reviewed and uploaded to CODIS in a timely manner; 2) develop and follow procedures that will allow Program officials to more closely monitor grantee drawdowns, as a means to ensure that adequate progress is being made toward the achievement of each grantee's goals, and objectives; and 3) develop Program performance measurements, goals and objectives that support and allow for the monitoring of progress toward the achievement of the Program's mission.

OJP Administration and Oversight of the Program

We reviewed the OJP's administration and oversight of the Program and determined that weaknesses existed in three areas.

First, OJP issued second-year Program grants to states that had not drawn down, as of the time the awards were issued, any of their first-year

Program grant funds. Specifically, in FY 2003 OJP awarded seven grants for the second year of the program, totaling \$10.2 million, to states that had drawn down essentially none of their initial awards totaling \$11.8 million. We question OJP's awarding these additional funds to states that had not yet shown an ability to draw down their prior Program funds in a timely manner.

Second, the requirements instituted by Program management for contractor laboratories performing no-suspect casework analysis were inconsistent with those required for state and local laboratories performing the same work. Specifically, contractor laboratories are required to be accredited or certified by specific independent organizations, and to have a technical leader onsite. These conditions are not required for state or local laboratories that participate in the Program. During our review, we found five laboratories in the states of Ohio and Texas that were performing Program-funded no-suspect casework analysis but did not meet one or both of these requirements. In addition, we were unable to determine from documentation maintained by OJP whether all co-grantees in six additional grantee states met these same requirements. We believe that the level of scrutiny placed upon the contractor laboratories should similarly be placed upon the state and local laboratories.

Third, OJP has failed to ensure that the federal funds granted under the Program will benefit the national DNA database. Specifically, we identified one laboratory, the Fort Worth, Texas, Police Department, that was uploading Program-funded profiles to Texas' State DNA Index System (SDIS, the state level of the CODIS system) but those profiles were not being uploaded to the National DNA Index System (NDIS, the national level of the CODIS system). Only profiles uploaded to NDIS are able to aid investigations across state lines. Therefore, failing to upload to NDIS limits the crime-solving potential of the profiles. Upon further inquiry, we were informed that Fort Worth's profiles could not be uploaded to NDIS based upon a decision made by the FBI's NDIS Program Manager. Specifically, the Fort Worth Police Department, due to the closure of their DNA laboratory, had hired two contractors, one to analyze the no-suspect cases, and one to review the data produced by the first contractor and upload that data to CODIS. In December 2003, the Fort Worth Police Department was notified by the NDIS Program Manager that its data analysis contractor did not have the authority to upload forensic profiles for them. Since OJP's requirements for the Program only state that profiles are to be uploaded to CODIS (a term that encompasses the entire database system of indexes at the local, state, and national level), the Fort Worth Police Department was able to use

Program-funded contractor services without violating OJP requirements, even though the resultant profiles could not be added to NDIS. We take issue with such an arrangement, and believe that viable profiles (complete and allowable) that result from federal funding awarded by OJP should be uploaded to the NDIS for comparison with DNA profiles from other NDIS laboratories. During our audit, the Fort Worth Police Department took action to remedy the arrangements it had for data review, to ensure the profiles could be added to NDIS. However, the failure of OJP to ensure that all viable profiles be uploaded to NDIS remains.

We recommend that OJP: 1) more closely monitor previous grantees' progress in drawing down grant funds prior to awarding them additional funding; 2) continue to pursue de-obligation of funds for Program grantees that have shown their inability to draw down their Program funds in a timely manner and that are unable to provide satisfactory evidence that they will be able to do so in the near future; 3) ensure that Program requirements in future years require all laboratories analyzing no-suspect cases to meet the same requirements; and 4) ensure that Program requirements encourage and clarify that the expectation for grantees is ultimately the upload of profiles to NDIS.

Grantee Oversight of Contractor Laboratories

In assessing the adequacy of grantee oversight of contractor laboratories, we identified four grantee/co-grantee laboratories that did not maintain adequate documentation to substantiate that their oversight of their contractor laboratories met certain requirements imposed by the QAS. Specifically, these laboratories could not substantiate that a complete onsite visit of their contractor laboratory had been conducted or that their contractor's on-going compliance with applicable standards had been confirmed.

In addition, six laboratories, including three grantee/co-grantee laboratories and three contractor laboratories, had incomplete or outdated outsourcing policies or procedures relating to chain-of-custody or evidence handling of no-suspect cases. For example, the written policies of each of the three grantee/co-grantee laboratories failed to describe fully the procedures currently in use for outsourcing no-suspect casework evidence. In each instance, the procedures staff used, as described to us, appeared sufficient to safeguard no-suspect casework evidence. In addition, two

contractor laboratories' procedures failed to address an aspect of facility cleaning and decontamination. Finally, one contractor's procedures failed to describe methods to properly secure evidence after it had been received and logged in by the receptionist, but was awaiting the attention of technical personnel.

Allowability of Grantee Expenditures

We assessed the allowability of costs charged to Program awards by four grantees. While we found that they materially complied with most award requirements, we noted deficiencies at all four grantees and found some costs charged to Program awards that were unallowable and/or unsupported. As a result, we questioned costs of \$111,297 out of a total of approximately \$13.5 million awarded. In addition, we made nine recommendations addressed to OJP in separate audit reports we issued. Accordingly, these recommendations were not reiterated in this report.

We also assessed whether selected grantees/co-grantees complied with Program requirements pertaining to costs paid to contractor laboratories. We found that one co-grantee was overpaying for services received from its contractor laboratory, and we questioned \$44,640 in unallowable costs as a result. We recommended that OJP remedy these questioned costs.

Our audit results are discussed in greater detail in the Findings and Recommendations section of this report. Our audit objectives, scope, and methodology, and a list of audited contractor laboratories, grantees, and co-grantees appear in Appendix I. Audit criteria applied during our work is described in Appendix III.

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INTRODUCTION

A key objective of the Department of Justice's (Department) strategic plan is to improve the crime fighting and criminal justice administration capabilities of state and local governments. The use of DNA profiles (computerized records containing DNA characteristics used for identification) has become an increasingly important crime-fighting tool, and the Department has created funding opportunities to assist state and local governments in implementing, expanding, or improving their use of DNA technology. The Office of Justice Programs (OJP), National Institute of Justice (NIJ), is the primary Department component disseminating these funds.

The NIJ, through its Office of Science and Technology, supports research, development, and improvements in the fields of forensic sciences. The Office of Science and Technology's Investigative and Forensic Sciences Division (IFSD) operates the DNA Backlog Reduction Program with the goal of eliminating public crime laboratories' backlogs of DNA evidence.

The NIJ's DNA Backlog Reduction Program has two components: the *Convicted Offender DNA Backlog Reduction Program*, which provides funding to states to outsource analyses of convicted offender samples to contractor laboratories; and the *No Suspect Casework DNA Backlog Reduction Program* (Program), which provides funding to identify, collect, and analyze DNA samples from evidence collected in no-suspect cases. The NIJ defines a no-suspect case as a case in which there is biological evidence from a crime but where no suspect has been identified or the original suspect has been eliminated. Our audit focused on the administration and operations of the program relating to no-suspect cases.⁸

When no-suspect cases are analyzed, the resulting DNA profiles are compared to local, state, and national DNA databases to search for matches with profiles from other crime scenes or from convicted offenders. These comparisons are conducted through the national network of DNA databases, referred to as the Combined DNA Index System (CODIS), which we discuss on the following page.

⁸ We previously audited the program related to convicted offender samples. For the results of this audit see Audit Report No. 02-20, *The Office of Justice Programs Convicted Offender DNA Sample Backlog Reduction Grant Program*, issued in May 2002.

The Combined DNA Index System

CODIS is a national DNA information repository that allows local, state, and federal crime laboratories to store and compare DNA profiles from crime-scene evidence and from convicted offenders. The Federal Bureau of Investigation (FBI) oversees CODIS and provides participating laboratories with special software that organizes and manages its DNA profiles and related information. Through a hierarchy that encompasses national, state, and local indexes, CODIS identifies matches between DNA profiles from case evidence and a convicted offender or evidence from multiple crime scenes.

DNA profiles are uploaded into the national index (the National DNA Index System or NDIS) from the state indexes (SDIS), and from the local indexes (LDIS) into SDIS. The forensic laboratories at each level of the CODIS hierarchy decide which DNA profiles to upload to the next level, and conversely the state and national levels determine – generally based upon applicable state and federal legislation – which profiles they will accept from the local and state indexes.

Currently, CODIS contains two primary databases: the convicted offender database and the forensic database which contains the case evidence profiles. As of April 2004, NDIS contained 1,681,700 convicted offender profiles and 80,300 forensic profiles.

The FBI measures the effectiveness of CODIS by tracking the number of investigative leads that have been provided through CODIS' match capabilities. As of April 2004, the FBI reported a total of 16,695 investigations aided by CODIS.⁹

Determining the National Casework Backlog

The current DNA casework backlog is significant. A report submitted to Congress by the Attorney General in April 2004 estimated that over 540,000 criminal cases with biological evidence were awaiting DNA testing in state and local laboratories and at law enforcement agencies across the

⁹ CODIS's primary metric, the "Investigation Aided," is defined by the FBI as a case that CODIS assisted by producing a match between profiles (*i.e.*, linking two cases together, or linking a case profile to an offender profile) that would not otherwise have been developed.

country.¹⁰ Those cases include 52,000 homicides and 169,000 sexual assaults.

However, determining the full extent of the backlog is complicated by the fact that there are more than 17,000 law enforcement agencies that potentially could be retaining untested forensic DNA evidence. Only about 10 percent of the estimated backlog of casework samples have been submitted to state or local crime laboratories. Further, even if law enforcement agencies submitted these cases to state and local crime laboratories, most of those laboratories lack sufficient evidence storage facilities for the resulting volume of evidence. In addition, state and local laboratories have been challenged financially, have had difficulty filling positions with qualified candidates, and already have a backlog of evidence awaiting analysis from cases already submitted. Police departments often retain evidence samples without submitting them because they believe that crime laboratories will not accept the samples or would be unable to analyze them.

Because of the difficulty of quantifying the no-suspect casework backlog, our audit could not determine the impact that the Program had on reducing this backlog.

The No Suspect Casework DNA Backlog Reduction Program

The Program was developed to assist states in reducing the number of untested no-suspect cases so that the resultant DNA profiles could be uploaded to CODIS. The Program was authorized under the DNA Analysis Backlog Elimination Act of 2000. According to the NIJ, the mission of the Program is “to increase the capacity of state laboratories to process and analyze crime-scene DNA in cases in which there are no known suspects, either through in-house capacity building or by outsourcing to accredited private [contractor] laboratories.”

The Program was initiated with a Solicitation for applications to be submitted by September 2001. However, due primarily to the events surrounding September 11, 2001, the Solicitation deadline was extended into FY 2002. Therefore, while the Program was initiated in FY 2001, the

¹⁰ The report was based on a study conducted by Washington State University and Smith Alling Lane, a Tacoma, Washington, law firm.

first grant applications were received and reviewed in FY 2002, and the first awards were issued toward the end of that fiscal year.¹¹

Sources of the Program's \$28.5 million in funding included a portion of \$15.3 million transferred by the Attorney General from the Asset Forfeiture Fund Super Surplus,¹² and a portion of \$20 million appropriated in FY 2002 by Congress as part of funding for programs authorized under the DNA Analysis Backlog Elimination Act of 2000. A total of 27 states¹³ applied for awards in the Program's first year, and 25 received awards.¹⁴

Program Background

The 25 states that received funding proposed to analyze over 24,700 no-suspect cases using grant funds. The following table details the total grant awards that each state received and the number of no-suspect cases that they proposed to analyze with the funding:

¹¹ Throughout this report, we use "FY 2001" to refer to the first year of the Program, since it was in that fiscal year that the Program was initiated. We acknowledge that the Program was primarily implemented during FY 2002.

¹² The Asset Forfeiture Fund Super Surplus in the Department contains excess end-of-year monies that the Attorney General can use for authorized purposes.

¹³ For the sake of simplicity, we use the term "state" throughout this report to include both states and U.S. territories, such as Puerto Rico.

¹⁴ Of the 27 states that initially applied for awards in FY 2001/2002, one state withdrew its application and another state decided to withhold its application until the second year of the Program. The remaining 25 states all received awards.

**TABLE 1
PROGRAM GRANTEES AND FUNDS AWARDED**

Grantee State	FY 2002 Funds Awarded	Cases Funded¹⁵
Maryland	\$5,048,669	3,704
New York	5,039,535	3,146
Texas	3,379,688	3,160
Florida	2,795,086	1,500
Ohio	2,254,088	3,068
Wisconsin	1,630,000	850
Michigan	1,471,170	1,359
Arizona	1,052,282	1,729
Massachusetts	917,030	1,000
Alabama	690,246	463
New Mexico	550,245	785
Illinois	500,000	400
Oklahoma	500,000	500
Kansas	377,176	450
Maine	376,554	300
Missouri	348,412	513
Indiana	303,558	203
Kentucky	291,543	400
New Jersey	286,805	420
Nebraska	226,494	100
Puerto Rico	131,678	60
Delaware	129,413	48
Connecticut	117,163	300
New Hampshire	71,716	250
Vermont	20,829	30
TOTALS	\$28,509,380	24,738

Source: Office of Justice Programs

Grantees could use Program funding to analyze no-suspect cases in several different ways:

- "In-house" by DNA laboratories within the grantee's state;
- Outsource analysis to state or local laboratories outside of the grantee's state;

¹⁵ This number represents the total number of no-suspect cases that grantees proposed would be analyzed with Program funds, through both outsourcing and in-house analysis.

**TABLE 2
PROGRAM GRANTEES AND CONTRACTOR LABORATORIES**

Grantee State	Contractor Laboratory Selected				
	Bode ¹⁶	Orchid Cellmark ¹⁷	LabCorp ¹⁸	Fairfax Identity ¹⁹	Other ²⁰
Maryland	✓			✓	
New York		✓	✓		✓
Texas		✓			
Florida	✓			✓	✓
Ohio	✓	✓			
Wisconsin					✓
Michigan	✓	✓		✓	✓
Arizona		✓			
Massachusetts		✓			
Alabama	✓				
New Mexico					✓
Illinois		✓			
Oklahoma		✓			
Indiana					✓
Kentucky				✓	
New Jersey	✓	✓			
Nebraska					✓
Puerto Rico				✓	
Vermont		✓			

¹⁶ The Bode Technology Group, Inc. is located in Springfield, Virginia.

¹⁷ Orchid Cellmark has U.S. locations in Germantown, Maryland; Dallas, Texas; and Nashville, Tennessee.

¹⁸ Laboratory Corporation of America has 31 locations in the U.S.

¹⁹ Fairfax Identity Laboratories is located in Fairfax, Virginia.

²⁰ "Others" include Reliagene Technologies, Inc. in New Orleans, Louisiana; Identigene in Houston, Texas; Genelex Corporation in Seattle, Washington; GeneScreen in Dallas, Texas and Dayton, Ohio; DNA Reference Lab, Inc. in San Antonio, Texas; and University of Nebraska Medical Center in Omaha, Nebraska.

In addition to the direct costs of in-house analysis or outsourcing, Program funds also could be used for a number of other purposes in support of the analysis of no-suspect cases. These included paying for costs associated with oversight of contractor laboratories, purchasing supplies and equipment, or paying for overtime for the processing of no-suspect casework.

Program Structure

One stated objective of the Program was to foster cooperation and collaboration among all of the affected governmental agencies and departments, such as law enforcement agencies, crime laboratories, and prosecutors. According to the NIJ, the intent of this objective was to maximize the use of CODIS for solving no-suspect crimes. Therefore, states with more than one DNA laboratory were required to demonstrate that all of its laboratories were provided with the opportunity to participate in the Program. Consequently, while the awards were issued to one agency within each state, those grantees were required to coordinate and facilitate the participation of co-grantees as part of its award. Therefore, within this report and throughout our audit work we included co-grantees (*i.e.*, local laboratories or law enforcement agencies that also received funds from the Program), within the scope of our review.

The oversight of the funds distributed by the Program involved various entities. Specifically:

- 1) OJP awarded funds and administered the Program through the primary grantee in each state;
- 2) The primary grantee within each state oversaw the financial management of each award, including facilitating reimbursement to each of the co-grantees for their Program-funded expenditures, and collecting appropriate information from co-grantees to meet the required reporting obligations to OJP; and
- 3) Each of the grantees, whether the primary grantee or a co-grantee, was required to have oversight over their own Program-funded technical operations and activities, as well as those of any contractor laboratory they used as part of Program activities.

In several states, including Ohio and New York, the primary grantees formalized its relationship with each co-grantee in the form of a contract or agreement to ensure that each co-grantee understood their oversight and compliance obligations.

Each of these layers of accountability is addressed within this report. Finding I assesses Program achievements. Finding II addresses OJP's responsibilities of oversight, Finding III addresses each grantee's oversight over technical operations, and Finding IV addresses financial management of the primary grantee.

FINDINGS AND RECOMMENDATIONS

I. Program Impact and Achievement of Program Goals

We determined that the Program has been successful in funding the analysis of over 24,700 previously backlogged no-suspect cases, as projected by Program grantees. However, we were unable to determine whether the Program was achieving its mission of increasing laboratory capacity. Further, many grantees experienced lengthy delays in implementing their proposals and were not drawing down Program funds on a timely basis. We also determined that while the Program awards helped to increase the volume of no-suspect profiles uploaded to CODIS, all four of the individual grantees we audited experienced delays in uploading completed profiles. Finally, OJP had not developed substantive Program goals, and the Program's performance measurements were not adequate to assess whether it was achieving its stated mission.

Impact of the Program on Laboratory Capacity

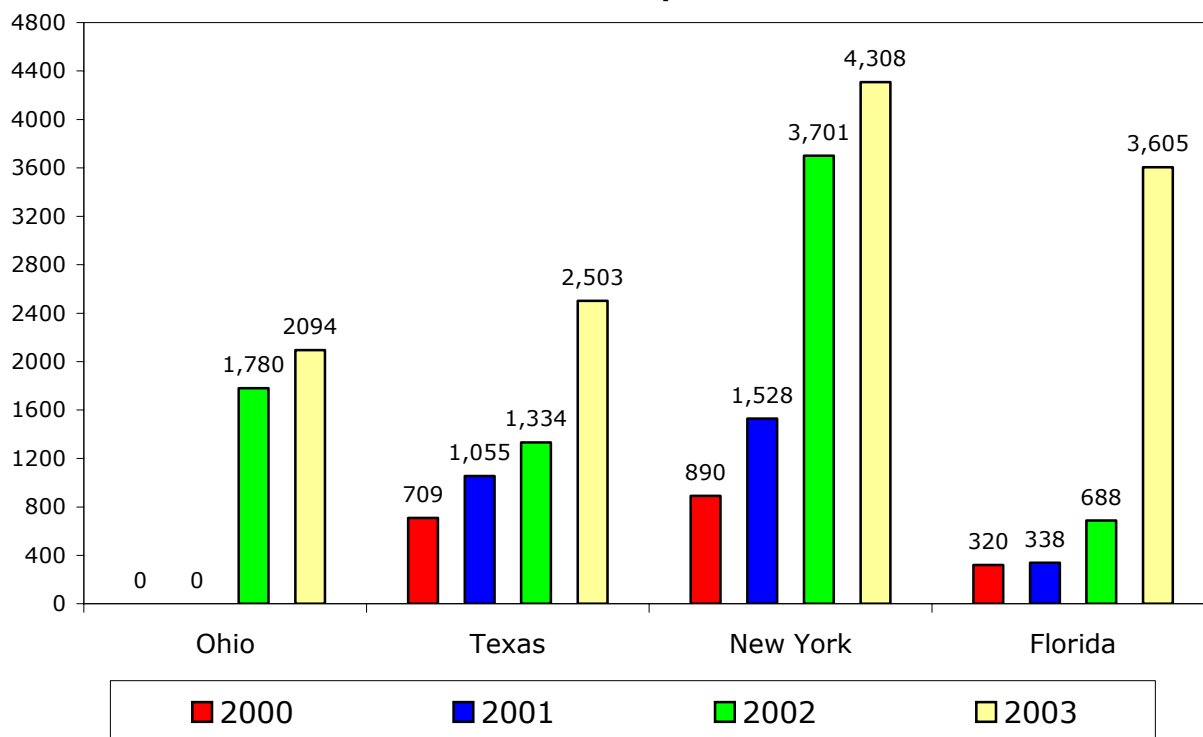
As stated previously, the mission of the Program is "to increase the capacity of state laboratories to process and analyze crime-scene DNA in cases in which there are no known suspects, either through in-house capacity building or by outsourcing to accredited private laboratories." To accomplish this, OJP awarded approximately \$28.5 million in funding to 25 states for the analysis of over 24,700 backlogged no-suspect cases during the first year of the Program.

We found that measuring the Program's progress was complicated by the lack of definitive data linking Program funding to trends observed in increased uploads of DNA profiles to NDIS from case evidence. For example, we collected NDIS upload statistics for each of the four grantees we audited to determine how the Program awards affected the number of complete²¹

²¹ A profile's completeness is determined by whether it contains all of the points of information that the FBI requires for an NDIS profile to be considered. Therefore, we only included complete profiles in our productivity calculations.

profiles that those states were able to upload to NDIS prior to and during the award period. Those statistics are illustrated on the following graph:²²

FIGURE 2
Forensic Profiles Uploaded to NDIS



Source: Program grantees

As the figure illustrates, all four of the grantees demonstrated a marked increase in total complete profiles analyzed and uploaded to NDIS after receiving their Program awards. However, since these increases were inclusive of both the no-suspect cases funded by the Program as well as other DNA cases that the laboratories were analyzing with local funding, we cannot conclusively state the extent to which this data establishes that the Program met its mission. For example, it is unclear from the data whether the increase in uploads is due to the Program funding, or whether it is because the laboratory hired, with its own funding, additional staff that helped increase productivity.

²² Ohio did not join NDIS until November 2000 and had a major computer system malfunction in 2001, so no profiles went to NDIS in those years. However, profiles for Ohio uploaded to SDIS from 2000 through 2003 were 136, 558, 1099, and 2084, respectively.

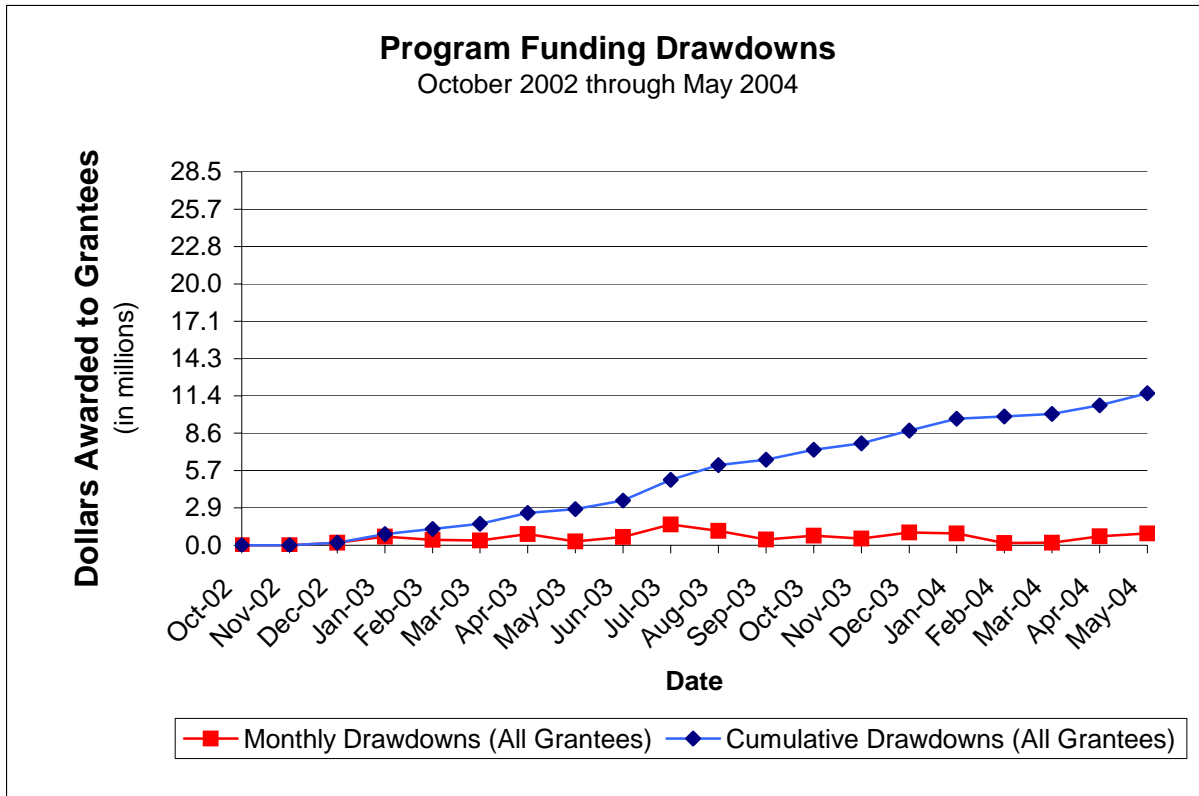
When considered in conjunction with delays in the drawdown of funding and delays in the upload of profiles, two issues we discuss later in this section, it becomes even more apparent that without better data a concrete determination about the Program's achievement of its mission is not possible. For example, for those of our four auditees that had not materially drawn down Program funding, we would conclude that the Program did not account for the increase in productivity demonstrated in the previous chart.

Untimely Utilization of Program Funds

During our audit fieldwork, we noted that many of the grantees had drawn down very little of their award funds, or in some cases had not drawn down any funds at all.

As of May 31, 2004, only \$11.6 million, or about 41 percent of the \$28.5 million awarded from FY 2001 Program funds, had been drawn down by the 25 Program grantees. For the four grantees included in our audit, only \$5.9 million of the \$13.5 million awarded, or 44 percent, had been drawn down as of the same date. While these awards were made between July 2002 and September 2002, the largest grantee in terms of dollars awarded (Maryland), and two additional grantees (Delaware and Connecticut), had not drawn down any funds as of May 31, 2004. These three grantees received awards totaling nearly \$5.3 million. The following chart illustrates the drawdown trends for this Program through May 2004:

FIGURE 3



While the drawdown amounts are not a definitive indicator of specific grantee Program activities, we believe that drawdowns are an important indicator of overall grantee progress toward the achievement of proposed objectives.

For example, the award to the New York State Division of Criminal Justice Services (DCJS) in the amount of \$5.04 million, with a term of one year, was awarded in September 2002. Yet, as of May 2004, only \$500,000 had been drawn down, or less than 10 percent of the award amount. According to grantee officials, multiple reasons accounted for their delayed drawdowns, including the time it took to establish separate contracts with the co-grantees across the state. In many cases, these contracts were not finalized until August 2003, nearly a year after the 1-year award was made. Further, grantee officials in New York stated that amounts drawn down may not be the best indicators of progress actually being made. Because funds may have been spent or obligated, but not yet drawn down, they believed that the amount of funds actually spent and obligated would provide a better gauge. However, as of April 2004, New York reported total funds spent and obligated of \$2.2 million, which is still only 45 percent of the total awarded.

Further, one co-grantee in the state of New York estimated that its program will not be completed until December 2004, or 27 months after the initial 1-year award was made.

In another example, the Texas Department of Public Safety (TXDPS), which had drawn down approximately \$2 million of its \$3.4 million award as of May 2004, cited delays in initiating contracts with the co-grantees in its state as a reason for delays in expending funds. Further, the Florida Department of Law Enforcement (FDLE), which had drawn down about \$2 million of its \$2.8 million award, stated that backlogs at its contractor laboratories (*i.e.*, contractor laboratories' inability to process all the cases it was receiving from various clients, delaying results back to those clients) were preventing it from expending its remaining award funds. The FDLE anticipated completing drawdowns in December 2004. Finally, as of May 2004, the Ohio Bureau of Criminal Identification and Investigation (Ohio BCI&I) had drawn down approximately \$1.4 million of its \$2.3 million award. Officials at the Ohio BCI&I cited delays in the submission of no-suspect cases by law enforcement agencies, and the screening of evidence by the laboratory for items that were most likely to produce viable DNA results.

In sum, grantee drawdowns are one gauge of the overall progress being made toward achieving grantees' proposed goals. Program awards were made for an initial period of one year, and the above examples illustrate that many grantees have not made timely progress in completing their proposed programs, and have had to obtain extensions from the NIJ. Not only does this practice hinder the timely achievement of the Program's overall mission, but obligated funds not being utilized by this Program could have been used by other programs or grantees with more immediate needs for the funding.

Profiles Not Uploaded to CODIS

An additional factor that affects the overall success of the Program is whether Program-funded profiles are being uploaded to CODIS. During our audit work at various state and local laboratories, we observed that approximately 2,538 of the DNA profiles that had resulted from Program-funded analysis had not been uploaded to CODIS. Specifically, we noted various laboratories in all four grantee states had received back data from their contractor laboratories for cases analyzed by those contractors, but

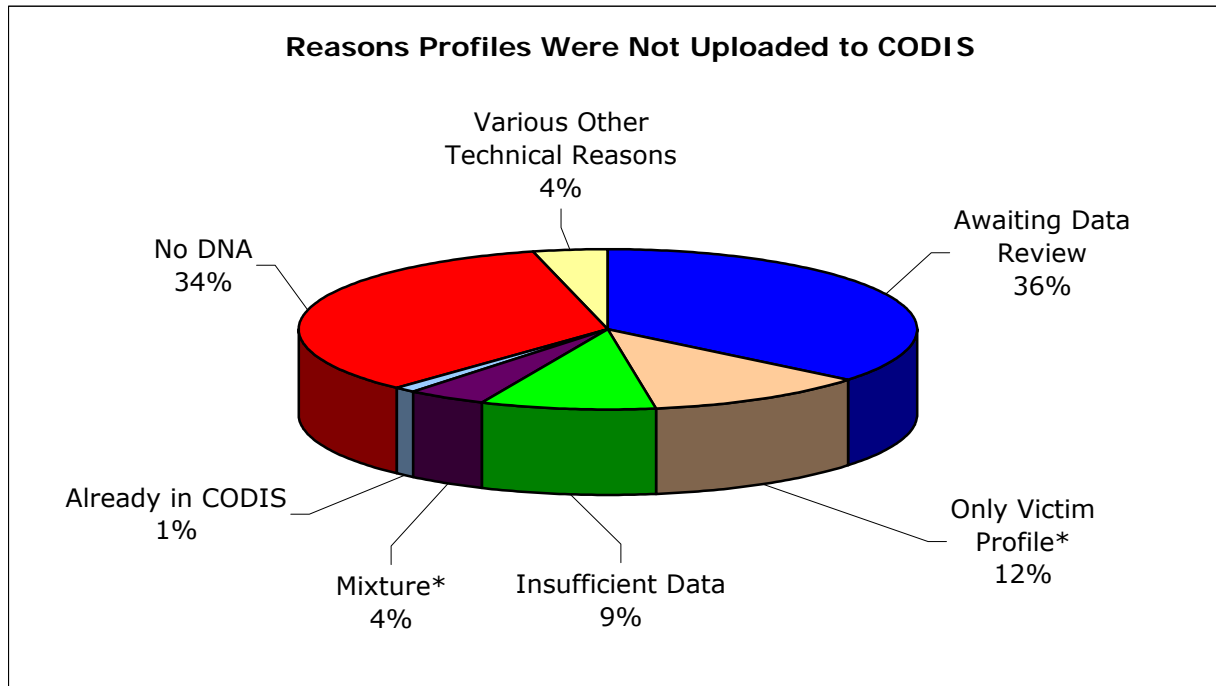
that the resultant DNA profiles had not been uploaded to CODIS as of the time we reviewed the data.

There is always a delay between when the data is received from a contractor and when it is uploaded by the state to CODIS. This time lag is due to the fact that, after receiving the contractor data, states must address the requirements of the *Quality Assurance Standards for Forensic DNA Testing Laboratories* (QAS), effective October 1, 1998, prior to uploading the data to CODIS. The QAS require that a forensic laboratory ensures that the data it receives back from its contractor meets certain quality standards. As part of this, the laboratory must conduct a technical and administrative review for each case analyzed by the contractor. However, as detailed below, grantees varied in their ability to address the QAS requirements in a timely manner.

To assess the reasons that might account for our observation of profiles not being uploaded to CODIS, we analyzed data provided by the grantees and co-grantees. As of April 2004, 2,538 profiles from Program-funded cases returned to the grantees had not been uploaded to CODIS. We reviewed the reasons provided by the grantees and co-grantees for this delay and summarized in the following figure.²³

²³ Due to the unique circumstances regarding the Fort Worth Police Department's inability to upload profiles to NDIS, we excluded their results from this analysis. This issue is further discussed in Finding II of this report.

FIGURE 4



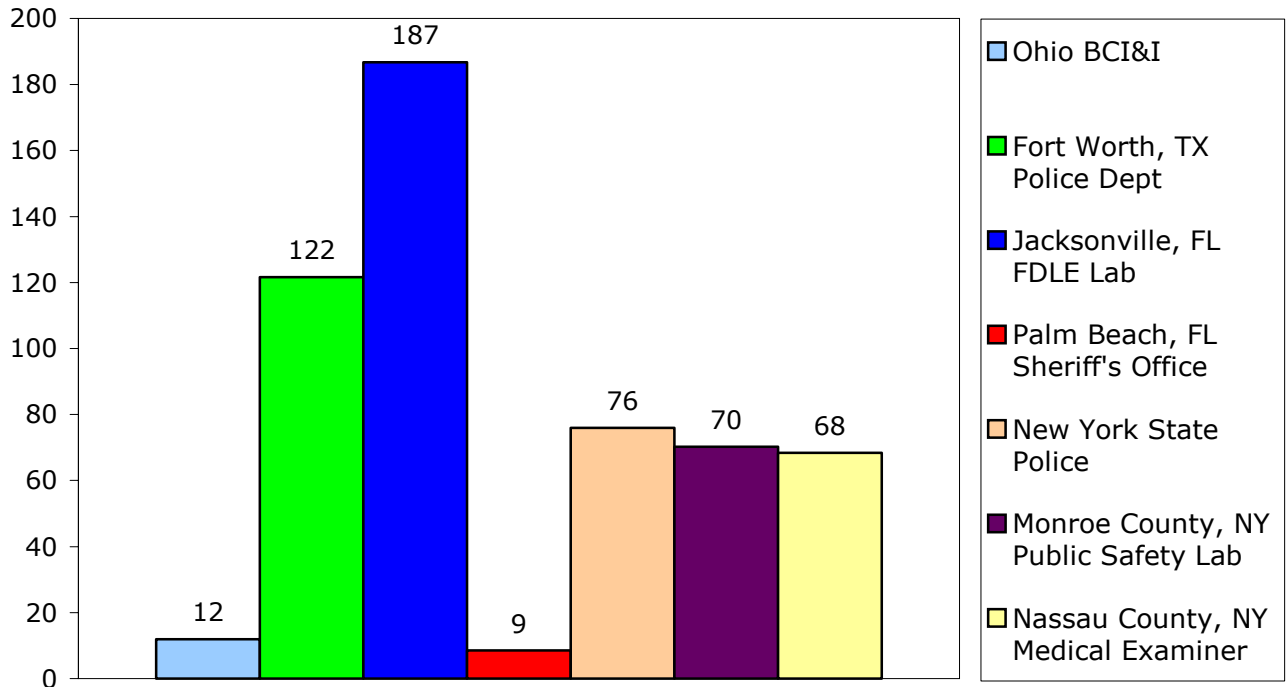
Source: Program grantees and CODIS reports

* "Mixture" refers to profiles that reflect DNA from multiple persons and are too complex to be appropriately included in CODIS. "Only Victim Profile" refers to those profiles where only the victim's DNA was found on the evidence. Victim DNA profiles are not permitted in NDIS.

The most common reason provided for profiles not being uploaded was "Awaiting Data Review." In its *Solicitation for the No Suspect Casework DNA Backlog Reduction Program (FY 2001)* (Solicitation), the NIJ required that profiles be "expeditiously uploaded into CODIS." While no standards or criteria govern how much time grantees are permitted before they should upload analyzed data to CODIS, profiles that have not been uploaded to CODIS cannot be compared and matched to other forensic and offender profiles, limiting the crime-solving benefits that those profiles can have.

We further examined this issue for seven grantees and co-grantees. We judgmentally selected 25 cases and, as part of a larger review of those cases, determined the length of time it took to upload the profiles once the DNA results were returned by contractor laboratories for each case where resultant profiles were uploaded. The results of that analysis are summarized as follows:

**FIGURE 5
Average Days for Data Review**



Source: Grantee case files and CODIS reports

These results illustrate the vast differences between the various grantees and co-grantees. For example, the Palm Beach Sheriff's Office and the Ohio BCI&I were able to conduct the reviews required by the QAS necessary for upload to CODIS within an average of 9 days and 12 days, from the time the analyzed data was returned by the contractor laboratory. However, it took the FDLE's Jacksonville laboratory and the Fort Worth Police Department²⁴ an average of 187 days and 122 days to conduct these reviews and upload the data to CODIS.

Further, we noted many additional cases where data had not been reviewed and profiles had not been uploaded that exceeded the times illustrated above. For example, we noted cases for the FDLE's laboratories in Jacksonville and Tampa Bay where analysis results were returned by the contractor laboratories in June 2003 and August 2003, but the profiles had not been uploaded to CODIS when we conducted our review in March 2004.

²⁴ The Fort Worth Police Department contracted with the University of Northern Texas for the data review and upload to CODIS.

We believe that these data review delays are excessive and not in accordance with the intent of the Program. DNA profiles not reviewed cannot be uploaded to CODIS and therefore cannot be linked to other crime-scene evidence or offender profiles, undermining the mission of the Program.

The second most common reason, "No DNA," is the result of insufficient DNA being detected during the screening process of the evidence to yield a viable sample for DNA analysis. This reason is not a problem to be addressed, particularly with old evidence from unsolved crimes, since the DNA present on the evidence may have deteriorated over time and may not be of sufficient quantity to yield a DNA profile.

As discussed in the following section, the lack of program goals and objectives, combined with the previously discussed delays in utilizing Program funding and in uploading profiles to CODIS, led us to question whether OJP had established adequate performance measurements to monitor the Program's progress.

Program Goals and Performance Measurements

In response to the Government Performance and Results Act, which requires agencies to develop strategic plans that identify their long-range goals and objectives and establish annual plans that set forth corresponding annual goals and indicators of performance, OJP developed one performance measurement for the Program. The stated mission for the Program is "to increase the capacity of state laboratories to process and analyze crime-scene DNA in cases in which there are no known suspects, either through in-house capacity building or by outsourcing to accredited private laboratories." This mission directly supports the following Department strategic plan goal and objective:

- Goal: To prevent and reduce crime and violence by assisting state, tribal, and local community-based programs.
- Objective: To improve the crime fighting and criminal justice administration capabilities of state, tribal, and local governments.

We reviewed OJP's progress toward achieving the single performance measurement established for the Program: *Number of DNA samples/cases processed in cases where there is no known suspect*. For this measurement,

OJP had set a goal of 24,800 samples/cases for FY 2002. However, due to various factors, including the events of September 11, 2001, disbursement of funding for this Program was delayed and not completed until September 2002, and OJP did not meet this measurement. The Program funded the analysis of 24,738 samples or cases in its first year. According to information provided by the NIJ, only 10,609 cases had been analyzed as of December 31, 2003. In FY 2003 and FY 2004, OJP established goals of 33,850 and 43,000 samples or cases, respectively.

Even though the targets established for the Program in FY 2002 were not achieved, we sought to further analyze the established performance measurement as it relates to the Program's mission. While its mission is to increase the capacity of state laboratories to process and analyze crime-scene DNA in no-suspect cases, the Program's performance measurement merely tracks no-suspect samples or cases that have been "processed." We concluded that this measurement does not gauge whether the Program is making progress toward the achievement of its stated mission.

In discussing the performance measurement with Program management, they stated that they had attempted to add the following data points to their performance measurement in FY 2003: 1) number of profiles entered into CODIS; 2) number of profiles entered into NDIS; 3) number of investigations aided; and 4) number of cases solved.

According to documentation provided by Program management, the OJP's budget office informed them that they could not make changes to their performance measures since they had already been entered into the "*Performance Measurement Table*" and been approved. However, while these measurements may have assisted Program management in monitoring certain Program achievements, these revised performance measurements still would not generate the type of data (*i.e.*, laboratory capacity prior to and during the Program) that would allow Program management to track the Program's progress toward achieving its mission of increasing laboratory capacity.

In addition to assessing whether OJP had met the performance measurement it had established, we assessed whether there were other performance measurements that could be established that would provide decision-makers within the Department and Congress information on whether the Program was meeting its goals and mission. We concluded that the Program performance measurement does not address whether the

Program is aiding in reducing the national backlog of no-suspect casework samples awaiting analysis. While reducing the backlog is not part of the official mission of the Program, monitoring this information would be useful in determining whether Program funding is having a positive effect on the national no-suspect casework backlog, or whether a decrease in the national no-suspect casework backlog has the beneficial effect of increasing laboratory capacity across the country.

In a report issued in November 2003, the General Accounting Office (GAO)²⁵ cited concerns that performance measurements for many NIJ programs, including this Program, were inadequate to assess results.²⁶ The report stated that the Program's one performance measurement was not outcome-based; rather, it was merely an intermediate measure. GAO recommended that the NIJ reassess the measures used to evaluate the Office of Science and Technology's progress toward achieving its goals and focus on outcome measures to better assess results where possible. Further, in a prior report issued by the Office of the Inspector General (OIG), deficiencies were noted relating to the adequacy of data being collected by OJP to monitor performance measurements for another DNA-related program.²⁷

In addition, when we began our audit work in November 2003, we asked Program officials for the goals and objectives established for the Program. OJP officials responded that management personnel for the Program had recently changed, but those officials were unaware of any formal goals and objectives for the Program. In response to our inquiry, OJP officials developed the following goals and objectives for the Program:

- Ensure that state and local forensic casework laboratories receive funding to reduce their no-suspect case backlogs;
- Make future awards in a timely manner;
- Ensure consistency among applicants;

²⁵ Effective July 7, 2004, the General Accounting Office (GAO) became the General Accountability Office. The acronym remains the same.

²⁶ GAO Report No. 01-198, titled *Better Performance Measures Needed to Assess Results of Justice's Office of Science and Technology*, dated November 2003.

²⁷ The prior OIG audit report, titled *The Office of Justice Programs Convicted Offender DNA Sample Backlog Reduction Grant Program*, Report No. 02-20, was issued in May 2002.

- Ensure funding drawdowns meet program and application goals;
- Provide better award monitoring; and
- Collect and report accurate statistics and performance measures.

In our judgment, none of these goals and objectives allow OJP to assess whether the Program is making progress toward achieving its mission of increasing the capacity of state laboratories to process and analyze no-suspect DNA from crime scenes. Some examples of such goals and objectives could include: 1) To increase grantee laboratory capacity by a certain percentage, and 2) To reduce grantees' no-suspect backlogs by a certain percentage.

Recommendations

We recommend that OJP:

1. Develop and implement procedures that will allow Program officials to more closely monitor grantee drawdowns as a means to ensure that adequate progress is being made toward the achievement of each grantee's goals and objectives.
2. Ensure that timely uploads of Program-funded profiles are performed by all grantees.
3. Develop Program goals and objectives that support the achievement of the Program's mission of increasing laboratory capacity, and implement a system to track these goals.
4. Develop performance measurements that allow the monitoring of progress toward achieving the Program's mission, such as monitoring laboratory capacity prior to, during, and at the conclusion of the Program.

II. Administration and Oversight of the Program

We reviewed OJP's administration and oversight of the Program, and determined that weaknesses existed in three areas: 1) OJP issued second-year Program grants to states that had not drawn down any of their first-year Program grant funds by the time the new awards were issued; 2) the requirements instituted by the Program for contractor laboratories performing no-suspect casework analysis were inconsistent with those required for state and local laboratories performing no-suspect casework analysis; and 3) OJP failed to ensure that the federal funds granted under the Program will benefit the national DNA database. These weaknesses hinder the ability of Program management to maximize Program accomplishments and ensure consistent operational quality of laboratories funded for no-suspect casework analysis.

In August 2001, OJP developed and issued Program requirements in the Program Solicitation. The Program Solicitation specified general grant guidelines and restrictions, as well as more specific requirements. Grantees were required to ensure that all analyses of no-suspect cases under the Program complied with the QAS, and that any profiles resulting from these analyses be uploaded expeditiously to CODIS. Further, the grantees were to ensure that their contracting laboratories:²⁸

- are accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB), or certified by the National Forensic Science Technology Center (NFSTC);
- adhere to the most current QAS issued by the FBI Director;
- have a Technical Leader located onsite at the laboratory;
- provide quality data that can be easily reviewed and uploaded to CODIS;
- have the appropriate resources to screen evidence (if applicable); and
- only be paid for work that is actually performed.

²⁸ See Appendix III for further information regarding Program specific requirements.

We reviewed OJP’s administration and oversight of the Program to determine if grants were made in accordance with applicable legislation, and whether OJP adequately monitored grantee progress and compliance with Program requirements. In addition, we assessed whether the Program-specific requirements instituted by OJP fully supported the Program’s mission. We identified the following weaknesses in OJP’s administration and oversight of the Program.

Additional Funds Awarded to Grantees not Drawing Down Initial Funds Timely

In FY 2003, OJP awarded grants for the second year of the Program, totaling \$10.2 million, to six states that had drawn down none of their initial awards, and to one state (New Mexico) that had drawn down less than 1 percent of its initial award, as of the date the second-year grants were made. The initial awards to these seven states totaled \$11.8 million. Further, for six of the seven states, the applications requested funding for purposes that were partially or completely identical to those identified in their initial award application.²⁹

**TABLE 3
FY 2003 Program Awards to States Unable to
Timely Use FY 2001 Grant Funds**

State	FY 2001 Award Date	FY 2001 Grant Amount	FY 2003 Award Date	FY 2003 Grant Amount
Maryland	09/05/2002	\$5,048,669	09/24/2003	\$2,072,362
New York	09/20/2002	\$5,039,535	09/16/2003	\$5,482,020
New Mexico	08/13/2002	\$550,245	07/11/2003	\$674,414
Oklahoma	08/22/2002	\$500,000	07/11/2003	\$244,500
New Jersey	08/07/2002	\$286,805	06/10/2003	\$1,272,254
Nebraska	09/10/2002	\$226,494	07/11/2003	\$125,086
Connecticut	08/05/2002	\$117,163	09/10/2003	\$346,758
Total		\$11,768,911		\$10,217,394

²⁹ We excluded from this analysis states that had begun to draw down more than trace amounts of their grant funds by the time they were awarded their second-year grant.

The two largest grantees in the initial award, Maryland and New York, had not drawn down any of their FY 2001 funds when OJP awarded them second-year funding. As shown in the table, both states received their second grant roughly a year after their initial award. Their applications for the second-year funds requested resources to pay for similar transactions as were funded in their initial award. For example, Maryland was funded in FY 2001 for the outsourcing of 3,704 no-suspect cases. Similarly, OJP awarded it funds for the outsourcing of an additional 500 no-suspect cases in the FY 2003 award. In New York, three laboratories (Monroe, Nassau Counties, and the New York State Police) received funding for the outsourcing of cases in both FY 2001 and FY 2003.

Oklahoma, Connecticut, and New Jersey also had not drawn down any of their initial awards when they received second-year funding for activities similar to the first year. We noted that New Jersey, in particular, received a significant increase in its second-year grant even though it had failed to establish a pattern of drawing down its first-year Program funds efficiently. According to application documents, New Jersey requested this increase to outsource a significantly larger number of no-suspect cases than was requested in the first year (1,500 no-suspect cases in FY 2003 versus 220 in FY 2001).

While these states may have legitimate bases for requesting funding for additional cases, based upon the number of cases in their backlog we question OJP's awarding additional funds to states that had failed to establish a pattern of drawing down their current Program funds in a timely manner.

We noted that although Nebraska had not drawn down any of its initial award at the time it received additional Program funding, unlike the previous states mentioned, Nebraska significantly changed its funding request in its FY 2003 grant application. The initial award was provided to pay for personnel and consultant/contractual agreements so the Omaha Police Department could outsource the analysis of no-suspect cases. The FY 2003 award funded equipment and supplies for the Nebraska State Patrol Crime Laboratory to help it become ASCLD/LAB accredited. The significant variance in its two application requests may have provided OJP with appropriate justification for the FY 2003 grant award.

We identified one instance in which OJP intervened with a grantee that stated it was unable to draw down Program funds. OJP awarded an FY 2003

grant to the city of Albuquerque, New Mexico, which, at the time of the grant award, had drawn down less than 1 percent of its initial award. However, after receiving the second Program grant, Albuquerque grantee management communicated to OJP the significant problems it was experiencing in expending its initial award funds, problems that did not appear reconcilable. Consequently, OJP management began to take steps to de-obligate both grants awarded to the city at the time of our fieldwork in May 2004.

In light of these findings, we concluded that OJP should more closely monitor previous grantees' progress in using grant funds prior to awarding additional funding. Further, we recommend that OJP continue to pursue de-obligation of funds for Program grantees that have failed to draw down their Program funds in a timely manner and are unable to provide satisfactory evidence that they will do so in the near future.

Inconsistent Requirements for Laboratories Performing No-suspect Casework Analysis

As previously mentioned, the Solicitation issued by OJP to initiate the Program included several requirements for outsourcing analyses to contract laboratories.

During initial audit fieldwork conducted in December 2003, we determined that three of the six laboratories within the state of Ohio which were participating in the grant as co-grantees did not meet the requirements that were imposed upon the outsourcing or contract laboratories. The primary differences between the requirements imposed on state or local laboratories and contractor laboratories are that contractor laboratories are required to be accredited/certified by ASCLD/LAB or NFSTC and are required to have a technical leader onsite. We considered this to be a material inconsistency in the Solicitation requirements, since these co-grantee laboratories within the state of Ohio were being treated similarly to a contract laboratory and were being reimbursed on a flat-fee basis for each no-suspect case analyzed under the grant.

Specifically, we found that the Canton-Stark County, Cuyahoga County, and Mansfield Police Department laboratories all lacked either accreditation or certification. In addition, we found that these same three laboratories did not have a permanent technical leader onsite, even though they did have a technical leader available to them for onsite consultation. Since the requirements state that outsourcing laboratories must "have a

technical leader that is located onsite at the laboratory where the testing is being performed," we concluded that these laboratories do not meet this requirement.

We designed our fieldwork in the other grantee states, including Florida, Texas, and New York, to include sufficient review to determine if similar deficiencies were noted with the co-grantee participants in those states. While we noted no exceptions in Florida or New York, we identified the following conditions in Texas:

- For the TXDPS (Austin) laboratory, we found that the technical leader position had been vacant since November 2003. While the vacancy was posted, no one had been hired as of our fieldwork in March 2004, and the technical leader from the TXDPS's Houston laboratory was also serving as the technical leader in Austin. The technical leader meets the qualification requirements for this position, but she was not onsite to accomplish her responsibilities at the TXDPS (Austin) laboratory. During this period, the laboratory was performing grant-funded in-house analysis of no-suspect cases.
- For the TXDPS (McAllen) laboratory, we found that the technical leader position has been vacant since July 2003. The technical leaders of the Corpus Christi (from July 2003 through February 2004) and Lubbock (from February 2004 to the present) laboratories have been available to provide technical oversight to the McAllen laboratory. While both meet the qualifications for being a technical leader, neither is located onsite. During this period, the TXDPS (McAllen) laboratory was performing grant-funded in-house analysis of no-suspect cases.

None of the above-mentioned laboratories failed to meet the criteria imposed by OJP for state and local laboratories (i.e., compliance with the QAS), but they did fall short of the requirements that OJP imposes on contractor laboratories (see page 22). However, as discussed previously, we believe that all laboratories, whether state, local, or contractor, should be held to the same standards.

To assess whether similar conditions might exist at other laboratories, we reviewed the grant files of the remaining 21 grantees to determine whether they, or their co-grantees, were outsourcing the analysis of no-suspect cases (making this issue not applicable for those laboratories) or completing the analysis in-house. If a laboratory was completing the analysis in-house, we reviewed the grant file records to determine, where

possible, whether that laboratory was ASCLD/LAB accredited or NFSTC certified, and whether the laboratory had an onsite technical leader. In most instances, we were able to determine from OJP grant file documentation that grantees and co-grantees in each state met these requirements.

However, for the following states OJP grant file documentation was not sufficient to indicate whether grantees and/or co-grantees doing in-house analysis met the applicable requirements: Arizona, Delaware, Kansas, Maine, Michigan, Missouri. We cite these states only as an indicator of the number of grantees and co-grantees that, similar to the conditions in Ohio and Texas, may not fully meet the same requirements being imposed upon the contractor laboratories.

We consider this to be a vulnerability within the Program's administration in that the level of scrutiny placed upon the contractor laboratories is not similar to that placed upon the state and local laboratories. Of particular concern is the issue of accreditation/certification. A laboratory's accreditation or certification signifies that an independent external organization has confirmed the laboratory's compliance with the QAS and the overall quality of their operations. By not requiring Program grantees to be accredited or certified, Program management have deprived themselves of a valuable assurance of grantee compliance with Program requirements, including compliance with the QAS, thereby hindering their own administration of the Program. Therefore, we recommend that OJP ensure that future Program Solicitations require all laboratories – whether in-house or contractor – analyzing no-suspect cases to meet the same accreditation/certification requirements.

Failure to Ensure Program Funding to Support the National DNA Database

In the process of collecting information to complete an analysis of whether no-suspect cases were being uploaded into CODIS, we were informed of a complication that had developed at the Fort Worth Police Department (FWPD) that prevented the profiles resulting from their grant-funded analysis from being uploaded to all levels of CODIS.

Specifically, the FWPD – due to the closure of its DNA laboratory in mid-2002 – had hired both an analysis contractor laboratory to analyze the no-suspect cases and a data review contractor to review and upload the data

to CODIS. The FWPD did not have CODIS access, nor were its staff qualified to perform the data review of the analysis contractor's results.

In late December 2003, the TXDPS was informed by the FBI's NDIS Program Manager that the FWPD's data review contractor, who did have access to CODIS to upload missing person's profiles, could no longer serve as the agent in charge of uploading FWPD's forensic profiles. Further, none of the profiles that this contractor reviewed past the point of notification could be uploaded without a separate review by staff of a CODIS-participating public laboratory.

However, at the time of our audit in March 2004, the FWPD was continuing to use the services of the data review contractor laboratory since the NDIS Program Manager's decision did not prevent the profiles confirmed and uploaded by that laboratory from being uploaded to SDIS (*i.e.*, the state level of CODIS). Consequently, the profiles were still searchable and could therefore provide aid to investigations within the state.

The Solicitation for the Program did not clearly specify that laboratories are required to upload grant-funded profiles to NDIS (*i.e.*, the national level of CODIS), if complete results are obtained. Rather, the Solicitation required that the grantees include in their applications a plan for, among other things, submission of profiles that result from grant-funded analysis to CODIS. Since "CODIS" is a term used generically to convey the entire database system of indexes at the local, state, and national levels, a grantee could argue that upload of profiles only to the local level, or to the local and state levels, meets the requirements of the Solicitation. In fact, FWPD management made such an argument to us regarding the profiles that resulted from the grant-funded analyses completed.

We disagree with such a conclusion. While the Solicitation and the DNA Analysis Backlog Elimination Act of 2000 make references to CODIS, we believe that federal funds awarded by OJP should be used for analysis when all viable (*i.e.*, complete and allowable) resulting profiles will be uploaded to NDIS, thereby contributing to the crime-solving potential of the national database. Therefore, we encourage OJP to develop future Solicitations to clarify that the expectation of grantees is ultimately to upload all viable grant-funded profiles to NDIS.

Further, we recommend that OJP verify that the TXDPS has implemented the necessary measures to ensure that the FWPD's

grant-funded profiles eventually will be uploaded to NDIS. The FWPD's Laboratory Manager stated during our fieldwork in March 2004 that he was aware that action would need to be taken to ensure that the profiles were uploaded to NDIS. However, he stated that the issue was much larger than just his laboratory, since he would most likely need to rely on assistance from another local laboratory within the state to perform the reviews for him. In addition, he said he would need assistance from the Texas CODIS Administrator to resolve the issue.

According to communications we have had with both the FWPD and the TXDPS since that time, the Manager of Field Laboratories at the TXDPS has begun action to resolve this matter. The resolution underway uses grant funds to hire a contract worker to review and upload to CODIS the profiles that were analyzed by Orchid Cellmark (Dallas) for the FWPD under its participation in the Program grant. This corrective action is to our satisfaction, since it will ensure that profiles are uploaded to NDIS, not just to SDIS. However, OJP should ensure that such resolution is completed.

Recommendations

We recommend that OJP:

5. Monitor grantees' progress in drawing down grant funds prior to awarding them additional funding, and closely examine the reasons additional funding is requested. If funding is awarded, a justification supporting the decision should be carefully documented, specifically addressing the rationale for the untimely drawdowns.
6. De-obligate funds for Program grantees that have failed to draw down their Program funds in a timely manner and are unable to provide satisfactory evidence that they will be able to do so in the near future.
7. Ensure that Program requirements in future years stipulate that all laboratories analyzing no-suspect cases to meet the same accreditation/certification requirements, regardless of whether the laboratory is private or public.
8. Ensure that future Solicitations clarify that the expectation of grantees is ultimately to upload all viable grant-funded profiles to NDIS.

9. Verify that the TXDPS has implemented the necessary measures to ensure that the Fort Worth Police Department's grant-funded profiles will be uploaded to NDIS.

III. Grantee Oversight of Contractor Laboratories

In assessing the adequacy of grantee oversight of contractor laboratories, we identified four laboratories that had inadequate documentation to substantiate that oversight of their contractor laboratory met Program requirements. Six laboratories also had incomplete or outdated policies or procedures relating to the outsourcing of no-suspect cases. Without complete and current documented policies or procedures, laboratory management cannot ensure that all appropriate staff comply with established methods, and management is hindered in its ability to detect and respond to issues of non-compliance.

The structure of the Program places oversight responsibility on each grantee, whether that grantee is a primary or co-grantee, for any contractor laboratory it uses as part of its participation in the grant. Such oversight includes ensuring the adequacy of policies and procedures related to the outsourcing of no-suspect casework evidence by its own laboratory and by its contractor laboratory. Therefore, throughout this section we refer to primary grantees and co-grantees as simply "grantees." Our audits assessed the adequacy of grantee oversight of their contractors, as well as verification of the compliance and handling of no-suspect cases at various contractor laboratories.

Inadequate Contractor Oversight Documentation

The QAS require that laboratories conduct certain oversight of their contractor laboratories, and the extent of these activities varies between laboratories that are outsourcing casework analysis and those outsourcing analysis of convicted offender samples. For casework analysis, the QAS require that laboratories:

- Ensure that the contractor laboratory certifies its compliance with the QAS. This requirement is contained within Standard 17.1. According to the FBI, the contractor laboratory must submit to annual audits to ensure compliance with the QAS, and must make the results of those audits available to the laboratories for which they perform analysis work.
- Establish and use review procedures to verify the integrity of the data received from the contractor laboratory. This requirement is contained

within Standard 17.1.1. The procedures implemented to comply with this requirement must include a review of the data received from the contractor, similar to the type of review that is conducted on the laboratory's own analysis results. In addition, according to guidance provided by the FBI regarding compliance with the QAS, an onsite visit should be conducted to verify the contractor laboratory's ability to provide quality data. These onsite visits should include an evaluation of any findings detected during the last audit of compliance with the QAS to ensure that all deficiencies noted were satisfactorily resolved.

Of the grantees we audited, we identified four that were outsourcing their no-suspect case analysis to contractor laboratories and that were unable to supply us with sufficient documentation to substantiate that they had met the QAS requirements for contractor oversight.

- The Ohio BCI&I was unable to provide us with documentation that an onsite visit meeting the FBI's guidance was conducted as of the time of our fieldwork in December 2003. Specifically, the Grant Manager provided us with confirmation that an onsite visit was conducted, but that visit did not include a review of audit results to ensure that the contractor laboratory was fully complying with QAS requirements. Ohio laboratory management agreed with our assessment, and following our audit the Grant Manager provided us with documentation that an onsite visit meeting the requirements of the QAS was conducted. This documentation satisfactorily addressed this finding, and therefore we make no further recommendation regarding this deficiency.
- The FDLE's Jacksonville Regional Operations Center DNA Laboratory, a co-grantee of the grant awarded to FDLE Headquarters in Tallahassee had no documentation that an onsite visit of their contractor laboratory had been performed. The DNA Supervisor stated that she assumed one was performed by FDLE Headquarters in Tallahassee since the contract that exists between FDLE and the contractor was implemented by the Tallahassee office. The Jacksonville DNA Supervisor could not say when the site visit might have been conducted, since she had been provided with no documentation of the visit, nor had she requested any.

While the contract that exists between FDLE and the contractor laboratory may have been handled by FDLE Headquarters, records from each FDLE laboratory utilizing that contract must contain

sufficient documentation to substantiate that the oversight of the contractor laboratory required by the QAS has been performed. Grantee management in both FDLE's Tallahassee and Jacksonville locations agreed with this assessment, and stated that they would take appropriate corrective action.

Subsequent to our audit, the Supervisor of the Jacksonville DNA Laboratory provided us with the onsite visit reports supplied to her by the FDLE Investigative and Forensic Science Services Director in Tallahassee documenting that onsite visits had been conducted in 2002 and 2004. These reports, and the fact that the Jacksonville DNA Laboratory Supervisor now has the documentation of onsite visits conducted, satisfactorily addresses our Jacksonville audit finding. Therefore, no further recommendation will be made regarding the Jacksonville DNA Laboratory. However, we recommend that the FDLE Tallahassee Investigative and Forensic Science Services management implement a policy that will ensure documentation is provided to relevant FDLE system laboratories regarding contractor oversight in the future.

- The Fort Worth Police Department, a co-grantee of the grant awarded to the TXDPS, had incomplete documentation to substantiate that its contractor laboratory complied with the QAS. At the time we conducted our audit in March 2004, the Laboratory Director, who was not in his current position when the outsourcing contract was implemented, was able to locate an onsite visit report from April 2002, copies of protocols and procedures that were supplied to them at the start of the contract, and accreditation documentation. However, this documentation contained no indication of a review of the contractor's QAS audits, or any indication that the contractor's on-going compliance with the QAS had been confirmed.
- The Houston Police Department, a co-grantee of the grant awarded to the TXDPS, could not produce sufficient documentation that an onsite visit of its contractor laboratory meeting the requirements of the QAS had been conducted. Travel vouchers for a site visit to the contractor laboratory were provided, but no site visit report could be located. Therefore, we could not determine whether the site visit included the level of review required by the QAS.

Incomplete or Outdated Policies and Procedures

In addition to reviewing supporting documentation of contractor oversight, we also reviewed the policies and procedures in place that govern the transfer of evidence between the grantee laboratories and the contractor laboratories, and the tracking, safeguarding, and analysis of that evidence. We specifically examined whether sufficient policies and procedures were in place to ensure that the chain-of-custody was properly maintained throughout the transfer process, and to ensure that the policies, procedures, and facilities governing the storage, analysis, and tracking of the evidence were consistent with the QAS Sections 6 (Facilities) and 7 (Evidence Handling). Among other requirements contained in these sections, the QAS require a laboratory to have a facility that is designed to provide adequate security and minimize contamination (Standard 6.1), and to have and follow a documented evidence control system to ensure the integrity of physical evidence (Standard 7.1).³⁰

Our audits revealed that three grantee laboratories and three contractor laboratories had incomplete or outdated policies or procedures regarding either chain-of-custody or evidence handling.

Grantee Laboratory Deficiencies

Florida Department of Law Enforcement, Jacksonville Regional Operations Center

We found that the FDLE Jacksonville Regional Operations Center DNA Laboratory had an evidence control system. However, while the system appeared adequate to address the processing of evidence within the laboratory, it did not contain any specific guidance for the outsourcing process.

For example, the system did not contain evidence-handling policies that clearly described how the samples were being packaged

³⁰ While our audit work was designed to review whether policies existed, we were dependent upon laboratory staff and management descriptions of procedures in use for an indication of the actual practices within the laboratory. Therefore, while we could confirm whether appropriate policies and procedures were in place, we could not attest to the on-going practices of staff within the laboratory.

by the DNA section for submission to the contractor laboratory, or how the chain-of-custody documentation was being maintained. Also, the electronic-evidence tracking system was not designed to permit employees to check evidence out of the system and submit them to the contractor for analysis. Instead, according to laboratory management, the tracking system stated that each outsourced item had been "returned to the submitter," which was the only option programmed into the computer for instances when evidence was leaving the laboratory. The laboratory had manual documentation to account for the chain-of-custody, but without a policy explaining how this was being handled it was not clear how the chain-of-custody had been accounted for.

Laboratory management cannot ensure that staff know and comply with the established procedures unless those procedures have been formalized in writing for staff reference. Therefore, while the procedures described to us for the outsourcing process appeared adequate to prevent loss or abuse to the evidence during this process, we recommend that these procedures be described fully in a formally approved and implemented written policy.

Nassau County Police Department

As co-grantees of the Program grant to the New York State DCJS, the Nassau County Police Department (NCPD), in cooperation with the Nassau County Office of the Medical Examiner (OCME), outsourced no-suspect cases to Orchid Cellmark in Germantown, Maryland. The outsourcing was handled so that the evidence was sent directly from the NCPD to the contractor, and the results of the analysis were reviewed by the OCME. Based upon these arrangements, the evidence handling portion of our audit was conducted strictly at the NCPD.

Various procedures for tracking, handling, and storing the evidence were described to us by NCPD staff while we physically reviewed their facilities. These procedures appeared to be sufficient to account for and safeguard the evidence that was being outsourced, both prior to being sent out to the contractor and after it was returned by the contractor.

However, we were not able to locate all of these procedures in documented policies. We were provided with evidence handling policies that constitute the laboratory's evidence control system required by QAS 7.1, but these policies did not detail all of the procedures staff stated were in use to minimize contamination and document the details of evidence being sent to the contractor. Further, those policies do not reflect the current electronic evidence tracking system in place. The laboratory did have separate procedures – albeit not formally completed – for the use of the electronic evidence tracking system. However, laboratory management cannot ensure that staff know and comply with the established procedures unless those procedures have been formalized in writing for reference.

We recommend that all the current procedures in use in the outsourcing of no-suspect casework evidence be described in detail in formalized written policies.

Houston Police Department

The Houston Police Department's evidence control system did not address the policies or procedures used when transferring evidence between its laboratory and the contractor laboratory. We asked the Assistant Laboratory Director about these policies and procedures, and she responded that while the laboratory has procedures for this process, they are not contained in the current formalized policies. She further provided us with a written description of the procedures in use, as well as a form that is used to document the chain-of-custody of evidence items being sent to and received from the contractor laboratory.

In reviewing the procedures described by the Assistant Laboratory Director, the procedures appear generally sufficient to address evidence to the contractor laboratory. However, they lack detail regarding the process followed when the evidence is returned. Further, the procedures must be formalized in writing for laboratory management to be able to ensure that all staff comply with them.

Therefore, we recommend that a comprehensive written policy be developed that contains all aspects of the outsourcing transfer of evidence, and that such a policy be formally approved and implemented.

Contractor Laboratory Deficiencies

The Bode Technology Group, Inc.

The Bode Technology Group, Inc.'s, (Bode) chain-of-custody policy, part of its compliance with QAS 7.1, appeared adequate to track the movement of evidence within the laboratory. However, we determined that the way in which staff are applying their chain-of-custody policy is not sufficient to adequately document transfers within the laboratory.

Specifically, the policy states that when a case has been processed it must be repackaged and returned to the custody of the Evidence Custodian. While this is being done in practice, the documentation does not reflect this transfer. Instead, the documentation shows that the laboratory personnel still have custody of the items, even while the items are in the Evidence Custodian's custody and control and, therefore inaccessible to laboratory personnel. While this situation does not pose a concern as to the safety or security of the evidence, it does pose a concern for the complete documentation of evidence movements in the chain-of-custody documentation maintained for casework clients.

In discussing this issue with Bode management, they agreed with our finding. After our audit in January 2004, Bode personnel provided us with documentation that staff had been informed of the new procedure requiring them to formally return custody to the Evidence Custodian on the chain-of-custody form. They also provided us with copies of the new Standard Operating Procedures (SOPs) governing chain-of-custody, that include clarification of the policy. We consider this documentation sufficient to address this deficiency and therefore make no further recommendation regarding Bode's chain-of-custody procedures.

In addition, we could not determine from a review of Bode's evidence control system which of the evidence handling SOPs applied to the high-throughput (i.e., high-volume) casework environment under which the no-suspect cases are processed. For example, despite a protocol for Photographing of Evidence, in the laboratory tour it was obvious from what we observed and were told that the

high-throughput casework items are not photographed. Consequently, it is not clear whether compliance weaknesses might exist in those areas where staff practices are inconsistent with a policy, since that policy may or may not apply to the high-throughput casework environment.

Management agreed with this finding, and following our audit provided to us a revised *Forensic Evidence Handling SOP* that clarified which of the procedures applied to individual casework and which were applicable to all casework, including high-throughput. We consider this documentation sufficient to address this deficiency and therefore make no further recommendation regarding Bode's evidence handling procedures.

Finally, we found that Bode's policies and procedures for cleaning and decontamination of the laboratory (in compliance with QAS 6.1, among other requirements) appeared to adequately address these topics, with one minor exception. The laboratory contains a windowed cutout in the wall, also referred to as a pass-through, between the pre-amplification room (considered a "clean" area) and the post-amplification room (considered a non-"clean" area). The pass-through allows transference of tube trays between the two rooms with minimal risk of cross-contamination or transfer. There were no policies or procedures regarding the cleaning of the pass-through. While this poses a limited risk to the laboratory, since contamination incidents are tracked that would reveal whether the pass-through area has caused contamination problems, we consider this to be a point of inconsistency with the remainder of their policies. Therefore, we recommended Bode management implement a policy for the cleaning of the pass-through, and they agreed that such a policy would be implemented.

Orchid Cellmark, Germantown, Maryland

Our examination of procedures of the Orchid Cellmark Laboratory in Germantown, Maryland, revealed that while the laboratory had an evidence control system as required by QAS 7.1, actual practices of staff were inadequate to ensure that evidence is properly secured immediately after it is delivered to the laboratory. Specifically, evidence arriving at the lab is received into the reception area, which is accessible to the general public. After the item is

logged in by the receptionist, the item is not immediately secured or moved to a limited access area. Further, we observed that there are times when the receptionist takes a short break and the reception area may be briefly unattended.

While management acknowledged this latter situation, they stated that for breaks of any length someone fills in for the receptionist. Our observations during fieldwork supported this assertion. In addition, management stated that they would be able to hear from their offices – which adjoin the reception area – when the door clicks open to signify that someone has entered, and would check on the situation if the receptionist was momentarily absent. However, we question whether the security of the evidence should rely upon such methods.

Therefore, while we acknowledge that the evidence packages arrive sealed, and while we acknowledge that the reception area is generally monitored by someone who is physically present, we believe that Orchid Cellmark's evidence storage policies would be strengthened by requiring that evidence, after being received and logged in by the receptionist, be immediately placed in a limited-access or secure area while awaiting the attention of technical personnel.

Orchid Cellmark, Dallas, Texas

We found that Orchid Cellmark (Dallas) policies and procedures for cleaning and decontamination of the laboratory (in compliance with QAS 6.1, among other requirements) appeared to adequately address these topics, with one minor exception. The laboratory contains a pass-through, similar to the one described previously at Bode, that allows transference of tube trays between the pre-amplification room and the post-amplification room. In addition, the pass-through is equipped with ultra-violet light that can be switched on to decontaminate the pass-through. However, we noted that there were no policies or procedures requiring the use of the ultra-violet light, nor an indication of how frequently this should occur.

As with Bode, the omission of this information from the policies poses a limited contamination risk to the laboratory. As with Bode, we consider this to be a point of inconsistency with the remainder of its

policies. Therefore, we advised Orchid Cellmark management to implement a policy for the cleaning of the pass-through, and they agreed that they would implement such a policy.

Recommendations

Our recommendations below reflect the structure of the Program in which the primary grantee in each state serves as a liaison between OJP and the co-grantees. Therefore, our recommendations to correct deficiencies at co-grantee laboratories are directed to each state's primary grantee.

Further, contractor laboratory deficiencies must be resolved by a grantee laboratory that used the services of that contractor laboratory, a fact also reflected in our recommendations. Therefore, we addressed our recommendations for contractor laboratories to selected grantee personnel.

We recommend that OJP:

Florida

10. Ensure the FDLE, Investigative and Forensic Science Services, Tallahassee, implements a policy to routinely distribute a copy of contractor oversight documentation to all laboratories participating in its outsourcing contracts;
11. Require the FDLE, Investigative and Forensic Science Services, Tallahassee, to ensure that the Jacksonville Regional Operations Center, as a co-grantee of the grant made to Florida, create a comprehensive policy that will contain current procedures in use for the outsourcing of no-suspect casework evidence, and formally approve and implement that policy;
12. Require the FDLE, Investigative and Forensic Science Services, Tallahassee, to ensure that the Bode Technology Group implements a policy for the cleaning of the pass-through that exists between the pre-amplification and post-amplification areas;

Texas

13. Require the TXDPS to ensure that the Fort Worth Police Department, as a co-grantee of the grant made to Texas, begin maintaining records to substantiate their vendor's on-going compliance with the QAS;
14. Require the TXDPS to ensure that the Houston Police Department, as a co-grantee of the grant made to Texas, completes and documents an onsite visit to their contractor laboratory sufficient to meet the requirements of the QAS;
15. Require the TXDPS to ensure that the Houston Police Department, as a co-grantee of the grant made to Texas, create a comprehensive policy that will contain current procedures in use for the outsourcing of no-suspect casework evidence, and formally approve and implement that policy;
16. Require the TXDPS, through the Fort Worth Police Department, as a co-grantee of the grant made to Texas, to ensure that Orchid Cellmark in Dallas, Texas, implements a policy for the cleaning of the pass-through that exists between the pre-amplification and post-amplification areas;

New York

17. Require the New York State DCJS to ensure that the NCPD, as a co-grantee of the grant made to New York, create a comprehensive policy that will contain current procedures in use for the outsourcing of no-suspect casework evidence, and formally approve and implement that policy, and
18. Require the New York State DCJS to ensure that Orchid Cellmark in Germantown, Maryland, implements a policy requiring that evidence, after being received and logged in by the receptionist, is immediately placed in a limited access or secure area while awaiting the attention of technical personnel.

IV. Allowability of Costs Charged to Program Awards

We assessed the allowability of costs charged to Program awards by the four grantees we audited. While we found that they materially complied with most award requirements, we noted small deficiencies at all four grantees, and found costs charged to Program awards that were unallowable and/or unsupported. As a result, we questioned costs of \$111,297, out of a total of approximately \$13.5 million awarded, and made 9 recommendations. In addition, we assessed whether selected grantees/co-grantees complied with Solicitation requirements pertaining to costs being paid to contractor laboratories and found that one co-grantee was overpaying for the services received from its contractor laboratory. Consequently, we questioned \$44,640 in costs that were unallowable out of a total award of approximately \$5 million.

The first year of the Program was designed to provide states with funds to analyze no-suspect casework DNA profiles, either through in-house analysis or outsourcing, and to build laboratory capacity. We selected four grantees, conducted separate grant audits for each of the grantees, and issued separate audit reports.³¹ The selection of the grantees was based on the award amount and on the amount of funds drawn down as of the start of our audit. We selected the following four grantees to audit: 1) Ohio Bureau of Criminal Identification and Investigation (Ohio BCI&I), 2) Texas Department of Public Safety (TXDPS), 3) Florida Department of Law Enforcement (FDLE), and 4) New York State Division of Criminal Justice Services (DCJS). In addition, at each of these locations we conducted an analysis of whether selected grantees/co-grantees complied with Solicitation requirements pertaining to costs being paid to contractor laboratories. The specific work conducted at each site, including the scope and methodology of each audit, is detailed in Appendix I of this report.

The four grantees received a total of approximately \$13.5 million to analyze 10,874 no-suspect cases and to build capacity in their labs. As of May 31, 2004, these grantees had drawn down approximately \$5.9 million, or 44 percent of their awarded funds. The following is a summary of the findings from each of the audits of these four grantees.

³¹ Audit reports issued are identified in Appendix I of this report.

Ohio Bureau of Criminal Identification and Investigation

The Ohio BC&I is a division within the State of Ohio, Office of the Attorney General. The Ohio BCI&I was awarded \$2,254,088 to analyze 3,068 no-suspect cases, to purchase supplies and equipment, and to identify old no-suspect cases for testing.

We reviewed the Ohio BCI&I's records to determine whether costs claimed for reimbursement were allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of the award.

Our audit revealed that the Ohio BCI&I charged some unallowable costs to the award and did not have proper documentation to support all expenditures. As a result, we questioned \$106,755 in costs that were unsupported or unallowable, or approximately 5 percent of the total funds awarded. Additionally, we noted that required financial status reports were not always submitted timely. We also found that the grantee received drawdowns of funds in excess of their immediate disbursement requirements.

Unsupported Costs

Salaries and fringe benefits for overtime worked on no-suspect casework were authorized to be paid from the award. In turn, the Ohio BCI&I utilized co-grantees within the state of Ohio to accomplish the goals outlined in their Program proposal. The Canton-Stark County Crime Laboratory (Canton-Stark), one of the co-grantees, was approved and reimbursed by the Ohio BCI&I for a total of \$110,000. The funds for Canton-Stark were originally budgeted under the supplies budget category, but were altered by Grant Adjustment Notice (GAN) 8 at the request of Canton-Stark, which reallocated \$95,497 from supplies to the personnel and fringe benefits budget category. However, after reviewing the personnel records, we found support for only \$20,297 of the \$95,497, resulting in questioned costs of \$75,200.

The Miami Valley Regional Crime Laboratory (Miami Valley), another co-grantee used by the Ohio BCI&I, was authorized in the grantee's budget worksheet to pay overtime in the amount of \$8,000 for the analysis of no-suspect cases. At the time of our audit, Miami Valley had been reimbursed a total of \$8,000 for overtime by the Ohio BCI&I. After

reviewing the payroll records, we found support for only \$5,102 of the \$8,000, resulting in questioned costs of \$2,898.

In addition, we questioned \$5,009 in unsupported costs charged to the award. Canton-Stark was reimbursed \$14,503 for supplies by the Ohio BCI&I. Using information we received from Canton-Stark, we concluded that they had only spent \$9,494 on allowable supplies relating to the testing of no-suspect cases. As a result, we questioned the remaining \$5,009 as unsupported.

Unallowable Costs

We found one transaction for \$23,648 that was unallowable. The grantee purchased 20,000 buccal swabs from Bode with \$23,648 of the award funds, but this purchase was not approved in the budget and these items do not relate to functions performed under this Program.

Untimely Financial Status Reports

We examined the Financial Status Reports (FSR), which contain the actual expenditures and unliquidated obligations incurred for an award on a quarterly and cumulative basis. The Financial Status Reports must be filed within 45 days of the end of the most recent past quarterly reporting period. We reviewed FSRs for timeliness and accuracy, and found that 4 of 5 FSRs were submitted between 5 and 19 days late.

Excess Drawdowns

Our review of the total expenditures compared to drawdowns for the award found that the Ohio BCI&I had excess award funds totaling \$201,674 on hand as of April 29, 2003. As of June 18, 2003, the Ohio had excess award funds on hand totaling \$236,578. Prior to our audit, the grantee realized that its methodology for drawing down funds was incorrect, and beginning in October 2003, it began to make smaller and more frequent drawdowns. Therefore, we did not make any recommendations regarding this matter.

Texas Department of Public Safety

The TXDPS was awarded \$3,379,688 to analyze 3,160 no-suspect cases, and to pay for overtime, consultants for in-house analysis, and for outsourcing. In addition, funds were awarded to purchase equipment and supplies.

We reviewed the TXDPS's records to determine whether costs claimed for reimbursement were allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of the award. We found that one Financial Status Report was inaccurate.

Inaccurate Financial Status Report

We reviewed the FSRs submitted for the period August 1, 2002, through December 31, 2003, for accuracy and timeliness. While the reports were submitted in a timely manner, one of the six reports reviewed incorrectly stated the total outlays.

The FSRs for the quarters ending December 2002 and December 2003 were overstated by \$1,435 and \$80,033, respectively. The FSRs for the quarters ending March, June, and September 2003 were understated by \$346, \$70, and \$40, respectively. The TXDPS provided documentation showing that, with the exception of the December 2003 FSR, the discrepancies were due to temporary timing differences relating to when benefit expenditures were posted. In addition, the TXDPS did not agree that the FSR for the fourth quarter of 2003 was overstated by \$80,033, but they agreed that the report was incorrect and submitted a revised report in May 2004.

Florida Department of Law Enforcement

The FDLE was awarded \$2,795,086 to reduce the backlog of no-suspect cases in state and county crime laboratories, to analyze those cases using the 13 CODIS core loci, to expedite the entry of the resultant profiles into state and national CODIS networks, and to increase Florida's DNA analysis production capability and capacity. Included in this amount was funding for the outsourcing of over 1,500 no-suspect cases, and funds to purchase equipment and supplies.

We reviewed the FDLE's records to determine whether costs claimed for reimbursement were allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of the award.

Our audit revealed that the FDLE charged relatively small unallowable costs to the award. As a result, we questioned \$4,542 or less than 0.2 percent of the total award. We also found that progress reports did not always accurately reflect actual Program activities. Finally, we noted a reportable condition relating to management controls over the approval of invoices from contractor laboratories.

Unallowable Costs

We found unallowable costs charged to the award by four co-grantees. First, the Broward County Sheriff's Office Crime Laboratory exceeded its allowable costs for salary and fringe benefits by \$1,932 for five positions that were not in its approved budget.

Second, the Miami-Dade Police Department submitted a reimbursement request for equipment totaling \$184 that was not approved by the Forensic Services Director. Also, a transaction totaling \$100 was unallowable because the items purchased were not approved in the budget worksheet and were not related to functions performed under the award.

Third, a transaction totaling \$786 charged by the Palm Beach County Sheriff's Office Crime Laboratory was unallowable because the purchased items were not approved in the budget worksheet and were not related to functions performed under the award. Specifically, the Sheriff's Office purchased a file cabinet for \$241, office supplies for \$469, and ink cartridges for \$76.

Finally, a transaction totaling \$1,540 charged to the award by the Indian River Community College Crime Laboratory was unallowable because the purchases were not approved in the budget worksheet. Specifically, the laboratory purchased a TLS PC Link Labeling System for \$1,175, biodyne membrane for \$214, and chemiluminescence reagent for \$151.

Inaccurate Progress Reports

We noted that the progress report for the period ending June 30, 2003, understated the number of CODIS hits by 14. In addition, the progress report for the period ending December 31, 2003: 1) overstated the number of cases outsourced to contractor laboratories by 1,867; 2) understated the number of cases uploaded into CODIS by 62 cases; and 3) overstated the number of CODIS hits by 16. Grantee officials concurred and stated that they would ensure that future reports were accurate.

Inadequate Controls Over Contractor Invoice Approval

We noted that FDLE's management controls over the approval of invoices from contractor laboratories were inadequate. Prior to our audit, FDLE officials did not have adequate procedures in place to ensure that the FDLE was charged only for the portion of work actually completed by contractor laboratories. During the audit, the Forensic Services Director revised the procedures to ensure that the FDLE was paying only for services actually performed by each contractor laboratory. Under the revised procedures, each Serology Supervisor is required to verify and certify each invoice for payment before the contractor laboratories are paid.

New York State Division of Criminal Justice Services

The New York State DCJS is the principal coordinating agency for criminal justice activities in the state of New York. The DCJS was awarded \$5,039,535 to analyze 3,146 no-suspect cases, to upload the resulting profiles to CODIS, and to compare the profiles to the CODIS convicted offender database. Included in the award was funding for overtime, consultants for in-house analysis and for outsourcing, and equipment and supplies.

We reviewed the DCJS's records to determine whether costs claimed for reimbursement were allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of the award.

Our audit revealed that the FSRs submitted to OJP did not always accurately reflect actual cumulative outlays. In addition, we found that the

budget information submitted by one of the co-grantees was inadequate. Finally, we determined that billing arrangements between a co-grantee of the Program award to DCJS and its contractor laboratory were not consistent with Program requirements.

Inaccurate Financial Status Reports

We reviewed the four FSRs submitted by the DCJS and found the reports were submitted in a timely manner. However, we found that the FSRs underreported cumulative outlays incurred.

Underreporting outlays occurred because some of the state's co-grantees did not report outlays to the DCJS in a timely manner. The DCJS acts as the executive agent for all of the state's co-grantees. Each quarter the DCJS completes and forwards to the NIJ a consolidated FSR for all of the state's co-grantees, which the DCJS relies on for the outlay information submitted. The co-grantees report outlays on a state financial reporting form that is similar to the federal FSR. In order for the federal FSR to be accurate, the state financial reporting form must be submitted in a timely manner so that co-grantee's outlays can be accurately reported on the federal FSR.

The DCJS reported cumulative total outlays of \$392,187 on the federal FSR for the period ending December 31, 2003. At the time of our audit, we found that seven co-grantees reported award outlays on the state's financial reporting form. Of the seven co-grantees reporting outlays as of December 31, 2003, three did not report outlays in a timely manner to the DCJS. As a result, we found cumulative total outlays on the federal FSR for the period ending December 31, 2003, to be \$681,390.

Inadequate Budget Documentation

We reviewed the financial records of each co-grantee and found that one had approved budget documentation that included only one rate of pay for personnel. However, we found expenditures for several different personnel categories. Therefore, we were unable to establish whether the personnel expenditures were approved in the co-grantee's budget and, as a result, we could not determine if that co-grantee accurately expended award funds.

Unallowable Costs

One aspect of our overall assessment of grant activities was to review controls over payments made to contractor laboratories, particularly with a focus on compliance with the Program Solicitation, which requires that state applicants ensure that their contractor laboratories are paid for only the portion of the work that they perform. The Solicitation further states that: “funds from the Program cannot be used to pay laboratories for fully processing samples when certain steps (in the analysis process) were not performed. . . . The compensation given to the outsourcing laboratory should be fair, and directly reflect the effort and cost put forth by the laboratory in processing the case/sample.”

While completing this portion of our work, we determined that one laboratory, a co-grantee under the grant awarded to the DCJS, was overcharged for the work that was actually performed by their contractor. Specifically, OJP approved the DCJS and co-grantees to pay a flat rate per case for cases processed by their contractor laboratories, with the limitation that the cases would be screened by the grantee laboratories.³² One of these co-grantees was the Nassau County Police Department (NCPD). However, during the delay between New York’s Program application and its award, the operations of the NCPD had changed so that by the time of the award they no longer had the proper facilities or staff to screen the evidence themselves. Consequently, the NCPD began sending out unscreened evidence to the contractor for the no-suspect cases funded under the Program.

In addition, the NCPD worked in cooperation with the Nassau County OCME to complete the outsourcing process: the OCME was responsible for overseeing interactions (e.g., QAS oversight and billing) and reviewing the contractor’s data. These cases were sent out under a contract that had been negotiated and administered prior to the Program award by the New York State Police. Since the OCME did not directly negotiate a price structure with the contractor, that structure did not reflect that the OCME was not screening their cases. Consequently, the OCME cases that were screened and determined to be negative for DNA were being charged the same price

³² To screen a case requires a laboratory to determine, through visual inspection and/or preliminary tests, which case samples are most likely to yield sufficient DNA for successful analysis. Screening the cases prior to sending them to a contractor laboratory generally means that there will be a greater level of success during analysis in obtaining a DNA profile from each sample.

as the cases where complete analysis was required and full results obtained. At the time we conducted our audit work in April 2004, the OCME had paid for complete DNA analysis for 48 cases that, in actuality, were only screened.

Since laboratories are not required by the Solicitation to perform all screening in-house, we were concerned that the NCPD was paying a flat-fee for cases analyzed, regardless of whether full analysis was completed. Such an arrangement violates the Program Solicitation requirements and limitations on contractor payments. In addition, the high percentage of these cases that were negative for DNA added greater emphasis to this issue. We determined that analysis for 51 percent of the cases outsourced at the time of our fieldwork in April 2004 could not be completed due to insufficient DNA.

Therefore, we questioned \$44,640 as unallowable costs for the 48 cases for which the contractor had been paid for complete analysis when only screening was performed.³³ In discussing this with the DNA laboratory management at the OCME, we were informed that they had decided to use the existing New York State Police's contract as a way to avoid the significant delays that would come with going through their local procurement process to execute their own contract. The DCJS's no-suspect grant point-of-contact, the Director of the Office of Forensic & Victim Services stated that the DCJS's goal was to expeditiously outsource the no-suspect cases. Using the New York State Police's contracts allowed the OCME to avoid negotiating separate contracts of their own. However, both the OCME and the DCJS management we talked to agreed with our conclusions and stated that they would seek to remedy the situation with both the contractor and the NIJ.

³³ Questioned costs of \$44,640 were calculated based upon multiplying the number of "screening only" cases (48) by the estimated price for screening only of \$250 per case, and subtracting that from the price actually paid (48 x \$1,180), with the remainder being the portion that we have questioned. This price was provided to us as the upper range of prices typically quoted to forensic casework contract clients by the Executive Director of Orchid Cellmark (Maryland).

Recommendations

We issued separate audit reports to OJP, containing a total of 13 recommendations, for each of the four grantees audited.³⁴ Because OJP is working with these grantees in responding to our audit findings, we will not provide additional recommendations to address these audit findings in this report. However, for the one issue in Nassau County that was not previously reported, we recommend that OJP:

19. Ensure that the New York State DCJS remedies questioned costs of \$44,640 for the Nassau County Police Department cases for which the contractor laboratory was paid for complete analysis but only screening was performed.

³⁴ See Appendix I for specific information regarding these separately issued reports.

STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS

As required by *Government Auditing Standards*, we tested OJP records and grant documents pertaining to the Program to obtain reasonable assurance about OJP's compliance with laws and regulations, that, if not complied with, we believe could have a material effect on the administration of the Program. Compliance with laws and regulations applicable to qualifying Program applicants for grant eligibility and to the administration of the Program grants is the responsibility of OJP management. An audit includes examining, on a test basis, evidence about compliance with laws and regulations. The pertinent legislation and the applicable regulations it contains are as follows:

DNA Identification Act of 1994

- Authorized the establishment of a national index of: 1) DNA identification records of persons convicted of crimes, 2) analyses of DNA samples recovered from crime scenes, and 3) analyses of DNA samples recovered from unidentified human remains;
- Specified several standards for those laboratories that contribute profiles to the national index system, including proficiency testing requirements for DNA analysts and privacy protection standards related to the information in the national index system;
- Established criminal penalties for individuals who knowingly violate the privacy protection standards, and provided that access to the national index system was subject to cancellation if the quality control and privacy requirements were not met; and
- Limited the use of grant funds to carrying out all or a substantial part of a program or project intended to develop or improve the capability to analyze DNA in a forensic laboratory.

DNA Analysis Backlog Elimination Act of 2000

This Act provides for grants to be made to states to carry out, for inclusion in CODIS, DNA analyses of samples taken from individuals convicted of qualifying state offenses or from samples taken from crime scenes. The Act also authorizes grants used to increase the capacity of laboratories owned by a state or by units of local government within the state to carry out DNA analyses of samples taken from crime scenes. This Act was signed into law on December 19, 2000, and part of funding for the Program for FY 2001 was included in a \$35 million appropriation for programs authorized under this Act.



Our tests revealed that OJP complied with the above legislation.

STATEMENT ON MANAGEMENT CONTROLS

In planning and performing our audit of the Program, we considered OJP's management controls for the purpose of determining our auditing procedures. In addition, we evaluated the process used by OJP to award grants under the Program and to monitor grantees. The evaluation of OJP was not made for the purpose of providing assurance on the management control structure as a whole; however, we noted certain matters that we consider to be reportable conditions under generally accepted *Government Auditing Standards*.

Reportable conditions involve matters coming to our attention relating to significant deficiencies in the design or operation of the management control structure that, in our judgment, could adversely affect OJP's ability to administer the Program grants. We noted deficiencies relating to OJP's monitoring and reporting of the Program's performance measurements, discussed in Finding No. 1. We also noted deficiencies concerning OJP's monitoring of grantee drawdowns and awarding of subsequent grants, discussed in Finding Nos. 1 and 2. However, we did not consider these deficiencies to be a result of systemic management control issues.

Because we are not expressing an opinion on OJP's management control structure as a whole, this statement is intended solely for the information and use of OJP in administering the Program.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of our audit were to evaluate the:

1. administration and oversight of the Program by OJP;
2. oversight of contractor laboratories by states receiving Program funds;
3. allowability of costs charged to Program awards; and
4. progress made toward the achievement of Program goals.

We conducted our audit in accordance with *Government Auditing Standards*. We included such tests as were considered necessary to accomplish the audit objectives.

The audit generally covered the period from the award of the Program's first year grants from July 2002 to September 2002 through the completion of audit fieldwork in May 2004.

Audit work was conducted at the NIJ and at the four states receiving the largest awards that had, or were expected to have, drawdowns in excess of \$500,000 at the time of our fieldwork. Within each grantee state, we visited the primary OJP grantee and other co-grantees that were selected based on: 1) the contractor laboratory they used for outsourcing and 2) whether we had audited the agency in the past. In addition, we visited four contractor laboratories from three different companies. These laboratories were selected based on the amount of funding they received from the Program.

We conducted onsite work at the NIJ on two separate occasions. During our first visit in November 2003, we conducted initial analysis on the Program and its grantees, including grantees' intended use of funds and OJP administration activities. During our second visit in May 2004, we attended a DNA Summit organized by the NIJ to inform and communicate with representatives of laboratories across the country regarding the status and future of the Program. In addition, we interviewed staff members at the NIJ and reviewed the FY 2001 and FY 2003 award files for all grantees to obtain information relating to the award process, to assess FY 2003 application funding requests, and to obtain compliance and certification information.

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The following is a list of the four grantees that were audited:

- Ohio Bureau of Criminal Identification and Investigation, London, Ohio (completed during the survey phase of the audit)
- Texas Department of Public Safety, Austin, Texas
- Florida Department of Law Enforcement, Tallahassee, Florida
- New York State Division of Criminal Justice Services, Albany, New York

Each of the above states had several co-grantees, for which we also collected and reviewed documentation, as follows:

Ohio

- Ohio Bureau of Criminal Identification and Investigation Laboratories in London, Bowling Green, and Richfield
- Canton-Stark County Crime Laboratory
- Cleveland Police Department Forensic Laboratory
- Columbus Police Department Crime Laboratory
- Cuyahoga County Coroner's Office
- Hamilton County Coroner's Office
- Lake County Regional Crime Laboratory
- Mansfield Police Department Crime Laboratory
- Miami Valley Regional Crime Laboratory

Texas

- Texas Department of Public Safety Laboratories in Austin, Corpus Christi, Garland, Waco, Houston, Macallen, Lubbock, and El Paso
- Harris County Medical Examiner
- Houston Police Department

- Southwestern Institute of Forensic Sciences
- Tarrant County Medical Examiner

Florida

- Florida Department of Law Enforcement Laboratories in Tallahassee, Jacksonville, Pensacola, Orlando, and Tampa
- Miami-Dade Police Department
- Broward County Sheriff's Office
- Indian River Crime Laboratory

New York

- Erie County Department of Central Police Services Forensic Laboratory
- New York City Office of the Chief Medical Examiner
- New York City Police Department
- Onondaga County Center for Forensic Sciences
- Suffolk County Crime Laboratory
- Westchester County Department of Laboratories and Research Forensic Science Laboratory
- Niagara County Sheriff's Department Forensic Laboratory

The information collected and reviewed for each of these agencies was dependent upon whether the co-grantee conducted the analysis of no-suspect casework in-house or via outsourcing. To assess their compliance with the Program Solicitation and relevant sections of the QAS, we performed the following procedures:

- For those co-grantees that outsourced, we collected and reviewed documentation of site visits to contractor laboratories, outsourcing contracts, evidence handling and chain-of-custody protocols and procedures, data review policies and procedures, contractor laboratory

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QAS documentation and accreditation information, and CODIS Specimen ID reports.

- For those co-grantees that conducted analysis in-house, we collected and reviewed the prior two external and internal QAS audit reports, accreditation information, Technical Leader information, analytical standard operating procedures, productivity statistics for 2001, 2002, and 2003, and CODIS Specimen ID reports.

In addition, we physically visited the following co-grantees:

- Fort Worth Police Department, Fort Worth, Texas
- Florida Department of Law Enforcement, Regional Operations Center Laboratory in Jacksonville, Florida; and Palm Beach County Sheriff's Office in Palm Beach, Florida
- New York State Police Forensic Investigation Center in Albany, New York; Monroe County Public Safety Laboratory in Rochester, New York; and Nassau County Police Department Forensic Evidence Bureau and Nassau County Office of the Chief Medical Examiner in Plainview, New York

For each of these co-grantees, we assessed their compliance with the Program Solicitation and relevant sections of the QAS pertaining to evidence handling and chain-of-custody, using the following procedures:

- Toured the laboratory facilities, to physically verify each grantee laboratory's adherence to its own policies regarding chain-of-custody and evidence handling, as well as to observe compliance with various QAS issues.
- Interviewed officials and reviewed documentation to ensure each co-grantee's compliance with Program requirements relating to the oversight of their contractor laboratories.
- Reviewed a judgmentally selected sample of case files to ensure that adequate documentation was present relating to the maintenance of chain-of-custody, proper evidence handling, the DNA analysis process, and reviews of the file documentation. In addition, we reviewed the case files to assess the timeframe for the analysis, review, and upload of profiles into CODIS.

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- Interviewed grantee officials to obtain an understanding of the billing process and procedures used to ensure that grantees were only paying for analysis actually performed.
- Reviewed the internal and external QAS audits for the prior two years to identify any control weaknesses or significant noncompliance issues with the QAS, and to ensure that timely corrective actions were taken for any material findings.

In addition, for all grantees and co-grantees, we compared reports generated at each laboratory of cases analyzed with Program funds to CODIS Specimen ID Reports in order to determine whether profiles were being uploaded on a timely basis, or to determine the reasons for profiles not being uploaded.

We also examined procedures at the following four contractor laboratories:

- Orchid Cellmark, Germantown, Maryland; and Dallas, Texas
- The Bode Technology Group, Inc., Springfield, Virginia
- Laboratory Corporation of America, Research Triangle Park, North Carolina

At these laboratories, we verified compliance with relevant sections of the QAS pertaining to chain-of-custody and evidence handling, and ensured that they complied with grantee requirements, using the following procedures:

- Toured the laboratory facilities, where applicable, to physically verify each grantee laboratory's adherence to its own policies regarding chain-of-custody and evidence handling, as well as to observe compliance with various QAS issues.
- Reviewed a judgmentally selected sample of case files (same cases as were selected at the grantees and co-grantees) to ensure that adequate documentation was present relating to the maintenance of chain-of-custody, proper evidence handling, the DNA analysis process, and reviews of the file documentation.
- Reviewed the internal and external QAS audits for the prior two years to identify any control weaknesses or significant non-compliance issues

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with the QAS, and to ensure that timely corrective actions were taken for any material findings.

- Interviewed grantee officials to obtain an understanding of the billing process and procedures used to ensure that grantees were only paying for analyses actually performed.
- Interviewed laboratory officials and reviewed documentation to ensure compliance with any specific requirements of each individual grantee laboratory.

In addition to the above audit steps, individual audits were conducted on each of the four primary NIJ grantees selected for review. Separate audit reports were issued to OJP for each of these audits, as follows:

- The Ohio Bureau of Criminal Identification and Investigation, London, Ohio, Audit Report No. GR-60-04-005, issued March 2004;
- The Texas Department of Public Safety, Austin, Texas, Audit Report No. GR-80-04-008, issued September 2004;
- The New York State Division of Criminal Justice Services, Albany, New York, Audit Report No. GR-70-04-008, issued September 2004; and
- The Florida Department of Law Enforcement, Tallahassee, Florida, Audit Report No. GR-40-04-009, issued September 2004.

For each of these grantees, OIG Audit Division staff assessed the grantee's compliance with key elements of the Program Solicitation and with relevant sections of the OJP Financial Guide. The procedures used were not significantly different from those commonly used by the OIG Audit Division for general grant audits. The audit steps were modified to be more specific to the Program by including steps to assess the grantee's monitoring of contractor laboratories, and provided more specific information on allowable and unallowable uses of Program funds. The assist audit teams tested compliance with what we considered to be the most important conditions of the awards, and performed the following procedures:

- Tested compliance and reviewed documentation for Program activities in the following areas: drawdowns, budget management and control, award expenditures, financial status and progress reporting, compliance with regulations, and monitoring of co-grantees.

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- Reviewed the most recent Single Audit Report to identify control weaknesses and significant non-compliance issues related to the grantee or to Federal programs in general.
- Performed limited testing of source documents to assess the accuracy of reimbursement requests and financial status reports; however, we did not test the reliability of the financial management system as a whole.
- Reviewed source documents for a judgmentally selected sample of expenditures to ensure they were allowable and properly supported.

GLOSSARY OF TERMS AND ACRONYMS

ASCLD/LAB: the American Society of Crime Laboratory Directors/Laboratory Accreditation Board is one of the organizations that provides accreditation for labs. The organization performs a thorough inspection of the laboratory before it grants accreditation.

Buccal Sample: a sample that is taken by brushing a swab or Q-tip against the inside of a person's cheek, so as to obtain cells that can be DNA typed.

Buccal Swab: a swab designed for the collection of a buccal sample.

CODIS Administrator: the person at each laboratory that is responsible for the administration and security of the laboratory's CODIS. The position can also be referred to as CODIS Manager or CODIS Custodian. The CODIS Administrator is required by the QAS for each laboratory with a convicted offender database, although all CODIS labs should have someone filling that role.

Combined DNA Index System (CODIS): provides a framework for storing, maintaining, tracking, and searching DNA specimen information. CODIS refers to the entire system of DNA databases (convicted offender database, forensic database, victim database, etc.) maintained at the national, state, and local levels. CODIS currently consists of three distinct levels: the National DNA Index System, State DNA Index System, and Local DNA Index System.

DCJS: the New York State Division of Criminal Justice Services, the primary grantee for the Program award to New York, is located in Albany, New York.

DeoxyriboNucleic Acid (DNA): DNA is found in almost all living cells, and carries the encoded information necessary for building and maintaining life. This encoded information is what makes each person an individual. Human DNA consists of two strands of molecules that wrap around each other to resemble a twisted ladder whose sides are connected by rungs of chemicals called bases. There are four kinds of these chemical bases, and the order in which they are arranged is called the DNA sequence. It is this unique sequence that is determined when a DNA sample is analyzed.

DNA Analysis: the generation of a DNA profile in accordance with national standards and validated methods.

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DNA Profile: a set of DNA identification characteristics, *i.e.*, the particular chemicals at the various DNA locations (loci), which permit the DNA of one person to be distinguishable from that of another person.

DNA Sample: a body tissue or fluid sample (blood, a buccal sample, or semen, for example) that can be subjected to DNA analysis.

Examiner (Analyst): an individual who conducts or directs the analysis of forensic casework samples, interprets data, and reaches conclusions. In other words, the analyst is the person performing the bulk of the DNA analysis work. The analyst's qualifications are governed by specific requirements as given in the QAS.

FDLE: the Florida Department of Law Enforcement, the primary grantee of the Program award to Florida, is located in Tallahassee, Florida. FDLE also has regional locations throughout the state, with the Tallahassee location serving as the FDLE Headquarters.

FYPD: the Fort Worth Police Department, a co-grantee of the Program award to the Texas Department of Public Safety.

GAO: the Government Accountability Office, evaluates federal programs, audits federal expenditures, issues legal opinions, and advises Congress and the heads of executive agencies about ways to make government more effective and responsive.

Hit: a confirmed match between two or more DNA profiles discovered by CODIS software at a single instant in time. In other words, a hit is a match between two or more profiles that the software finds when profiles are searched against each other. A hit can occur when an offender sample is matched to a sample from case evidence (forensic sample), when a forensic sample is matched against a forensic sample from another case, or a combination of these two.

In-house: any portion of processing and/or DNA analysis of cases or samples that occurs within the grantee's state by a state or local agency.

Investigations Aided: the primary measuring unit that the FBI uses to quantify the success of CODIS. An investigation is aided when a DNA match through CODIS either identifies a potential suspect or links crimes together, but only when the DNA match provides new information that would not have been otherwise developed.

Loci: the plural form of locus.

Locus: a specific physical location on a chromosome. Analogous to an address for a house.

National DNA Index System (NDIS): the FBI-maintained national component to CODIS. NDIS contains DNA profiles uploaded from approved SDIS laboratories.

NCPD: Nassau County Police Department Forensic Evidence Bureau in Plainview, New York. A co-grantee of the Program award to the New York State Division of Criminal Justice Services, Albany, New York.

NFSTC: the National Forensic Science Technology Center provides certifications of compliance with the Quality Assurance Standards. The certifications are not the same as laboratory accreditation but are still used as an indication of compliance by various organizations.

QAS: refers to the Quality Assurance Standards issued by the FBI Director upon the recommendation of the DNA Advisory Board. Quality Assurance refers to measures that are taken by labs to monitor, verify, and document performance. Two sets of QAS exist: QAS for Convicted Offender DNA Databasing Laboratories, effective April 1, 1999; and QAS for Forensic DNA Testing Laboratories, effective October 1, 1998.

OCME: Nassau County Office of the Chief Medical Examiner in Plainview, New York, is a co-grantee of the Program award to the DCJS.

Ohio BCI&I: the Ohio Bureau of Criminal Identification and Investigation, the primary grantee of the Program award to Ohio.

Outsourcing: processing and/or DNA analysis that takes place by an accredited or certified state or local laboratory outside of the grantee's state as a contractual agreement between the grantee and the other public laboratory, or by a certified or accredited private (contractor) laboratory.

Screening: To screen a case requires a laboratory to determine, through visual inspection and/or preliminary tests, which case samples are most likely to yield sufficient DNA for successful analysis. Screening the cases prior to sending them to a contractor laboratory generally means that there will be a greater level of success during analysis in obtaining a DNA profile from each sample.

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SDIS: State DNA Index System containing the state-level DNA records uploaded from local laboratory sites within the state. SDIS is the state's repository of DNA identification records and is under the control of state authorities. The SDIS laboratory serves as the central point of contact for access to NDIS.

TXDPS: the Texas Department of Public Safety, the primary grantee of the Program award to Texas. The TXDPS has laboratories across the state, with the headquarters offices located in Austin, Texas.

AUDIT CRITERIA

Federal Legislation

CODIS was first described and authorized in the DNA Identification Act of 1994 (Act). The Act, part of the Violent Crime Control and Law Enforcement Act of 1994, authorized the FBI to establish and maintain CODIS. That authorization limited records in CODIS to those that are: based upon analyses meeting the FBI's QAS, prepared by labs undergoing external proficiency testing every 180 days, and maintained by criminal justice agencies that limit the disclosure of the information to approved groups. Access to the national CODIS database is subject to cancellation if these requirements are not met and penalties of up to \$100,000 can be assessed for unauthorized disclosure or receipt of DNA samples/information. Each Program grantee signs a Statutory Assurance Certification, stating that they will comply with the provisions of the Act, which in turn means that they must require their contractors to comply with the Act, since the contractors are doing the actual DNA analysis work.

The Act also established the DNA Advisory Board (DAB), an entity that was to compose standards for quality assurance with which CODIS-participating laboratories would have to comply and which the Director of the FBI could then formally institute. The DAB produced one of the key sources of our audit criteria, as described below.

Quality Assurance Standards

The QAS, recommended by the DNA Advisory Board and formally instituted by the Director of the FBI, are one of the key sources of criteria for an audit of a CODIS-participating laboratory. Two sets of standards have been instituted: the *Quality Assurance Standards for Forensic DNA Testing Laboratories* effective October 1, 1998; and the *Quality Assurance Standards for Convicted Offender DNA Databasing Laboratories* effective April 1, 1999.

Our audits of grantee and contractor laboratories included a review of compliance with various sections of the Forensic QAS, since it is that set of QAS that addresses casework analysis, applicable to the processing of

no-suspect cases. Further, while the Forensic QAS contain 155 elements organized under 15 headings, our audits focused primarily on 3 of those headings, as follows:

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- Facilities: the physical design of the laboratory and additional controls should ensure the integrity of laboratory security and minimize contamination. This section contains five elements.
- Evidence Control: the laboratory should have a documented control system, and the necessary internal controls to implement it, to ensure the integrity of the evidence and to govern the final disposition of the evidence. This section contains seven elements.
- Subcontractor of Analytical Testing for Which Validated Procedures Exist: a laboratory making use of a subcontractor for any part of the DNA analysis process should establish certain specified controls to ensure the integrity of the subcontractor's work and results. This section contains two elements.

In addition, the FBI has developed an audit document to assist DNA community auditors in assessing a laboratory's compliance with the QAS. This audit document provided comment and discussion on various QAS and served as a source of additional guidance.

Solicitation Requirements

The Program Solicitation issued by OJP serves as another source of audit criteria for our audits of the four state grantees and their co-grantees. Per the Program Solicitation, grantees were required to ensure that all analysis of no-suspect cases under the Program complied with the QAS, and that any profiles resulting from that analysis be expeditiously uploaded to CODIS. Further, the grantees were to ensure that their contracting Laboratories:

- are accredited by the ASCLD/LAB, or certified by the NFSTC;
- adhere to the most current QAS issued by the FBI Director, including the use of proper quality assurance standards (controls);
- have a Technical Leader located onsite at the laboratory;
- provide quality data able to be easily reviewed and uploaded to CODIS;

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- have the appropriate resources to screen evidence to maximize analytical results (if applicable to the work contracted); and
- are paid only for work that is actually performed. The Solicitation further explains that the compensation given to the outsourcing laboratory should be fair, and directly reflect the effort and cost put forth by the laboratory in processing the case/sample.

In addition, the Program Solicitation stipulated allowable and unallowable uses of grant funds:

- Funds may be used for overtime and/or other compensation for existing staff and for laboratory equipment and supplies needed for processing no-suspect cases, for contractor-provided services to perform various steps in the processing and/or analysis of cases/samples, and for travel to outsourcing laboratory for review of laboratory procedures and practices.
- Funds may not be used for the replacement of funds already available to the states for processing no-suspect cases (supplanting), for hiring new staff or salaries for existing staff beyond the overtime or other compensation outlined above, and for overhead or administrative costs. The state must demonstrate that funds were spent on expenses directly associated with processing no-suspect casework. Indirect and administrative costs were unallowable under this Program.

OJP Financial Guide

The OJP Financial Guide (Guide) serves as an additional source of audit criteria for our audits of the four state grantees. The Guide places various requirements on every grant issued by OJP. The following are some of the significant requirements:

- Accurate and timely Financial Status Reports and Progress Reports must be submitted quarterly and semi-annually, respectively, to OJP.
- Changes to the grantees' budget in excess of 10 percent of the total award, or changes to the scope of the project must be submitted to OJP for approval.

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- Grantees should time their drawdown requests to ensure that federal cash on hand is the minimum needed for disbursements to be made immediately or within a few days.



U.S. Department of Justice

Office of Justice Programs

Office of the Assistant Attorney General

Washington, D.C. 20531

OCT 19 2004

MEMORANDUM TO: Guy K. Zimmerman
Assistant Inspector General for Audit

FROM: Deborah J. Daniels *D. Daniels*
Assistant Attorney General

SUBJECT: Draft Audit Report on Office of Justice Programs
No Suspect Casework DNA Backlog Reduction Program

This memorandum responds to the Office of the Inspector General's (OIG) draft audit report issued on September 24, 2004, regarding the Office of Justice Programs' (OJP) No Suspect Casework DNA Backlog Reduction Program managed by the National Institute of Justice (NIJ). The draft report contains 19 recommendations and \$44,640 in questioned costs, relating to Fiscal Year (FY) 2001 casework grants made under the authority of the DNA Analysis Backlog Elimination Act of 2000. In general, we agree with the draft report's recommendations.

The current Administration and Congress discontinued this program in favor of the President's DNA Initiative. The President's DNA Initiative, announced by the Attorney General in March 2003, is a comprehensive and flexible approach to harness the power of DNA in the criminal justice system. The DNA initiative contains new program features that successfully address many of the key issues identified by the OIG. For example, under the DNA Initiative, NIJ:

- awarded FY 2004 casework grants directly to local crime laboratories, ensuring that needed funds reached their ultimate recipients faster.
- developed an innovative centralized procurement approach for the analysis of convicted offender DNA samples that reduced the unit cost of DNA samples significantly and removed time-consuming procurement responsibilities from State and local laboratories. This system allowed public laboratories to focus on other work, such as DNA casework analysis.
- added a Special Condition to FY 2004 DNA backlog awards requiring that all Federally-funded DNA profiles eligible for uploading to the Federal Bureau of Investigation's (FBI's) National DNA Index System (NDIS) be uploaded to NDIS in a timely manner. The legislation authorizing the FY 2001 program required only uploading to the Combined DNA Index System (CODIS), therefore, NIJ could not require grantees to upload samples to NDIS in its FY 2001 grants.
- added a Special Condition to awards in July 2003 that will require the monthly tracking and reporting of performance measures to NIJ. The performance of FY 2004 grants is

tracked monthly, including the monitoring of cash drawdowns to identify those grantees that may be experiencing difficulties in meeting program objectives. NIJ program managers work with the grantees to overcome any identified challenges that may be hindering progress.

- added a requirement for laboratory accreditation/certification as part of its FY 2004 awards and will continue this requirement in FY 2005 awards. This will help to raise the standards of practice and address the OIG's concerns over some policy and procedure issues at laboratories.

The 11 recommendations pertaining to state and local grantees will be addressed by having NIJ request appropriate documentation from grantees to support that they have worked with the accrediting/certifying organizations and the FBI to address the recommendations. Ten of the 11 state-specific recommendations relate to laboratory accreditation/certification issues, adherence to the FBI's DNA quality assurance standards, and NDIS data acceptance and review procedures. In these areas, NIJ has no standards setting or interpretation authority or responsibility. The authority and responsibility for these matters lie with the FBI and laboratory accreditation/certification organizations. NIJ will work with these agencies to obtain documentation verifying compliance with all required DNA quality assurance standards and NDIS procedures prior to making new awards.

The provisions in the "Justice for All Act of 2004" passed by Congress in October 2004 should improve grantee performance. The Act requires that grantee laboratories be accredited within two years by a nationally-recognized forensic science professional association and undergo external audits at least every two years to demonstrate compliance with the FBI's quality standards. Grantee laboratories must also remedy, as soon as practicable, any deficiencies identified by an external audit. In addition, under the Act, the FBI's NDIS will be able to hold more DNA records in accordance with applicable legal authorities of States, subject to some Federal restrictions. The current Administration supported these provisions and worked with the Congress to enact them.

For ease of review, the 19 recommendations included in the draft report are restated below in bold, followed by our response to the recommendation.

We recommend that OJP:

- 1. Develop and implement procedures that will allow Program officials to more closely monitor grantee drawdowns as a means to ensure that adequate progress is being made toward the achievement of each grantee's goals and objectives.**

We agree with the recommendation. In fact, last year NIJ implemented a requirement for program managers to conduct and document reviews of grantee drawdowns on a monthly

basis. If significant delays in drawing down funding are discovered, NIJ will address the delays with the grantee.

2. Ensure that timely uploads of Program-funded profiles are performed by all grantees.

We agree that uploads of DNA profiles to CODIS, and to NDIS within CODIS, should be made as expeditiously as possible. NIJ will educate grantees that they should review all DNA profile data as quickly as possible, and then upload that data to CODIS, and to NDIS where appropriate. NIJ has already undertaken such an effort by emphasizing this point at the NIJ DNA Grantees' Workshop in June 2004, and will do so at other DNA-related conferences. Further, NIJ added a Special Condition to its FY 2004 DNA backlog program awards requiring that all grant-funded profiles eligible for uploading to NDIS be uploaded to NDIS in a timely manner. The legislation authorizing the original No Suspect Casework DNA Backlog Reduction Program required only uploading to CODIS, therefore, NIJ could not require uploading to NDIS in its FY 2001 No Suspect solicitation.

Many state and local laboratories are unable to review and upload data in a timely manner due to insufficient laboratory personnel resources. Many of the data reviewers are also DNA examiners, and they cannot review and upload data as a full-time job. NIJ will work with the FBI -- the data review standards interpretation agency -- as well as its DNA grantees, to achieve new methods to speed up DNA data review and uploading of profiles to CODIS and NDIS.

3. Develop program goals and objectives that support the achievement of the program's mission of increasing laboratory capacity, and implement a system to track these goals.

We agree with this recommendation and have implemented a system to establish and track goals under the President's DNA Initiative. Announced in March 2003, the President's DNA Initiative spells out the goals and objectives that NIJ is following for all DNA-related grant programs: (1) eliminating DNA backlogs, (2) increasing crime laboratory DNA analysis capacity, (3) stimulating DNA research and development, (4) training the criminal justice community, and (5) advancing the use of DNA in solving missing persons cases.

To further refine and track these goals, in FY 2003, NIJ instituted new program objectives and performance measures to monitor progress toward achieving these goals and objectives. The new goals, objectives and performance measures have been incorporated into NIJ's revised Government Performance and Results Act (GPRA) charts. Some of the program's performance measures include: (1) reducing time from receipt of

DNA samples to uploading the data to CODIS and NDIS; (2) the number of DNA profiles uploaded to CODIS and NDIS; and (3) reducing the number of backlogged cases and samples. In July 2003, NIJ added a Special Condition to awards that will require the monthly tracking and reporting of performance measures to NIJ. The performance of FY 2004 grants is also tracked monthly.

4. **Develop performance measurements that allow the monitoring of progress toward achieving the Program's mission, such as monitoring laboratory capacity prior to, during and at the conclusion of the program.**

We agree with the recommendation. Beginning in July 2003, NIJ developed and instituted new performance measures, in support of the program's mission, goals and objectives and to monitor NIJ's and grantees' progress towards achieving program goals. Further, NIJ has developed, and will soon implement, a new Grant Progress Assessment (GPA) Program, through which trained DNA examiner-auditors hired by NIJ through the Forensic Resources Network, will conduct grant progress and compliance assessments and report their findings to NIJ for any necessary follow-up or appropriate funding actions. Spot-checks of profile uploads to CODIS and NDIS, adherence to DNA quality assurance standards and solicitation requirements, as well as a progress check of performance measures, will be included in the grantees' assessments.

5. **Monitor grantees' progress in drawing down funds prior to awarding them additional funding, and closely examine the reasons additional funding is requested. If funding is awarded, a justification supporting the decision should be carefully documented, specifically addressing the rationale for the untimely drawdowns.**

We agree with the recommendation. Last year, NIJ implemented a procedure for the program manager to monitor grantee drawdowns on a monthly basis. Past performance and drawdown issues are now documented as part of NIJ's review of grantee applications for new funding.

6. **De-obligate funds for Program grantees that have failed to draw down their Program funds in a timely manner and are unable to provide satisfactory evidence that they will be able to do so in the near future.**

We agree with the recommendation. NIJ will closely monitor future grantee drawdowns and performance, and will consider de-obligating funding, among other options, for grantees that are unable to make adequate progress in accomplishing the purposes of the grant.

7. **Ensure that Program requirements in future years stipulate that all laboratories analyzing no-suspect cases to meet the same accreditation/certification requirements, regardless of whether the laboratory is public or private.**

We agree with the recommendation. NIJ has already instituted identical quality assurance and accreditation requirements for both public and private laboratories in its FY 2004 DNA solicitations. This requirement will continue in future solicitations.

8. **Ensure that future solicitations clarify that the expectation of grantees is ultimately to upload all viable grant-funded profiles to NDIS.**

We agree with the recommendation. NIJ's FY 2005 DNA casework solicitation will include the specific requirement that all eligible DNA profiles be uploaded to NDIS. NIJ also added a special condition to the FY 2004 DNA casework awards requiring that all NDIS-viable profiles be uploaded to NDIS.

9. **Verify that the TXDPS has implemented the necessary measures to ensure that the Fort Worth Police Department's grant-funded profiles will be uploaded to NDIS.**

We agree with the intent of this recommendation, although the FY 2001 No Suspect Casework DNA Backlog Reduction Program did not require uploading of profiles to NDIS. This program was tied to the DNA Backlog Elimination Act of 2000, which required uploading of DNA profiles only to CODIS, not NDIS. We have added the NDIS uploading requirement for the FY 2004 awards, and will continue to do so under the President's DNA Initiative.

10. **Ensure the FDLE, Investigative and Forensic Science Services (IFSS), Tallahassee, implements a policy to routinely distribute a copy of contractor oversight documentation to all laboratories participating in its outsourcing contracts.**

We agree with the recommendation. NIJ will request a written response from FDLE detailing procedures implemented to ensure that contractor oversight documentation is routinely distributed to laboratories participating in its outsourcing contracts. NIJ has added the requirement for laboratory accreditation/certification in its 2004 solicitations and will continue this requirement in future solicitations.

11. **Require the FDLE, IFSS, Tallahassee, to ensure that the Jacksonville Regional Operations Center, as a co-grantee of the grant made to Florida, create a comprehensive policy that will contain current procedures in use for the outsourcing of no-suspect casework evidence, and formally approve and implement that policy.**

We agree with the recommendation. NIJ will request documentation from FDLE to support that the Jacksonville Regional Operations Center has created and implemented a comprehensive written policy for outsourcing no-suspect casework evidence.

12. **Require the FDLE, IFSS, Tallahassee, to ensure that Bode Technology Group implements a policy for the cleaning of the pass-through that exists between the pre-amplification and post-amplification areas.**

We agree with the recommendation. On September 30, 2004, your office notified the OJP Audit Liaison that it had received sufficient information from the Bode Technology Group to close this recommendation.

13. **Require the TXDPS to ensure that the Fort Worth Police Department, as a co-grantee of the grant made to Texas, begin maintaining records to substantiate their vendor's ongoing compliance with the QAS.**

We agree with the recommendation. NIJ will request a written response from TXDPS detailing procedures to ensure that the Fort Worth Police Department maintains records to substantiate their vendor's compliance with DNA quality assurance standards.

14. **Require the TXDPS to ensure that the Houston Police Department, as a co-grantee of the grant made to Texas, completes and documents an on-site visit to their contractor laboratory sufficient to meet the requirements of the QAS.**

We agree with the recommendation. NIJ will request documentation from TXDPS to support that the Houston Police Department has completed and documented an on-site visit to their contractor that meets the quality assurance standards.

15. **Require the TXDPS to ensure that the Houston Police Department, as a co-grantee of the grant made to Texas, create a comprehensive policy that will contain current procedures in use for the outsourcing of no-suspect casework evidence, and formally approve and implement that policy.**

We agree with the recommendation. NIJ will request documentation from TXDPS to support that the Houston Police Department has created and implemented a comprehensive written policy for outsourcing no-suspect casework evidence.

16. **Require the TXDPS, through the Fort Worth Police Department, as a co-grantee of the grant made to Texas, to ensure that Orchid Cellmark in Dallas, Texas, implements a policy for the cleaning of the pass-through that exists between the pre-amplification and the post-amplification areas.**

We agree with the recommendation. NIJ will request documentation from the TXDPS to support that they have worked with the appropriate DNA laboratory accrediting/certifying bodies and Orchid Cellmark in Dallas, TX, to ensure that the pass-through area is cleaned, and that all DNA quality assurance standards have been met by Orchid Cellmark.

17. **Require the New York State DCJS to ensure that the NCPD, as a co-grantee of the grant made to New York, create a comprehensive policy that will contain current procedures in use for the outsourcing of no-suspect casework evidence, and formally approve and implement that policy.**

We agree with the recommendation. NIJ will request documentation from New York State DCJS to support that the Nassau County Police Department (NCPD) has created and implemented a comprehensive written policy for outsourcing no-suspect casework evidence.

18. **Require the New York State DCJS to ensure that Orchid Cellmark in Germantown, Maryland, implements a policy requiring that evidence, after being received and logged in by the receptionist, is immediately placed in a limited access or secure area while awaiting the attention of technical personnel.**

We agree with the recommendation. NIJ will request documentation from the New York State DCJS to support that Orchard Cellmark in Germantown, Maryland implements a written policy requiring that evidence, after being received and logged in by the receptionist, is immediately placed in a limited access or secure area while awaiting the attention of technical personnel.

19. **Ensure that the New York State DCJS remedies questioned costs of \$44,640 for the Nassau County Police Department cases for which the contractor laboratory was paid for complete analysis but only screening was performed.**

We agree with the recommendation. NIJ and the Office of the Comptroller will work with the New York State DCJS and NCPD to remedy questioned costs of \$44,640.

We appreciate the opportunity to comment on the draft report. If you have any questions, please feel free to contact me on 202-307-5933, or LeToya A. Johnson, OJP Audit Liaison, on 202-514-0692.

Attachments

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**OFFICE OF THE INSPECTOR GENERAL
AUDIT DIVISION
ANALYSIS AND SUMMARY OF ACTIONS
NECESSARY TO CLOSE REPORT**

The OJP response to the draft audit report appears in Appendix IV. In its response, OJP generally agreed with all 19 of our recommendations and described the corrective actions it has taken or intends to take with regard to the recommendations. Prior to presenting the status of each recommendation and the actions necessary for closure, however, we address several statements that OJP made in its response.

First, the OJP response referenced the "President's DNA Initiative" (DNA Initiative), announced in March 2003, and asserted that the grant program that we audited was discontinued in favor of the DNA Initiative. This statement is incorrect. The 2004 grant program closely follows the requirements of prior year Forensic Casework Backlog Reduction Programs and our findings and recommendations are relevant for the 2004 program as well. In addition, we believe it is misleading for OJP to state that the current Administration and Congress discontinued the Forensic Casework DNA Backlog Reduction Program in favor of the DNA Initiative. Under the DNA Initiative, the funding source for the Backlog Reduction Program has changed, but the program has not been discontinued. In fact, DNA backlog elimination is the most strongly funded purpose area contained in the DNA Initiative. In our judgment, the priority given to reducing and eliminating backlogs further emphasizes the significance of the OIG recommendations contained in this report. Overall, the only apparent change to the grant program resulting from the DNA initiative is the source of funding. Under the DNA Initiative, administrative and program requirements are substantially unchanged from prior years.

Second, OJP's response indicated that many of our audit recommendations were already addressed in the DNA Initiative. While the DNA Initiative contains broad provisions related to a variety of DNA-related programs, including eliminating backlogs, strengthening crime laboratory capacity, stimulating research and development, and providing training, the DNA Initiative does not stipulate how those programs are to be managed, which is the key to successful administration of any grant program. For this reason, the DNA Initiative itself does not resolve or close any of our audit findings or recommendations. For example, the DNA Initiative does not address our recommendations relating to the development and implementation of better performance measurements or increased

monitoring and oversight of grant drawdowns. In addition, many of our recommendations pertain to the oversight of local grantee activities by the state grantees. The DNA Initiative does not provide any guidance in this area.

The OJP's response provided examples of changes made to the May 2004 solicitation that added special conditions to DNA grants awarded in September 2004, which addressed some of our audit findings. We agree that these changes, many of which were implemented in response to our audit work, are positive steps taken by OJP. For example, the solicitation allows for grants to be awarded directly to local laboratories, which should shorten the time that it takes to utilize this funding. This change directly addressed one of our audit recommendations.

In its response, OJP also stated that the provisions in the "Justice for All Act of 2004" should improve grantee performance. While this Act provides funding authorization for many DNA-related programs, we still believe that OJP's administration of any funds awarded under this Act are the most significant measure of whether grantee performance will improve. The Act itself does not direct monitoring of grantee activities.

In sum, while the new DNA Initiative and the Justice for All Act contain many provisions related to DNA grant programs, the overall monitoring, administration, and success of these and other DNA-related grant programs are dependent upon the quality of activities conducted by OJP. Our recommendations focus on OJP activities, and the passage of the DNA Initiative and the Justice for All Act emphasize the importance of implementing the changes we recommend in the way the DNA grants are administered.

The status of the individual recommendations is as follows:

1. **Resolved.** This recommendation can be closed when we receive OJP's revised procedures for monitoring grantee drawdowns.
2. **Resolved.** This recommendation can be closed when we receive documentation that OJP is ensuring that Program-funded uploads are being performed on a timely basis.
3. **Resolved.** This recommendation can be closed when we receive:
 - 1) documentation that OJP has developed Program goals that support the achievement of the Program's mission of increasing laboratory capacity,

and 2) documentation that OJP has implemented an appropriate system to track those goals.

4. **Resolved.** This recommendation can be closed when we receive:
 - 1) documentation that OJP has developed and implemented performance measurements that allow the monitoring toward the achievement of the Program's mission of increasing laboratory capacity, and
 - 2) documentation relating to the Grant Progress Assessment Program as it pertains to the oversight of those performance measurements.
5. **Resolved.** This recommendation can be closed when we receive a copy of the implemented procedures for the review of drawdowns for current grants before awarding grantees additional funding.
6. **Resolved.** This recommendation can be closed when we receive a copy of the implemented procedures for the de-obligation of funding for grantees that are not utilizing their grant funds in a timely manner.
7. **Resolved.** This recommendation can be closed when we receive evidence that all laboratories participating in future programs must meet the same certification/accreditation requirements.
8. **Resolved.** This recommendation can be closed when we receive evidence that future Solicitations emphasize that Program-funded profiles should be uploaded to NDIS.
9. **Resolved.** This recommendation can be closed when we receive documentation that the new awards funded in 2004 require that eligible grant-funded profiles be uploaded to NDIS.
10. **Resolved.** This recommendation can be closed when we receive documentation that the FDLE, Investigative and Forensic Science Services, Tallahassee, has implemented a policy to ensure that participating locations receive current contractor oversight documentation.
11. **Resolved.** This recommendation can be closed when we receive documentation that the FDLE, Jacksonville Regional Operations Center, has approved and implemented a comprehensive policy that contains current procedures in use for the outsourcing of no-suspect casework evidence.
12. **Closed.**

APPENDIX V

13. **Resolved.** This recommendation can be closed when we receive documentation that the Fort Worth Police Department is maintaining records to substantiate their vendor's on-going compliance with the QAS.
14. **Resolved.** This recommendation can be closed when we receive documentation that the Houston Police Department has completed and documented an onsite visit to their contractor laboratory sufficient to meet the requirements of the QAS.
15. **Resolved.** This recommendation can be closed when we receive documentation that the Houston Police Department has approved and implemented a comprehensive policy that contains current procedures in use for the outsourcing of no-suspect casework evidence.
16. **Resolved.** This recommendation can be closed when we receive documentation that Orchid Cellmark in Dallas, Texas, has implemented a policy for the cleaning of the pass-through that exists between the pre-amplification and post-amplification areas.
17. **Resolved.** This recommendation can be closed when we receive documentation that the Nassau County Police Department has approved and implemented a comprehensive policy that contains current procedures in use for the outsourcing of no-suspect casework evidence.
18. **Resolved.** This recommendation can be closed when we receive documentation that Orchid Cellmark in Germantown, Maryland, has implemented a policy requiring that evidence, after being received and logged in by the receptionist, is immediately placed in a limited access or secure area while awaiting the attention of technical personnel.
19. **Resolved.** This recommendation can be closed when we receive evidence that \$44,640 in questioned costs for the New York State DCJS has been remedied.